



National Integrity System Study

BOSNIA AND HERZEGOVINA 2007





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Report by
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Abbreviations and acronyms

CEC – Central Election Commission
Federal Intelligence Agency
ABA/CEELI – American Bar Association/Central East-European Legal Initiative
ACA – Anti-corruption Agency
ACABQ – Advisory Committee on Administrative and Budgetary Questions (of the UN)
ACCU – Anti-Crime and Corruption Unit
ADR – Alternative Dispute Resolution
ALDI - Agency for Local Development Initiatives
APIF – Agency for Mediation, Information and Financial Services of RS
BHTV – BiH television broadcaster
BiH – Bosnia and Herzegovina
CAFAO – Customs and Fiscal Administration Office
CBC – Central Bosnia Canton
CCI – Centre for Civil Initiatives
CEC BiH – Central Election Commission of BiH
CIDA – Canadian International Development Agency
CoM – Council of Ministers
CPI – Corruption Perceptions Index (TI)
CRA – Communications Regulatory Agency
CSO – Civil society organisation
DfID – Department for International Development (UK)
DNS – Democratic People’s Union (predominantly Serb party)
EC – European Commission
EC BiH – Election Commission of BiH
EPPU – Unit for Economic Planning and Implementation of MTDS BiH
EPRU – Economic Policy Research Unit
EU – European Union
EUFOR – European Union Force in Bosnia and Herzegovina
EUPM – European Union Police Mission
EUPPP – European Union Public Procurement Project
FBiH – Federation of Bosnia and Herzegovina
FDI – Foreign Direct Investment
FID – Financial Intelligence Department
FOSS – Federal Intelligence and Security Agency
FTV – Federal Television
GDP – Gross Domestic Product
GROZD – Citizens’ organisation for democracy

HDZ – Croatian Democratic Union
HJPC – High Judicial and Prosecutorial Council
IDA – International Development Association (of the World Bank)
IFAC – International Federation of Accountants
IFES – International Foundation for Election System
IMF – International Monetary Fund
INTOSAI – International Organization of Supreme Audit Institutions
IPTF – International Police Task Force
ISA – Intelligence and Security Agency of BiH
KM – Konvertibilna Marka (Convertible Mark, the BiH currency, pegged to the Euro at the exchange rate 1 EUR = 1.95583 KM)
MI FBiH – Ministry of the Interior of FBiH
MI RS – Ministry of the Interior of RS
MP – Member of Parliament
MTDS – Mid-Term Development Strategy
NATO – Northern Atlantic Treaty Organisation
NGO – Non-Governmental organisation
NIS – National Integrity System
OBN – Open Broadcasting Network
ODC – Office of the Disciplinary Counsel
OECD – Organisation for Economic Co-operation and Development
OHR – Office of the High Representative
OHRO – Human Rights Ombudsmen of BiH
OSCE – Organisation for Security and Co-operation in Europe
OSF – Open Society Fund
PA BiH – Parliamentary Assembly of BiH
PBS – Public Broadcasting Service
PDP – Party of Democratic Progress (predominantly Serb)
PIC – Peace Implementation Council
PIMU – Policy Implementation and Monitoring Unit
PPA – Public Procurement Agency
PRB – Procurement Review Body
PRSP – Poverty Reduction Strategy Paper
RRV – Swedish National Audit Office
RS – Republika Srpska
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
SFOR – Stabilisation Force (NATO-led)
SIDA – Swedish International Development Agency
SIPA – Security Intelligence Protection Agency
SNSD – Party of Independent Social Democrats (in RS)
TI – Transparency International
TI BiH – Transparency International Bosnia and Herzegovina
UK – United Kingdom
UN – United Nations
UNCAC – UN Convention against Corruption
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

About the NIS Studies

What is the NIS?

The National Integrity System encompasses the key institutions, sectors or specific activities (the ‘pillars’) that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International as part of TI’s holistic approach to combating corruption.¹ While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity. The NIS studies are based on an assessment of the quality of institutions relevant to the overall anti-corruption system.

Why Conduct NIS Studies?

The purpose of each NIS study is to assess the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries. They can also be carried out at the regional level, thus producing an Integrity Study.

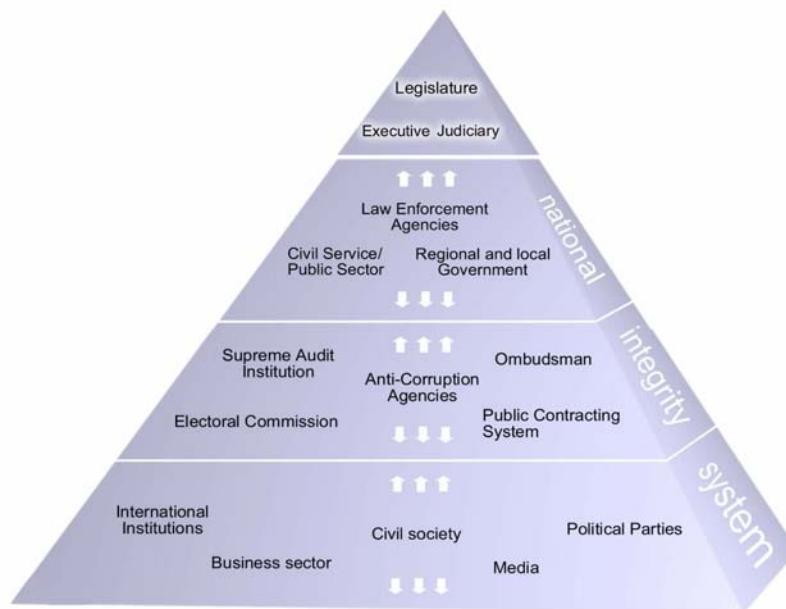
The studies provide a starting point for signalling areas requiring priority action. They also form the basis from which stakeholders may assess existing anti-corruption initiatives. Integrity studies help explain, for example, which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. Integrity studies also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the integrity system.

The studies create a strong empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development.

For Transparency International, Integrity Studies are an important measurement tool. They complement TI’s global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 55 such studies have been completed as of August 2006.

TI believes that it is necessary to understand the provision for and capacity of the integrity pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. Integrity Studies are a unique product of Transparency International, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

NIS has been graphically presented in many forms, all aspiring to present its holistic approach and inter-relations as well as mutual dependence of the institutions. One such graphic summary of the NIS can be found below – demonstrating how the grassroots institutions directly impact the regulators above them, who also provide some monitoring mechanisms. As one climbs up the pyramid, the institutions are more complex and demanding, relying on ever more of those below. The top of the pyramid consists of the three equally important institutions, the tripartite division of powers in a state, whereby all are equally important and independent, while they all must collaborate very closely. At the same time, all three must work closely with all the other institutions in the lower levels of the pyramid. Therefore, there are no more or less important parts – bricks of that pyramid; without any of them, the structure would collapse the system would not be viable and the top cannot be constructed without the solid basement and the lower levels.



Methodology of the Integrity Studies

The Integrity Studies offer a qualitative assessment of the integrity system in a country or region. The studies are based on both objective and subjective sources of data, which differ in quantity in each country or region evaluated. The studies therefore require both desk research and field research.

At least one focus group is convened as part of the Integrity Study, although more are recommended/desirable. Focus group participants include anti-corruption and governance experts drawn from government (including donors, where relevant), the private sector, the professions (e.g. lawyers, accountants and engineers), media and civil society. The aim of the focus groups is for a broad base of stakeholders to evaluate the integrity system and to comment on the draft Integrity Study. The results of the meeting then inform further revision of the Integrity Study. Each Integrity Study is reviewed by an external expert referee.

Transparency International Bosnia and Herzegovina

Transparency International is the only international movement exclusively devoted to curbing corruption. The organisation has been present in over 100 countries worldwide for twelve years. The BiH Chapter was launched on 23 February 2001 and received full accreditation as recognition for its successful work on 12 October 2002. Three years of hard work and commitment of its staff, members and Board of Directors have positioned Transparency International BiH (TI BiH) as one of the leading forces of the civil society capable of initiating a mechanism vehicle for changes in society by building regional and local coalitions and embracing the state, civil society and the private sector in anti-corruption combat.

TI BiH is registered as an association of citizens that operates as part of the international movement Transparency International, which advocates good and fair governance. The BiH Country Chapter is wholly locally owned and independent. Decisions are made by the Chapter's management bodies, namely the Assembly and the Board of Directors. The Assembly consists of TI BiH members – a limited number of individuals with different professional, cultural and geographical backgrounds who are devoted to promotion and fulfilment of the Association's goals. Members of the Board of Directors are appointed by the Assembly from amongst its most active members.

Financial means of the Association are provided by various donors who share the Association's anti-corruption goals. In raising the financial means, the Association is guided by the principle of self-sustainability, i.e. TI BiH shall not accept funds that are conditioned or structured in the way that prevents or might prevent the Association from undertaking independent actions or carrying out its mission. Technical and other support is offered to governments and public services, business organisations, institutions and individuals, as well as to TI's national and regional chapters.

The Association's vision is Bosnia and Herzegovina with a level of corruption similar to that in EU member states, which will be a reform leader in South-East Europe, with reduced poverty, on an advanced stage of sustainable economic development, attractive for foreign investment. The Association acts altruistically and its primary motive is not profit-oriented.

Over the last six years TI BiH has developed concrete mechanisms for monitoring corruption in BiH, measuring the progress achieved by governments, and disseminating information to the public through regular reports on corruption. Following two initial reports on corruption, in March 2002 TI BiH carried out a public opinion poll in entire BiH and published its findings in the "2002 Corruption Perception Study" in June 2002. During that period TI BiH participated in development of the Regional Reports on Corruption, which also included BiH. TI BiH also conducted lightning opinion polls before the 2002 general elections and 2004 local elections. By doing so, TI BiH exerted influence on political parties to work harder on anti-corruption strategies and called for enhanced transparency in the work of political parties and their leaders.

By launching the Accountability Programme in the Western Balkans, TI BiH has actively engaged itself in implementation and monitoring of the two key areas of government accountability: conflict of interest of public officials and free access to information. Partnerships were established through co-operation with and trainings of journalists, representatives of the civil society and public officials, as well as through provision of best legal and institutional practices via the TI's regional and international network.

TI BiH's experiences made it possible to set up the Centre for Advocacy and Legal Advice in Anti-Corruption Combat and launch a toll-free phone line for reporting of corruption (0800 55555) with the aim of strengthening institutional mechanisms for sanctioning corruption. These two are meant to constitute an alternative mechanism of co-operation between citizens and relevant public institutions in curbing individual cases of corruption and monitoring the performance of the said institutions while processing such cases.

In June 2004 TI BiH published the new edition of the Corruption Perception Study for 2004 with the aim of tracking the progress of anti-corruption efforts of the authorities at all levels. Soon thereafter, in August 2004, TI BiH published the National Integrity System Study, which helped achieve the full synergy of system diagnostics. While, on one hand, the Corruption Perception Study offers an external appraisal of how the system functions, i.e. how its end users – citizens perceive it, the NIS Study, on the other hand, assesses the effectiveness of the relevant institutions charged with anti-corruption combat. Comparison and pooling of the results of these two studies resulted in specific recommendations for improving the work of state institutions towards a more systemic and organised anti-corruption combat.

Continuous campaign aimed at educating citizens about adverse effects of corruption and tools for its reduction was further strengthened in 2005 through media campaign “Advocating Accountability and Promoting Transparency in BiH” as well as through establishment of closer collaboration with educational institutions resulting in a number of public lectures and debates on corruption at universities and secondary schools.

In early 2006 TI BiH became a member of the social coalition GROZD (Civic Organising for Democracy) whose aim is to enhance accountability of elected officials through elections and urging them to engage in solving the pressing problems of BiH citizens.

Executive Summary

Despite years of reforms, extensive analysis and billions of dollars in international assistance invested into the decade long 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. In 2006, the Corruption Perception Index included 163 countries and ranked them on a scale from the least corrupt to those where corruption is most pervasive. Following the fall from the 70th place in 2003 to the 88-96th place in 2005, in 2006 BiH shared the 93 to 98th place with score 2.9 out of a clean score of 10, which ranked the country among the most underdeveloped and corrupt countries in the world where reforms are slowly implemented, transition is characterised by numerous affairs which further indicates a continual lack vision and strategy in anti-corruption combat.

This study analyses the key public sector institutions necessary to combating corruption, as they comprise the 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 analysis of the status of corruption on the basis of the TI BiH surveys and findings shows that corruption is most pervasive at the local (municipal and cantonal) level. This is due to the fact that the majority of contacts between citizens and public administration take place at the local level while the price of corruption is certain to be higher at the higher levels of power. In most cases the incriminating trail of criminal activities in connection with misappropriation of public funds, mismanagement of public companies and irregularities in the privatisation process leads to the top levels of power. This poses a conclusion that most of these criminal activities could not happen without the direct engagement or patronage of high-ranking officials.

Disturbing fact that yet has not been properly addressed is that the key positions in privatisation agencies/directorates as well as in managing boards and other managing functions in public companies are held by persons whose most important qualification for carrying out such responsible duties is the fact that they belong to a specific political party. This leads the public to perceive the political parties as the most corrupt institution in the country, introducing fraud, theft, cronyism and other corrupt behaviour into the executive, legislative as well as indirect rule of law institutions (judiciary and law enforcement agencies).

Noteworthy is also the lack of a multi-stakeholder approach. Most efforts have concentrated on strengthening of individual pillars/institutions and very rarely taken a holistic countrywide approach that would begin by bringing the key parties to discuss the agenda and priorities together. This approach to the

system, based on combined effectiveness suggests that a strengthening of judiciary without implementing simultaneous measures in the police, prosecution, public attorney's office, lawyers etc., will not bring about any sustainable improvements. While progress has been made in professionalising judiciary, police and other institutions of the legal system, the lack of communication and co-operation between the parallel pillars has inhibited substantive systemic reforms. More than a decade since the end of hostilities there has been little or no serious sanctioning of economic crime committed either during the war or thereafter. This confirms the hypothesis that an uncoordinated system is unsustainable in the long-term.

The public sector has demonstrated its incapability to effectively address the governance issues, efficiently build its capacities and to lead a strong anti-corruption campaign. Three anti-corruption strategies have failed thus far for the reasons of the lack of institutional commitment, close collaboration, but also the actual political will to combat corruption. This is understandable from the prism of benefits the national politicians retain by maintaining their non-transparent self-governed feudal territories, effectively accountable to nobody and gaining from financial and economic resources solely at their disposal.

What is required in order to move away from the *status quo* is an imperative public requirement to reform, which can best be spurred by reinforcing trust in certain quasi-state pillars, such as professional supreme audit, election commission, public contracting mechanisms, civil service and ombudsmen, supported by the non-state pillars such as independent media, business sector and NGOs, topped by the still dominant, but retracting international community. These will build a sufficient pressure on the law enforcement institutions and judiciary, strengthened if necessary by a dedicated anti-corruption co-ordination authority or institutional setup that can eventually address all the existing deficiencies and problems of the critically problematic pillars: political parties, executive, legislative and local/regional governments, perceived as most corrupt.

This is indeed the holistic approach to the NIS that is constantly being missed in BiH and that must be translated into a feasible and very concrete anti-corruption strategy that applies all across BiH and is co-ordinated by the trustworthy department of the Council of ministers. In this case, the lines of responsibilities have to be most clearly defined, deadlines realistically set and the monitoring mechanism must be completely different to the implementing one and ideally non-governmental.

The introduction of such a strategy is a crucial step towards strengthening and enabling co-ordination of the NIS, which is the best long term solution to reducing corruption in BiH.

Country profile

OVERVIEW

The three main ethnic groups in present-day Bosnia and Herzegovina are Bosniak, Serb and Croat, and languages are individually branded as Bosnian, Serbian, and Croatian, while this was formerly a single Serbo-Croatian. Nationalities are Bosniak (Muslim), Bosnian Serb, and Bosnian Croat. Religions include Islam, Serb Orthodoxy, Roman Catholicism, and to limited extent Judaism, some Protestant sects and others. The area of 51,129 sq. km with the capital of Sarajevo (also the capital of FBiH) and Banja Luka as the second largest town (the capital of RS) is inhabited by approximately 4 million citizens ethnically

distributed as follows: Bosniak 48.3%, Serb 34.0%, Croat 15.4%, others 2.3%.²

Historically, Bosnia was under Ottoman rule until 1878, when it was given to Austria-Hungary as a colony. While those living in Bosnia came under the rule of the Austro-Hungarian Empire, South Slavs in Serbia and elsewhere were calling for a South Slav state. World War I began when Serb nationalist Gavrilo Princip assassinated the Archduke Franz Ferdinand in Sarajevo. Following the Great War, Bosnia became part of the South Slav state of Yugoslavia, only to be given to Nazi-puppet Croatia in World War II. During this period, many atrocities were committed against Serbs, Jews and others who resisted the occupation. The Cold War saw the establishment of the Socialist Federal Republic of Yugoslavia under Josip Broz Tito, and the reestablishment of Bosnia as a republic within the federation of Yugoslavia.



Yugoslavia's unravelling was hastened by Slobodan Milosevic's rise to power in 1986. Milosevic's embrace of Serb nationalism led to intrastate ethnic strife. Simultaneous rise in nationalism in Slovenia and Croatia led to their declaration of independence from Yugoslavia in 1991. In February 1992, the Bosnian Government held a referendum on independence. Bosnia's parliament declared the republic's independence on April 5, 1992. However, this move was opposed by Serb representatives, who favoured remaining in Yugoslavia. Bosnian Serbs responded with armed force in an effort to partition the republic along ethnic lines. Full recognition of Bosnia and Herzegovina's independence by the United States and most European countries occurred on April 7, and Bosnia and Herzegovina was admitted to the United Nations on 22 May 1992.

In March 1994, Muslims and Croats in Bosnia signed an agreement creating the Federation of Bosnia and Herzegovina. This narrowed the field of warring parties to two. The conflict continued through most of 1995, ending with the 21 November 1995 Dayton Peace Agreement, which was formally signed on 14 December 1995 in Paris. BiH today consists of two entities: the Federation of Bosnia and Herzegovina, which is largely Bosniak and Croat, and the Republika Srpska, which is primarily Serb. In July 2000, the Constitutional Court of BiH rendered a decision whereby Bosniaks, Croats, and Serbs are recognised as constituent people throughout the territory of BiH. In March 2002, this decision was formally recognised and agreed by the major political parties in both entities. Nevertheless, the political scene remains ethnically coloured with domination of the national parties (particularly the Bosniak SDA, Serb SDS and Croatian HDZ that have marked much of the post-Dayton years). This landscape somewhat changed with the October 2006 general elections, although the nationalistic rhetoric remains even since³.

In accordance with Annex 2, Article V, of the Dayton Peace Agreement that left the unresolved status of Brcko subject to binding international arbitration, an Arbitration Tribunal was formed in mid-1996. On March 5, 1999, the Tribunal issued its Final Award. The Final Award established a special District for the entire pre-war Brcko municipality, under the exclusive sovereignty of BiH. The territory of the District belongs simultaneously to both entities in condominium. Therefore, the territories of the two entities overlap in the Brcko District. In accordance with the Final Award, the District is self-governing and has a single, unitary, multiethnic, democratic Government; a unified and multiethnic police force operating under a single command structure and an independent judiciary. The District Government exercises, throughout the pre-war Brcko municipality, those powers previously exercised by the two entities and the former three municipal governments. The Brcko district is demilitarised.

The most recent national elections took place in October 2006, electing new State presidency members, Entity governments, and State, Entity and cantonal parliaments. BiH introduced the direct election of mayors at regional and municipal elections held in October 2004, including the Brcko District elections.

GOVERNMENT AND POLITICAL CONDITIONS

Under the provisions of the Dayton Peace Accords, the entities have competencies in areas such as finance, taxation, business development, and general legislation. Entities and cantons control their own budgets, spending on infrastructure, health care, and education. Ongoing reforms have led to the creation of a single, multi-ethnic military under State-level command and control to replace the previous Entity-based institutions and a State-level Indirect Taxation Authority (ITA) that is responsible for the implementation of a state-wide value-added tax (VAT), revenues from which fund the governments of the State of BiH as well as the two Entities. Customs, which had been collected by agencies of the two entities, also is now collected by a new single State customs service.

The Presidency in BiH rotates among three members (Bosniak, Serb, Croat), each elected for a 4-year term. The three members of the Presidency are directly elected (FBiH votes for the Bosniak/Croat, and the RS for the Serb).

The Presidency is responsible for:

- Conducting the foreign policy of BiH;
- Appointing ambassadors and other international representatives, no more than two-thirds of whom may come from the Federation;
- Representing BiH in European and international organisations and institutions and seeking membership in such organizations and institutions of which it is not a member;
- Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of BiH;
- Executing decisions of the Parliamentary Assembly;
- Proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly;
- Reporting as requested, but no less than annually, to the Parliamentary Assembly on expenditures by the Presidency;
- Co-ordinating as necessary with international and non-governmental organizations in BiH;
- Exercising command and control over the Armed Forces of BiH in peacetime, crises, and war, and;
- Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the entities.

The Chair of the Council of Ministers is nominated by the Presidency and approved by the House of Representatives. He is then responsible for appointing a Foreign Minister, Minister of Defence, Minister of Foreign Trade, and others as appropriate, but this is largely a matter of intra-party arrangements. The Council is responsible for carrying out the policies and decisions in the fields of defence, intelligence, foreign policy; foreign trade policy; customs policy; monetary policy; finances of the institutions and for

the international obligations of BiH; immigration, refugee, and asylum policy and regulation; international and inter-Entity criminal law enforcement, including relations with Interpol; establishment and operation of common and international communications facilities; regulation of inter-Entity transportation; air traffic control; facilitation of inter-Entity co-ordination; and other matters as agreed by the entities.

Legislature. The Parliamentary Assembly is the lawmaking authority in BiH. It consists of two houses: the House of Peoples and the House of Representatives. The House of Peoples includes 15 delegates, two-thirds of whom come from FBiH (5 Croats and 5 Bosniaks) and one-third from the RS (5 Serbs). The Parliamentary Assembly is responsible for enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under the constitution; deciding upon the sources and amounts of revenues for the operations of the institutions of BiH and international obligations; approving a budget for the institutions of BiH; and deciding whether to consent to the ratification of treaties.

Judiciary. The Constitutional Court of BiH is the supreme, final arbiter of legal matters. It is composed of nine members: four are selected by the House of Representatives of FBiH, two by the Assembly of the RS, and three by the President of the European Court of Human Rights after consultation with the Presidency. The Constitutional Court's original jurisdiction lies in deciding any constitutional dispute that arises between the Entities or between BiH and an Entity or Entities. The Court also has appellate jurisdiction within the territory of BiH. Both FBiH and the RS government have established lower court systems for their territories.

ECONOMY

Next to Macedonia, BiH was the poorest republic in the old Yugoslav Federation. For the most part, agriculture has been in private hands, but farms have been small and inefficient, and food has traditionally been a net import for the country. Industry still is greatly overstaffed, reflecting the legacy of the centrally-planned economy. Under Tito, military industries were pushed in the republic; Bosnia hosted a large share of Yugoslavia's defence plants. Three years of interethnic strife destroyed the economy and infrastructure in Bosnia, caused the death of about 200,000 people, and displaced half of the population.

Considerable progress has been made since peace was re-established. Due to the strict currency board regime, which links the Konvertibilna Marka (BAM) to the Euro, inflation has remained low. However, growth has been uneven, with FBiH outpacing RS in the first post-Dayton decade and RS' stronger performance in the past couple of years.

Per capita GDP in 2005 has been estimated at approximately US\$2,423, with a total estimated nominal GDP of approximately US\$9.5 billion. The IMF estimated growth rate for 2005 was 5.4 percent, and

projected growth for 2006 is 5.7 percent. While official unemployment is approximately 40 percent, 'unofficial' estimates that include the large gray economy are approximately 18-22 percent. The current account deficit is estimated to be approximately 20 percent of GDP. The most prominent foreign investors in BiH come from Austria and Croatia. The most immediate task remains economic revitalisation. In order to do this fully, the environment must be conducive to a private sector, market-led economy. Privatisation has been slow, and unemployment remains high. Restructuring of BiH's domestic debt (estimated at over 2000% of GDP) is imperative. BiH is expected to meet its external debt obligations without major difficulties, although there does exist a significant internal debt overhang as a legacy of the 1992-95 war (particularly in FBiH). The introduction of a Value-Added Tax (VAT) in 2006 has increased the government's tax revenues and resulted in a budget surplus.

The top economic priorities are: acceleration of EU integration by concluding a Stabilisation and Association Agreement (SAA); strengthening the fiscal system; public administration reform; World Trade Organisation (WTO) membership; and securing economic growth by fostering a dynamic, competitive private sector. To date, work on these priorities has been inconsistent and not in line with milestones. The country has received a substantial amount of foreign assistance but must prepare for declining assistance flows in the future.

A multi-tiered and divided government creates a confusing array of regulations, fees, taxation, and standards requirements. This confusion results in a lack of transparency and opportunities for corruption in business-government dealings. Government authorities at all levels have begun to address these obstacles as part of the larger effort to transition to a market economy. However, BiH is still in the early stages of this process. As a result, foreign investment (particularly green field investment) has shown only limited gains. Foreign investment in the banking sector is the exception, with Austrian banks taking a dominant position in the local banking market.

FOREIGN RELATIONS

The implementation of the Dayton Accords of 1995 has focused the efforts of policymakers, as well as the international community, on regional stabilisation in the former Yugoslavia. However, donor resources for BiH have diminished due to competing assistance priorities elsewhere in the region and globally. BiH's relations with its neighbours Croatia, Montenegro and Serbia have been fairly stable since the signing of Dayton in 1995. Since the Dayton Accords were signed, over \$14 billion in foreign aid has moved into BiH. This support has been key to the growth and revitalisation of the economy and infrastructure.

BiH is a member of the United Nations (1992); International Monetary Fund (IMF) (1992), World Bank (1995), Organization for Security and Co-operation in Europe (OSCE) (1992); and the Council of Europe

(2002). It also participates in regional co-operation through the Stability Pact, Central-European Initiative (CEI), Southeast Europe Co-operation Initiative (SECI), Southeast Europe Co-operation Process (SEECF), Adriatic-Ionic Initiative (AII) and others.

However, the role of the Office of the High Representative and the international community in BiH has been detrimental for the post-conflict development of BiH. The Office of the High Representative (OHR) is the chief civilian peace implementation agency in Bosnia and Herzegovina. The 1995 Dayton Peace Agreement, as set out in Annex 10, designated the High Representative to oversee the implementation of the civilian aspects of the Peace Agreement on behalf of the international community⁴. The OHR is also tasked with co-ordinating the activities of the civilian organisations and agencies operating in BiH. The OHR mandate is the chief authority to interpret the agreement on the civilian implementation of the peace settlement. The High Representative has no authority over the NATO-led military Stabilisation Force (SFOR).

In order to accomplish that objective, the OHR sets out six core tasks for the organisation, and several programmes under each task designed to accelerate progress toward a Stabilisation and Association Agreement for BiH:

- Entrenching the Rule of Law;
- Ensuring that extreme nationalists, war criminals, and organised criminal networks cannot reverse peace implementation;
- Reforming the economy;
- Strengthening the capacity of BiH's governing institutions, especially at the State-level;
- Establishing State-level civilian command and control over armed forces, reforming the security sector, and paving the way for integration into the Euro-Atlantic framework; and
- Promoting the sustainable return of refugees and displaced persons.

The powers of the High Representative thus enable him to remove/replace the individuals in power (more in the International Organisations chapter of this publication), which have been exercised some 150 times thus far, including the highest officials of the country. In addition a large number of laws and amendments including the constitutional ones have been imposed.

Hardly any international engagement globally encountered such a broad criticism as did the reign of Lord Paddy Ashdown, the penultimate High Representative of the international community for implementation of the civilian aspect of the Dayton Peace Accords (DPA). This long title disguised an accumulation of powers, which have only been compared to the imperial rules of bygone centuries. The fact that Lord Ashdown was British, triggered comparisons with the Imperial rule in India of the 19th century⁵, while in other German media he was named the 'Drina Despot'⁶.

Lord Ashdown came to this position, succeeding the Austrian Wolfgang Petritsch on 27 May 2002 and was replaced on the last January morning of 2006. While he claims he will be remembered for having witnessed the start of the Stability and Association Agreement (SAA) negotiations for BiH, many would in fact remember him for the dubious decisions that he was making, while in supreme power⁷.

The role of the OHR by far surpasses mere donor co-ordination and an influence on the implementation of the civilian aspect of the DPA. 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 OHR. The current and the last High Representative, a German diplomat Christian Schwartz-Schilling has from the very outset made explicit statements that he is going to take the country to a self-responsible state required by SAA and that the office will transform into a Special Representation of the EU relinquishing such special powers to remove individuals and impose laws.

For this the country's officials must take a step away from the mere national rhetoric and turn to the institutional and economic reform agenda, among the priorities of which rests the effective anti-corruption campaign.

Corruption profile

A 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 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 an 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.

Establishment of the rule of law and the functional and self-sustainable state structure with full powers handed over from the international community to the national authorities continues to pose the main challenge for BiH. A key country's watchdog, Transparency International Bosnia and Herzegovina (TI BiH) believes no significant progress has been made in the country as far as combat against corruption and organised crime is concerned. Continuous lack of political will to fight corruption and organised crime in a systematic and organised way has been evident throughout the post-war period and continued in 2006. The main cause of such an extraordinarily high level of corruption in BiH is the involvement of political elites in illegal activities; hence the lack of will on the part of the political elites to engage in combat against all-pervading corruption.

Two global surveys conducted by Transparency International (TI) have included BiH recently. In 2006, the Corruption Perception Index included 163 countries and ranked them on a scale from the least corrupt to those where corruption is most pervasive. Following the fall from the 70th place in 2003 to the 88-96th place in 2005, in 2006 BiH shared the 93 to 98th place with score 2.9 out of a clean score of 10, which ranked the country among the most underdeveloped and corrupt countries in the world where reforms are slowly implemented, transition is characterised by numerous affairs which further indicates a continual lack vision and strategy in anti-corruption combat. The fact that all the countries which have recently joined EU or intend to do so as part of their developmental goal, are far ahead BiH is a clear indicator of how much remains to be done in this field.

The Global Corruption Barometer was a survey that included 69 countries in 2005 with the aim of identifying most corrupt institutions and assessing their impact on each country. As far as BiH is concerned, political parties are again perceived as the most corrupt, while 70% of those questioned believe corruption has a huge impact on the political life of the country. This survey only goes to confirm the apathy and pessimism of citizens as over 40% of the respondents expect the level of corruption to increase in the next period. More than 50% of the respondents believe that the existing forms of corruption have a particularly unfavourable impact on business environment, which has adverse implications for Bosnia and Herzegovina when the inflow of both foreign and domestic investment is concerned.

A positive step forward in 2005 was the signing of the UN Convention against Corruption (UNCAC) and its ratification in 2006. Yet the process of bringing in line numerous domestic laws and regulations with

the UNCAC and other international standards must remain a top priority. This should primarily be related to requirements for assets declarations of elected and appointed officials and the whole area of asset recovery; on improvements of the Criminal codes by proper incorporation of corruption in private sector; strengthening the international co-operation and formation of the special anti-corruption authority which would co-ordinate work of numerous public bodies and agencies which currently do not fully co-operate. The present legal framework should also be enriched by regulations on protection of whistleblowers.

Another positive example in the fight against corruption was the work of the Public Prosecutor's Office and the Court of BiH, especially the Special Department for Organised Crime and Corruption of the Public Prosecutor's Office of BiH, in processing a significant number of cases in which former and acting officials were involved. It is worrying, however, that the initial decisiveness of these institutions has somewhat diminished lately, which is elaborated in the relevant sections of this book.

The analysis of the status of corruption on the basis of the TI BiH surveys and findings shows that corruption is most pervasive at the local (municipal and cantonal) level. This is due to the fact that the majority of contacts between citizens and public administration take place at the local level while the price of corruption is certain to be higher at the higher levels of power. In most cases the incriminating trail of criminal activities in connection with misappropriation of public funds, mismanagement of public companies and irregularities in the privatisation process leads to the top levels of power. This poses a conclusion that most of these criminal activities could not happen without the direct engagement or patronage of high-ranking officials.

Disturbing fact that yet has not been properly addressed is that the key positions in privatisation agencies/directorates as well as in managing boards and other managing functions in public companies are held by persons whose most important qualification for carrying out such responsible duties is the fact that they belong to a specific political party. The change of ownership structure in state-owned companies or banks for token values without prior assessment or in contravention of valid court rulings revoking such sales procedures, accompanied by death threats against high-ranking officials, racketeering and extortion are just a few of the examples of many irregularities that have characterised the privatisation process so far.

Delays in privatisation of the so-called strategic companies cause enormous damage to the country, given the condition these companies are in and the manner of their operations. In most cases, the state-owned companies have a monopoly in activities and territories in which they operate and yet incur losses totalling millions of convertible marks. The consequences are exclusively borne by citizens, who besides paying for low-quality yet very expensive services provided by these companies, also suffer through budget subsidies for the companies' losses. Efficient and transparent public procurement system has not been put in place yet, so a large number of breaches of law are still being recorded. Positive effects of the

new Law on Public Procurement are delayed due to the impediments in establishing the institutions provided for in the new Law. The hard and very professional work of the public sector supreme audits should be highlighted since it brought numerous non-transparent and illegal activities to the limelight.

The primary purpose of judicial reform was to establish the independence of the judiciary as an essential prerequisite for the rule of law. The processing of corruption is the key test of the judiciary's independence because those involved in corrupt activities mostly include politicians and high-ranking civil servants who manage considerable wealth, power and influence. The secondary problem of the BiH judiciary is inefficiency, but this problem is of a rather technical nature and it comes down to organisational and financial strengthening of its institutional capacities. The only way to restore public confidence in the rule of law is if the judicial system succeeds in processing numerous cases of criminalised privatisation, misappropriation of budgetary funds and criminal activities in public companies, which were often disclosed by the public sector auditing agencies.

One of the problems that are still generating corruption is lack of transparency and integrity in work of inspection authorities (particularly tax, market and labour inspectorates). Another obstacle is vast administration the public spending of which presently consumes an astonishing 70% of the total BiH budgets. The reform of public administration and reduction of administrative costs remain the top strategic priorities.

Led by the Ministry of Security the Council of Ministers has initiated drafting and adoption of the BiH Strategy for the fight against corruption and organised crime for the period 2006-2010, accompanied with the respective actions plans. This will however have to be followed by a clear commitment to adopt and implement this strategy and it will require permanent independent monitoring instruments in place. The strategy must take a holistic approach, taking all the levels of governments into account and not just representing yet another mere wish list, as had been presented by the OHR in 1999 and subsequently by the Council of Ministers in 2001 – both being failed attempts.

Anti-corruption activities

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 merely 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 widespread⁸.

The first significant project in corruption awareness raising was carried out by the OSCE in co-operation 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.

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. One such attempt was seen in 2000 and 2001, 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. Today it is known as the Medium-Term Development Strategy for BiH (2004-2007) and it is being monitored by the Council of Ministers' Economic Policy and Planning Unit (EPPU).

Ultimately, the Ministry of Security of BiH undertook a task to prepare a separate Anti-Corruption and Organised Crime Strategy of BiH for 2006-2009, which is a lot more elaborated on the crime prevention end than on the anti-corruption campaign, where it remains a list of legal and institutional desires, without much plan on how this would be implemented or monitored.

To date, the various action plans proposed by other levels of government also 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 convince the public of their serious intentions.

Nevertheless, certain systemic measures have been undertaken for individual pillars and as this study demonstrates, a number of them have begun to function in accordance with their visions and missions and deliver results. These reforms are individually elaborated in the next section of the book that examines individual institutions.

There have also been noteworthy initiatives undertaken by and with the private sector (the older top-down, less successful 'Bulldozer' and the more recent bottom-up, largely positive but RS-limited 'regulatory guillotine') explained in details in the private sector chapter. The NGO scene yielded various results when it comes to accountability and transparency of the governments, particularly at the local level, but in terms of the national anti-corruption activities, only TI BiH has profiled itself and worked consistently with the authorities, or where this was not possible blew the whistle. Media have been unveiling corruption relatively successfully, but the number of articles and reports very quickly outgrew the number of cases processed by prosecution and judiciary and the effects were minimised with time, as public lost confidence such reports can change the corrupt climate in the country.

Noteworthy is also the lack of a multi-stakeholder approach. Most efforts have concentrated on strengthening of individual pillars/institutions and very rarely taken a holistic countrywide approach that would begin by bringing the key parties to discuss the agenda and priorities together. This approach to the system, based on combined effectiveness suggests that a strengthening of judiciary without implementing simultaneous measures in the police, prosecution, public attorney's office, lawyers etc., will not bring about any sustainable improvements. While progress has been made in professionalising judiciary, police and other institutions of the legal system, the lack of communication and co-operation between the parallel pillars has inhibited substantive systemic reforms. More than a decade since the end of hostilities there has been little or no serious sanctioning of economic crime committed either during the war or thereafter. This confirms the hypothesis that an uncoordinated system is unsustainable in the long-term.

The National Integrity System

Legislature

1. Role(s) of institution/sector as pillar of NIS - Legislature

Is there formal operational independence of the legislative branch? Is the legislative branch independent in practice?

YES – The legislature in BiH is dispersed because the Constitution provides for a very high level of decentralisation in the country. There are five levels of government in BiH (4 levels in RS and 2 levels in the Brčko District), which means that also five levels of the legislative branch exist. Members of the legislature are elected exclusively through elections at all levels of governance. A consensus exists confirming that the last elections in BiH were fair and organised in accordance with acceptable standards. Although BiH is not officially a republic, its constitutional setup is republican in nature, which presupposes that the legislative branch is independent.

Can legislators veto senior appointments? Have they done this?

YES – According to the respective constitutions, parliaments are required to approve appointments of cabinets and ministers. At the beginning of or during the election cycle, the Presidency of BiH and the Entity Presidents nominate the Chair of the Council of Ministers designate and Entity Prime Ministers designate, respectively. Only persons who are able to secure parliamentary majority may become nominated as prime minister designates. The parliament elects the new prime minister and ministers and can also cast a non-confidence vote in the government during its mandate. If the latter is the case, either a new government is elected among the same parliamentary assemblage or a new election is called.

Likewise, parliaments can vote non-confidence in government at any time if the government loses majority support in parliament. In this case, as a rule, no new election is called, but the Entity President/Presidency of BiH gives mandate to a representative of a political party (although it can also be a non-partisan person) who can win parliamentary majority. A government elected in this way does not serve a four-year term (which is a regular election cycle), but only until the end of the election cycle. So, although it provides for pre-term elections, the Election Law of BiH does not allow the newly-elected government to serve a full four-year term.

Is the legislature required to approve the budget? Does it? Can the legislature amend the budget? Does it do this regularly?

YES – One of the main functions of the legislative branch, in addition to passing and amending the constitution and other laws, is budget approval. Budget is adopted in the form of a law and along with it

parliaments also adopt the budget implementation law. The legislature can also amend or readjust the budget. Responsibility for budget approval and budget readjustment falls exclusively with the parliaments and no other branch of government (executive or judiciary) can perform this. If no such budget is adopted in due time, the parliament issues a decision on temporary funding (provisional budget), which cannot be in force for more than 6 months from the day it is passed. Temporary funding means that the budget for the previous year is used on a provisional basis. The law requires that the budget draft for the following fiscal year must be submitted by 15 October of the current year at the latest.

In 2006, the budget of institutions and international obligations of BiH amounted to KM 954,599,200, the budget of RS KM 1,049,300,000, and the budget of FBiH KM 1,139,603,719⁹.

International community, especially IMF through its Stand-by agreements that define the limits of public spending, and to a certain extent the World Bank, played a significant role in adopting the budget.

At the Entity level, the procedure is less politicised and the budget planning methodology is much better, though far from international standards and active role of assemblies.

2. Resources/structure

How many institutions comprise the legislature? What are the key institutions (please provide a list)?

At the level of BiH, legislative function is carried out by a bicameral Parliamentary Assembly of BiH, which consists of the House of Representatives and House of Peoples. The House of Representatives is composed of 42 members, two-thirds of whom (28) are elected from FBiH, and one-third (14) from RS. Members of the House of Representatives are directly elected from their respective Entities.

The House of Peoples comprises of 15 delegates, two-thirds of whom are selected from the Parliament of FBiH (including five Croats and five Bosniaks) and one-third from the National Assembly of RS (five Serbs). Delegates to the House of Peoples are selected indirectly by Entity parliaments.

The Constitution of BiH is based on the principle of division of government into the legislative, the executive and the judicial branch with certain control mechanisms. The same principle applies to all levels of government.

In RS, legislative function is performed by the National Assembly of RS and the Council of Peoples. The National Assembly of RS is composed of 83 members who are directly elected. The Council of Peoples has 28 delegates (8 Serbs, 8 Croats, 8 Bosniaks and 4 representatives of other ethnic groups) who are

elected by their respective national caucuses in the National Assembly. If there are not enough members in the National Assembly to be delegated to the Council of Peoples, vacant slots are filled by delegates who are elected from municipal councils in RS.

In FBiH, legislative function is carried out by a bicameral Parliamentary Assembly of FBiH consisting of the House of Representatives and House of Peoples. The FBiH House of Representatives has 97 members who are directly elected in general election. The FBiH House of Peoples has 58 delegates (17 Bosniaks, 17 Croats, 17 Serbs and 7 representatives of other ethnic groups) who are elected from cantonal assemblies. Unfortunately, although the Amendments to the Constitution provide that the vacant spots must be filled from cantonal assemblies, the maximum number of Serb delegates in the House of Peoples of the Parliament of FBiH has been 12. This means that the functioning of the FBiH Parliament over the last four years, until the 2006 general elections, was *de jure* unconstitutional.

In addition to that, there are unicameral cantonal assemblies at the cantonal level in FBiH. At the level of local self-government there are city assemblies and municipal assemblies/councils.

Brčko District, as an autonomous administrative unit, also has its own assembly.

The parliaments of BiH, Entities, cantons in FBiH and Brčko District have the authority to enact legislation, whereas city and municipal assemblies do not have such authority. The responsibility for enacting legislation is laid down in constitutions (BiH, Entities and cantons) or statutes (Brčko District). In addition to its primary function to enact legislation, the legislature also has a responsibility for constitutional matters (new constitution and amendments to the existing one are adopted by a two-thirds majority, that is, by the so-called Entity majority in the House of Peoples of the Parliamentary Assembly of BiH or by ethnic majority in the Council of Peoples of the National Assembly of RS/House of Peoples of the Parliamentary Assembly of FBiH).

What is the budget/staffing of key institutions in the legislative branch?

Parliaments are funded exclusively from the Budget, that is, from the part of the Budget earmarked specifically for the funding of the legislative branch. Parliaments at all levels act through both plenary sessions (with participation of all elected MPs) and commissions or committees. So, for example, the House of Representatives of the Parliamentary Assembly of BiH has eight standing committees: Constitutional and Legal Affairs Committee; Committee on Human Rights, Immigration, Refugees and Asylum; Foreign Affairs Committee; Finance and Budget Committee; Foreign Trade and Customs Committee; Gender Equality Committee; Traffic and Communications Committee; and Administrative Committee. On the other hand, the House of Peoples of the Parliamentary Assembly of BiH has three committees: Constitutional and Legal Affairs Committee; Foreign Trade Policy Committee; Financial and Administrative Issues Committee. In addition to that, both Houses may set up various temporary

committees, and they currently have two joint committees: Joint Committee for European Integration and Joint Security and Intelligence Committee, which oversees the work of the Intelligence-Security Agency of BiH.

Each committee has a chair, a first deputy chair and a second deputy chair, who rotate to the position of chair in regular time intervals. In addition to that, some of the committees have their own secretaries who are not MPs/delegates but are employees of the Parliamentary Assembly working in the Secretariat of the parliamentary house. The Committees give their opinions, submit proposals and report to their respective Houses, and carry out other duties. Furthermore, these committees can, based on their conclusion, form other committees, e.g. investigative or inquiry committees.

A paradox that characterises the existence of BiH over the last few years is the expansion of activities and powers of the joint BiH institutions, often under pressure from the international community, which is accompanied by neither an appropriate training of the legislative bodies nor an adequate budget that would account for the newly-established institutions. What happens as a consequence is that a number of newly-formed, but essential authorities are financed from special funds, often from international donations, without being strategically envisioned and accounted for in the budget. At the same time, parallel executive bodies continue to exist at the Entity level, which duplicates fiscal expenditures and creates an institutional chaos, leaving the legislature unable to respond adequately.

The 2006 budget of the Parliamentary Assembly of BiH amounted to KM 9,300,870, the budget of the National Assembly of RS (including the House of Peoples) amounted to KM 9,726,403, while the budget of the Parliament of FBiH (House of Representatives and House of Peoples) was KM 9,419,652¹⁰.

What is the budget/staffing of any committees relevant to budget oversight, ethics/integrity and anti-corruption?

The Finance and Budget Committee of the House of Representatives of the Parliamentary Assembly of BiH is *inter alia* responsible for adoption, implementation and oversight of implementation of the BiH budget. Parliaments at other levels also have such committees. In addition to that, an Audit Committee has recently been formed, which is exclusively responsible for overseeing SAIs' reports and preparing discussions for the Parliamentary Assembly. Its effectiveness is still minimal.

The National Assembly of RS has the Committee for Economy and Finances, and the House of Representatives of FBiH has the Committee for Economic and Financial Policy. Both committees are *inter alia* responsible for considering matters related to the budget and annual budget balance sheet as well as for adopting and implementing the budget and overseeing its implementation. As the parliament adopts the budget that provides for funding of other branches of government, the budget also contains items regulating the issues of funding the legislature itself.

As the very names and remits of the committees indicate, both Houses of the Parliamentary Assembly of BiH have committees that are responsible for budget and finance in general. On the other hand there are no special committees or commissions, at least not at the level of BiH, that are responsible for anti-corruption and ethics/integrity issues.

There are no special budget itemisations for parliamentary committees relevant to budget oversight, ethics/integrity and anti-corruption. Generally, budgets do not have special itemisations for financing the work of parliamentary committees and commissions.

In addition to that, each parliament has its own so-called administrative and professional service which offers administrative assistance to the parliament's operation. So, for example, both Houses of the Parliamentary Assembly of BiH have their own secretaries (not members of the Parliaments), who are heads of the House's Secretariat and who employ a certain number of administrative staff to assist the Parliament in its day-to-day activities.

What is the budgetary process that governs the legislative branch?

Budget draft is prepared by the government and submitted to the respective parliament, that is, to the parliamentary commission/committee in charge of budget and finance. The commission/committee considers the draft budget and gives suggestions to the government. Finally, the parliament adopts the budget in the form of budget law and budget implementation law. The legislature also has the exclusive authority to pass the readjustment of the budget following the same procedure that is used for adoption of the initial budget (as described above).

It is only in 2006 that the practice of regular adoption of the budget took root, which means observance of deadlines and the holding of discussion in the Parliamentary Assembly, following the proposal of the Council of Ministers, which was prior to that approved by the Presidency. Until 2006, amendments adopted by the legislature were of minor significance and rather politicised in character¹¹. However, in most cases parliamentarians vote as per instructions from their parties' headquarters, lacking deeper understanding of the matter and vision of development.

Discussions mainly focus on direct expenditures (salaries, etc.), not on activities and strategic financing. When the budget for 2007 is concerned, it will not be adopted within the deadline due to the paralysis of institutions following the implementation of election results. The joint State institutions will therefore be financed from a provisional budget until such time as the regular budget is adopted in 2007, which only goes to show that the parliament lacks strategic vision and approach.

Does the legislature have an accounts committee or a select committee? What kind of resources does this committee have?

YES – The parliaments have their committees that are in charge of overseeing budget funds and audit reports (as described above). In addition to that, the parliaments also have select committees. These committees are funded from the budget in the same way as any other parliamentary committees.

Finally, at the level of BiH and Entities, there are Public Sector Audit Services (SAIs). These services do not have the authority to carry out audits of the legislature itself. The new draft Law on Public Sector Auditing gives the audit services power to conduct audits of parliaments as well. The work of SAIs is discussed in greater detail in the relevant section of this publication.

Do members of parliament have off-the-books funds?

PARTLY – MPs/delegates receive remuneration for their work in parliament. MPs/delegates are allowed to perform their duty either as volunteers or as professionals. If they are professionals they are entitled to salary, and if they are volunteers they are entitled to certain remuneration and reimbursement of costs. Parliaments are funded exclusively from the budget and no off-the-books funds exist. Several donations by foreign donors (including the European Union) for reconstruction of the BiH Parliamentary Assembly building may be considered an exception to this rule. However, no off-the-books funds may be used for funding the work of MPs/delegates.

Are there significant categories of public expenditure that do not require legislative approval? If so, which departments does this involve, what is their expenditure and what percent does this represent of the government's annual expenditure?

NO – It is a general rule that the budget, adopted by the relevant parliament, is the only criterion for public expenditure. Although the readjustment of the budget is permitted by the law, it can only be undertaken following the adoption of a parliamentary decision in the form of a law. Each budget beneficiary can only spend the funds made available to it and within the budget line under which the funds have been allocated to the budget beneficiary¹². Following the government's proposal, funds may be reallocated between current expenditure and capital expenditure, and reallocation of funds within a budget beneficiary is approved by the decision of the relevant ministry. The government has right to dispose of budgetary reserve in certain cases, but its amount is limited (to 2.5% of the total income earned in a fiscal year) and the conditions for disposal of these funds by the government are very precisely defined: covering of incidental expenditures that have not been budgeted for, expenditures that have not been budgeted for in sufficient amounts as well as for other purposes in accordance with the government's decisions.

3. Accountability

What kind of laws/rules govern oversight of the legislative branch? Are these laws/rules effective?

In a parliamentary democracy system such as BiH, parliament is the highest government authority. With regard to the enacted legislation, there are only two external factors that can challenge the adopted laws.

According to the Constitutions of the Entities, the President of the Entity may request, after the adoption of a law in parliamentary procedure, that the National Assembly makes decision on the law anew when he/she finds that the law is not in compliance with the basic principles of state functioning. If the parliament readopts the law, the President of the Entity is obliged to promulgate the law by decree.

In practice, however, this happens very rarely as the President of the Entity may be elected from the same political party that has a majority in parliament and, as such, forms the government. In addition to that, the Entity Presidents occupy high-ranked (often highest-ranked) positions in the political party that nominated them as President. Such a procedure is not provided for at the level of BiH, that is, the Presidency of BiH does not have the authority to request that the Parliamentary Assembly of BiH should make decision on the law anew.

In addition to that, laws can be challenged in a procedure before the Constitutional Court of BiH and Entity Constitutional Courts. If the constitutional courts find a law or a part of it to be in contravention of the Constitution of BiH or Constitutions of the Entities, they repeal the law or some of its provisions and direct the relevant parliament to pass, within the legally defined time period, a new law that will be in compliance with the Constitution.

The Constitutional Courts do not have the authority to change any laws by their own decisions, because this authority belongs only to the legislature. At the time of writing this publication, several laws were assessed for their constitutionality before the Constitutional Court of BiH. The Court's decisions will be final, but before being referred to the Constitutional Court, the matter is also discussed and prepared by the relevant constitutional and legal affairs committee.

To whom must the legislative branch report, by law? Does this accountability for its actions take place in practice? How are legislators held to account?

In view of the aforementioned, the parliaments in BiH have only political accountability to their electorates and there is no other way, constitutional or otherwise, for the composition of a parliament to change, except by means of election.

Is there oversight of off-budget expenditure by the legislature? Who does this, and how? Are citizens legally enabled to participate in the budgetary process? In other processes related to ethics/integrity and anti-corruption? If yes, does this happen in practice?

The responsibility for drafting and proposing the budget rests with the Government. The public is only able to participate through government institutions. Although the budget is passed in the form of a law in accordance with the parliaments' rules of procedure in a legislative process, the budget proposer (usually the relevant ministry of finance and parliamentary committees) may open a public debate. However, this has not happened in practice so far at any level of government.

4. Integrity mechanisms

Does the legislature have its own anti-corruption committee?

NO – There are no parliamentary committees exclusively dealing with anti-corruption or ethics/integrity issues either in the Parliamentary Assembly of BiH or in the Entity parliaments. Moreover, no other parliamentary commission or committee deals with anti-corruption issues.

Are legislators required to record and/or disclose contact with lobbyists or similar registered interest groups?

NO – There are no rules governing the work of lobbying groups or interest groups and their relation with the elected MPs. In practice, however, various interest groups exist that maintain contact with elected MPs, but parliamentarians are not legally required to disclose contacts with these groups. This is so for two reasons: first, there are no rules requiring registration of lobbying or interest groups and, second, MPs are not legally obliged to report informal contacts with persons or groups that might be lobbyist or interest-driven in character.

Are there codes of conduct/codes of ethics for legislators?

NO – There are no adopted codes of conduct/codes of ethics for MPs/delegate in the parliaments. The Rules of Procedure of the parliaments contain provisions requiring MPs/delegates to respect the dignity of the parliament, to address each other with respect, and to refrain from using offensive language or commenting on private lives of third persons. In addition to that, if an MP/delegate holds a speech in the parliament, no interruptions or interjections or any other disruptive behaviour on the part of other MPs/delegates which prevents freedom of speech are allowed. Should an MP/delegate be in breach of these rules, the Speaker of the Parliament may impose the following sanctions against him/her: reprimand, withholding the right to the floor, and removal of the MP/delegate from the parliamentary session.

Are legislators prevented from switching party lines mid-term? If not, is there any special oversight of this practice?

NO – According to the Election Law of BiH, MPs/delegates to the parliaments are elected directly. Candidates for MPs may stand for election as members of political parties or as independent candidates. Although an MP/delegate is elected to the parliament from the list of a certain political party, the mandate belongs exclusively to the MP/delegate. If an MP/delegate decides to switch party lines mid-term or to become an independent candidate, he/she ‘takes away’ the mandate with him/her, so the political party from whose list the MP/delegate was elected to the parliament has no legal means of preventing its MP/delegate from switching party lines or becoming an independent MP/delegate. In general, if an MP/delegate does not vote in the parliament as per instructions from his/her party whip and this results in his/her exclusion from the political party on the grounds of breach of party discipline, the political party still ‘loses’ this mandate as the law strictly prohibits a political party from replacing a ‘disobedient’ MP/delegate with the next candidate from its lists once he/she is expelled from the party.

Are there rules on conflict of interest? Are they effective?

PARTLY – At the level of BiH, the Parliamentary Assembly has adopted the Law on Conflict of Interest in Governmental Institutions of BiH¹³ (hereinafter: the Law on Conflict of Interest). Although the Law that was adopted in 2002 (with changes and amendments in 2004) provides that the Entities and Brčko District must enact their own conflict of interest laws within sixty days following the entry into force of this Law, this has not been followed in full. Brčko District did adopt its conflict of interest law in December 2002 though. However, the Law on Conflict of Interest provides that until such time as the laws are enacted in the area of conflict of interest at the level of the Entities and Brčko District, the Law on Conflict of Interest will apply. So, even though the conflict of interest laws have not yet been adopted at the level of the Entities, there is a legal framework in the area of conflict of interest that applies in the whole of BiH. The Law on Conflict of Interest, consequently, also applies at lower levels of government: cantonal, township and municipal. In addition to the Law, the Election Commission of BiH has adopted the Guide for Implementation of the Law on Conflict of Interest. The draft Law on Changes and Amendments to the Law on Conflict of Interest in Governmental Institutions of BiH, prepared in late 2006, includes a provision on transfer of the powers for implementation of this Law from all levels of governance to the Central Election Commission (CEC).

The Law provides that a conflict of interest is created in the event that an elected official, executive officeholder and advisor has a private interest that affects or may affect the legality, transparency, objectivity and impartiality as to the exercise of the public duty¹⁴. In terms of this Law, elected officials include Delegates and Members of the Parliamentary Assembly of BiH. In terms of the provisions of this Law concerning the Entities and the Brčko District, MPs/Delegates to the Entity parliaments, cantonal

parliaments in FBiH, city councils and municipal assemblies/councils are also considered elected officials. This is further upheld by the Guide for Implementation of the Law on Conflict of Interest¹⁵.

In practice, rules are applied to a greater extent with regard to prevention of conflict of interest, rather than prosecution for it. Outside official statistics presented in the CEC's periodic reports, there have been many enquiries by newly-elected officials asking for interpretation of potential conflicts of interest. Following CEC's recommendations, they often resign from one of the posts they hold in order to avoid being in a conflict of interest situation. By responding to these enquiries, CEC plays an important role in educating elected officials about conflict of interest. However, it takes very long for the Court of BiH, which is the highest appellate instance for CEC's decisions on conflict of interest, to decide on appeals against CEC's decisions. For example, the CEC's decision on imposition of sanctions against Ms. Džajić, MP in the Parliament of FBiH, (which was discussed at length in NIS BiH 2004 as the first such significant decision by CEC) is expected to be invalidated as it will soon fall under the statute of limitations. This will create a dangerous precedent and send an undesirable message to MPs. This publication does not intend to speculate about the possibility of political pressure being exerted on the Court of BiH to enable the case to fall under the statute of limitations, thus invalidating sanctions against Ms. Džajić.

Are there rules on gifts and hospitality? Are they effective?

PARTLY – The Law on Conflict of Interest contains provisions on acceptance of gifts and other services. The Guide for Implementation of the Law on Conflict of Interest provides a more detailed explanation of definitions contained in the Law. In addition to that, the Law sets forth the rules on financial interest of elected officials, government investment in private enterprises, personal service contracts as well as on personal financial disclosure of elected officials, disclosure of government investment, and disclosure of annual reports by enterprises in which the government authority made an investment.

The Election Commission reports that it faces difficulties finding qualified staff capable of implementing the Law in a timely manner and in accordance with the relevant regulations. The Commission is also beset with financial difficulties. Given that the Election Commission monitors implementation of the Law on Conflict of Interest for around 5,000 persons (elected officials, executive officeholder and advisors at all levels of government), and taking into account all the close relatives the Law applies to (close relative means: a marital or extramarital partner of the official concerned, his/her relatives by blood in a direct line, adoptive parent and adopted child, sibling, and parent and children of the marital partner – stepchild), and supposing that each such person has only two close relatives, there are around 10,000 additional persons subjected to this Law. The Election Commission has neither resources nor capacities to monitor implementation of this Law in a timely and legally prescribed way. Its capacities therefore must be strengthened and the legislature must be prompted to adopt the conflict of interest by-/laws at

the Entity level as well. At the same time, the Law on Changes and Amendments to the Law on Conflict of Interest has already made some concrete efforts towards reducing the amount of workload for the Election Commission. For example, until this Law was enacted the term close relatives had referred to relatives in the indirect line up to the third degree, which meant that an individual official was obliged to submit to the Election Commission data on as many as a hundred of related persons. This Law has also allowed siblings of elected officials to be employed in public enterprises, privatisation agencies and private companies that do business with governments at the cantonal or municipal levels.

Are there post employment restrictions? Are these restrictions adhered to?

YES – The Law provides that elected officials may not serve as directors, authorised persons or members of the management board in a public enterprise or privatisation agency. This provision applies six months after the elected officials leave office.

5. Transparency

Are registers of disclosed assets/gifts required, in law? Are they maintained in practice? Is there any lifestyle monitoring?

PARTLY – The Election Law of BiH provides that every candidate standing for elected office at the level of BiH or the Entity level is obliged, no later than 15 days from the day of accepting candidacy for the elections, to submit to the CEC a signed statement on his/her total assets, containing: current income and sources of income, including all incomes, wages, profit from property, and other incomes realised over the last 12 months; property, including money, bank accounts, business documentation, shares, securities, bonds, real property, personal property and other property and possessions exceeding KM 5,000; and disbursements and other liabilities, including all debts, liabilities, promissory notes, loans and guarantees of such liabilities.

The Election Law stipulates that the statement on assets must include property, incomes and disbursements in BiH as well as abroad. The statement should include the assets of the candidates and close members of his/her family: spouse, children and members of the family household whom it is the candidate's legal obligation to sustain.

All candidates elected at lower levels of government (cantonal, city and municipal levels) are required to submit to the CEC, within 30 days from the verification of their mandates, a signed statement on their assets. On the other hand, there are no bodies or rules for monitoring legislators' lifestyles.

Who is monitored? Who maintains these registers?

The Election Commission does not have the authority to monitor the data contained in the signed statement on assets. Its only obligation is to make these data available to the public.

Are disclosed assets required to be made publicly accessible? Is this information accessible in practice?

PARTLY – The statements on assets of candidates and elected candidates used to be publicly accessible on the website of the Election Commission of BiH, but were subsequently removed for unknown reasons. Informal sources report that these data were allegedly removed from the Election Commission's website due to pressure from certain elected officials. Resistance to public accessibility of these data is very strong and often comes from the most senior officials¹⁶. Also, it should be noted that the Law had to be imposed by the High Representative in the first place, because there was no political will for its adoption. This hence represents the only law that TI BiH insisted on being imposed by OHR as it had been clear that politicians in BiH were not ready for such an advanced step. There are many barriers to its implementation and the politicians' resistance to the disclosure of personal data is expected to continue for a long time.

Besides the Election Law of BiH, the Law on Conflict of Interest also requires elected officials (i.e. parliamentarians), executive officeholders and advisors to file personal financial reports. The purpose of these reports is to help prevent conflict of interest from occurring as well as to detect existing conflicts of interest. These financial reports refer to the serving of elected officials, executive officeholders and advisors on the management board, steering board, supervisory board, executive board of a public company; on the management board or directorate, or as director, of a privatisation agency; any involvement in a private enterprise; as well as to the data on additional compensation, ownership interest (of at least KM 10,000) or other financial interests (more than KM 1,000 a month).

Elected officials, executive officeholders and advisors are obliged to include in their financial reports any close relatives defined in the Law on Conflict of Interest in Governmental Institutions of BiH (see above). Financial reports must be submitted to the Election Commission of BiH no later than 30 days from assuming office. After that, financial reports are to be submitted every twelve months during term in office and 30 days after leaving office.

Must the legislative budget be made public and accessible? Is this done in practice?

YES – The Budget is adopted in the form of the budget law and as such must be published in the Official Gazette, which means that citizens do have access to the budget.

Must any accounts committee report regularly? Publicly? Does it do so?

YES – According to the Rules of Procedure of Entity parliaments and Rules of Procedure of the Houses of the Parliamentary Assembly of BiH, in addition to the obligation of addressing the issues within their area of competence, these committees/commissions are also obliged to report to the parliament on their work with regard to specific issues. The chair of the committee/commission is obliged to present this report to the parliament. There are no specific rules as to the publication of these reports, but supposing the work of the parliaments is open to the public, it follows that these reports may be made available to the public. On the other hand, pursuant to the Law on Freedom of Access to Information, the parliaments are obliged to make these reports available to the person who submitted a request for access to information.

6. Complaints/enforcement mechanisms**Are there any provisions for whistleblowing on misconduct within the legislature? Are these made use of in practice?**

NO – There are no provisions for whistleblowing on misconduct on the part of the legislature or parliamentarians.

What formal powers of sanction are in place against parliamentarians? Have they ever been invoked?

The Rules of Procedure of the parliaments provide that the MPs/delegates must not divulge any state secrets and confidential data during their term in office as well as after its expiry. Should an MP/delegate fail to comply with this obligation, he/she may be suspended for a period of six months (House of Representatives of the Parliamentary Assembly of BiH). No cases of such sanctions against any members of the House of Representatives have been recorded in practice.

Are legislators immune from prosecution?

YES – The Constitution of BiH and the Entity Constitutions guarantee immunity to the MPs/delegates. In general, MPs'/delegates' immunity refers to their conduct in exercise of their duties in their respective parliaments as well as outside the parliaments. MPs/delegates may not be held criminally responsible, detained or punished in any other way for the opinions they have expressed in parliamentary sessions or because of their voting in the parliament.

Additionally, MPs/delegates may not be detained without the prior approval of their respective parliament, unless they are arrested at the scene of crime punishable by a term of imprisonment of at least five years (or where detention pending trial is compulsory under the Criminal Procedure Code). Furthermore, if an MP/delegate invokes immunity, no criminal proceedings may be instituted against him/her until this immunity is lifted by the legislature. When the conditions are met for taking the MP/delegate into custody or bringing criminal prosecution against him/her, the relevant public prosecutor must seek prior approval of the parliament in which the suspect serves his/her term of office.

Has legislative immunity interfered with prosecution of corruption?

YES – The Rules on Immunity of MPs/delegates do not differentiate between types of criminal offences committed, based on which the legislature would abolish the MP's/delegate's immunity.

Do those who maintain registers of disclosed assets have a mandate, in law, to investigate allegations? Does this happen in practice? Is there adequate staffing/resources for this work?

YES – CEC oversees implementation of the Election Law of BiH and the Law on Conflict of Interest in Governmental Institutions in BiH, in particular their provisions governing incompatibility of functions of candidates and elected candidates in elections and elected officials. At certain intervals, the Election Commission publishes its reports on implementation of the Law on Conflict of Interest in Governmental Institutions in BiH. According to the fifth activity report from the day of entry into force of the Law on Conflict of Interest, until 15 May 2005 the Election Commission of BiH had initiated 66 procedures for determining facts, based on suspicion of violation of the Law on Conflict of Interest: 41 of these procedures were suspended, in 15 cases violations of the Law were confirmed, while the remainder of the procedures are still pending. A total of eight sanctions were invoked, including ineligibility to stand for any directly or indirectly elected office and additional fines ranging from KM 1,000 to 10,000. Over the last reporting period (15 May 2005 to 15 November 2005), the Election Commission of BiH initiated a total of 14 procedures and imposed three sanctions of ineligibility to stand for any directly or indirectly elected office for a period of four years following the discovery of the violation, one of which included a fine in the amount of KM 3,000. The decisions of the Election Commission are final and subject to enforcement (in administrative procedure). However, the aggrieved party may initiate an administrative procedure before the Administrative Division of the Court of BiH within two months from the day the aggrieved party received the final administrative act of the Election Commission¹⁷.

The Election Commission can receive signed as well as anonymous complaints related to implementation of the Law on Conflict of Interest in Governmental Institutions of BiH. The Commission is obliged to act upon any such complaint received, that is, to take all appropriate steps to investigate the allegations contained in these complaints.

The main weakness of this legal regulation is the fact that elected candidates are not legally obliged to report, during their term in office and after its expiry, any changes to their assets. As a result, the general public and the law enforcement cannot see how the assets of the elected official have been 'affected' by his/her participation in the legislature.

Transparency International BiH submitted to the Election Commission a proposal for changes to the Election Law of BiH allowing the assets of candidates and elected candidates to be monitored not only at the beginning of their term in office (which is not especially important, at least not for the public) but also after its expiry. The proposal also suggests that the reports on assets should not be submitted on an annual basis only, but also whenever there has been a significant change to the assets of the election candidate or elected official. TI BiH suggested that "significant change" should be defined in pecuniary terms – for example, candidate's or elected candidate's annual income can serve as a comparison point. Additionally, TI BiH suggested that the obligation to report assets should not only take place at the beginning of the term in office and at the end of the term, as well as after a certain time period following its end, for example, after two years.

How successfully has corruption been targeted by this institution, as an internal problem? An external problem?

The Law on Conflict of Interest does not expressly provide that the elected officials must blow the whistle at other elected officials if they happen to find out that the latter are in conflict of interest. However, while in public office, elected officials are required to perform their duties responsibly and conscientiously, in keeping with the ethics of their profession and the office they hold as well as with the principles of accountability, honesty, conscientiousness, transparency and credibility, which makes them morally bound to report to the relevant authority any breach of relevant regulation that they may happen to find out¹⁸.

On the other hand, the Criminal Codes provide that failure to report a criminal offence or an offender(s) also constitutes a criminal offence. Legislators, as holders of public office and as citizens, are also bound to report a criminal offence or an offender, even if the offenders are members of parliament. It is not known if any such case occurred in practice.

7. Relationship to other pillars

To what extent is this institution/sector a key part of this country's NIS?

Given that government in BiH is divided into three branches (legislative, executive, judicial) and that parliaments traditionally and constitutionally represent the highest government bodies in certain

administrative units, and accepting that elections are conducted fairly and in accordance with the law, it can be concluded that the legislature, when compared to other NIS pillars, represents one of the most important pillars of national integrity, if not the most important one.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

The legislature most relies on the executive (and vice versa). Until a few years ago, the legislature was also connected to the judiciary through partisan connections, but the Entity Constitutions were changed in such a way that the responsibility for election and removal of judges and prosecutors (except for judges of constitutional courts) was transferred to the High Judicial and Prosecutorial Council of BiH. This link between the legislature and the executive is reflected in the fact that the parliament elects government and also has the power, under the constitution, to pass non-confidence vote. Finally, the parliament has the authority to approve the budget (in the form of the budget law), which is the mother of all questions for every government.

The legislature is to a somewhat lesser extent connected with other pillars of national integrity. This connection becomes visible when the legislature first adopts a law that governs the operation of other pillars, then elects the officials who will manage the government bodies or agencies related to specific pillars of national integrity (ombudsman, SAIs), and finally when these bodies and agencies are obliged to submit their reports to the parliament. Furthermore, other pillars (e.g. NGO sector or the business sector) can submit draft laws that is regulated in the Rules of Procedure of the National Assembly of RS and the Parliament of FBiH¹⁹.

In law, must there be judicial review of the legislature's activities? Does this happen in practice?

YES – It is possible, under certain conditions, to initiate a procedure before the Constitutional Court of BiH or the Constitutional Courts of the Entities to determine whether a general act passed by the legislature (i.e. law) is in consistence with the Constitution of BiH or the Constitutions of the Entities, respectively. The Constitutional Courts have the power to declare a law, a part of a law or an article of a law unconstitutional. In this case, the parliaments have the obligation to pass, acting upon the instruction from the Constitutional Court, a new law or change the existing one in accordance with the recommendations from the Constitutional Courts.

What role can or does the legislature play in the oversight of government agencies?

The legislature appoints the prime minister, ministers and members of government. Ministers act as heads of line ministries and are responsible for the work of administrative bodies and organisations. The legislature does not have direct control over administrative bodies, nor can in any way exert influence on

their decisions, because this would counter the principle of separation of powers. Yet on the other hand, by means of control mechanisms (such as parliamentary commissions/committees that are responsible for considering issues in relation to the functioning of the executive) and the possibility of non-confidence vote, the legislature has indirect mechanisms with which it can influence the work of government agencies, primarily in terms of proper implementation of laws.

Executive

1. Role(s) of institution/sector as pillar of NIS

Are there administrative checks and balances on decisions of individual members of the executive? Are these effective in practice?

YES – The Law on Administration of BiH²⁰ establishes administrative checks and balances in terms of supervision of implementation of laws and other regulations as well as of legality in operations and actions of administrative bodies. The administrative supervision includes supervision over legality of the legislation, supervision over legality of work of the institutions with public authorities, and inspection supervision (certain tasks of the inspection supervision may be assigned to a specialised legal entity if their performance requires special professional expertise). The Law establishes the responsibility of the Minister for any given situation in the respective Ministry's scope of work as well as the responsibilities of the Heads of Directorates, Secretariat and Committees²¹. Unlike the Members of the Council of Ministers (Ministers and Deputy Ministers), who are not civil servants²², other senior officials performing function of managerial nature have the civil servants status. The latter have less authority than Ministers, but they also report to the Council of Ministers (CoM) for their work. Assistant Ministers, Assistant Directors and Inspector Generals are responsible for their work before the head of the institution (Minister, Director)²³. Since Ministers are holders of public offices with a rather broad scope of work, and partly due to their being occupied, a number of decisions and draft documents are in fact being prepared by the Assistant Ministers or other associates.

At the level of RS, there are republic administration authorities (ministries and other republic administration bodies) and republic administrative organisations (institutes, secretariats, directorates and funds)²⁴. The Assistant Minister, Secretary of the Ministry, and Head of the administrative organisation are responsible for their work to the Minister, whereas the associates and Heads of the internal organisational unit are responsible for their work to the Assistant Minister. The Deputy Head and Assistant Head of the administrative organisation are responsible for their work to the Head of the administrative organisation²⁵.

In FBiH, the Law on Federal Ministries and Other Authorities of Federal Administration²⁶ establishes the following holders of administrative functions: Federal Ministries, Federal Administrations and Federal Institutes/Administrative Organisations (institutes and directorates). Within the legislative competences of the cantons, cantonal ministries and cantonal administrations were established in accordance with relevant legal regulations. Heads of independent administrations and institutes are responsible for their work to the Government of FBiH, that is, to the cantonal government, whereas the heads of

administrations and institutes within the ministries are responsible to the Minister and the Government of FBiH, that is, to the Minister and the Government of the Canton²⁷.

So, the supervision encompasses the work of officials (personal supervision) and the acts they issue. There is also additional judicial supervision of administration as well as other forms of checks and balances (e.g. Ombudsperson). Positive legislation provides for a solid control mechanism, so the only question that can be raised is whether the laws are consistently followed in practice.

Is the formal operational independence of the executive branch? Is the executive branch independent in practice?

YES – The Constitution of BiH provides for a separation of powers where the executive is independent from the other two branches of government, namely the legislature and the judiciary. However, one should not overlook the interaction between these three branches, which operates as follows: although the Presidency of BiH nominates the Chair of CoM, this nomination must be approved by the Parliamentary Assembly of BiH. The Chair of CoM nominates Ministers and Deputy Ministers, who can take office only after once nomination has been approved by the Parliamentary Assembly of BiH. Furthermore, CoM is obliged, at least annually, to submit reports to the Parliamentary Assembly regarding its work as well as to answer questions posed by members of the Parliamentary Assembly²⁸. On the other hand, if the Parliamentary Assembly records a vote of no confidence in CoM, CoM resigns. Consequently, CoM clearly takes care to ensure parliamentary majority for specific issues, otherwise it may face a no-confidence vote. Therefore, CoM sometimes issues decisions that come into collision with the defined policy. This happens because such decisions are determined by the opinions of the political parties constituting majority in the Parliamentary Assembly.

In law, are there any noteworthy differences between elected ministers, appointed ministers and high level officials? In practice?

YES – Unlike in Anglo-Saxon countries, the executive in BiH is not elected directly, but is approved by the legislature. The Constitution of FBiH provides that the President of FBiH, with the concurrence of the Vice-President, nominates the Cabinet (Prime Minister and Ministers, each one having a Deputy). Nominations require the approval of the Parliament of FBiH. On the other hand, the Constitution of RS provides that the Prime Minister of RS and the Government of RS are elected by the National Assembly of RS. Unlike ministers, who are approved, managerial civil servants (Assistant Ministers, Secretaries of Ministries, Heads of administrative organisations, and Deputy and Assistant Heads of administrative organisations) are appointed by the Government of RS based on a public competition and following the proposal of the Agency for Civil Service²⁹. Of course, Ministers and their Deputies (who are not civil servants) have larger powers than senior officials and other civil servants.

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

YES – When making decisions within the scope of their remit, the Members of CoM and senior officials do, as a rule, give reasons for these decisions. The legal obligation to give reasons for the decision depends primarily on the type of decision or act issued by the Minister (Deputy Minister) or civil servant. For example, the Law on Administration stipulates that all materials and proposals that require material expenditures must be given reasons for. On the other hand, according to the rules of the administrative procedure, decisions in administrative matters must contain explanation as an integral part of the decision³⁰.

Are term limits constitutional? Are they adhered to in practice?

YES – This matter is regulated in the Constitution and relevant laws. The Constitution of RS provides that the Government of RS is elected for a term of four years and the National Assembly may vote no confidence to the Government. The President of RS may, after obtaining the opinion of the Prime Minister of RS and the Speaker of National Assembly of RS, dissolve the National Assembly of RS. Civil servants are appointed for a permanent tenure of office (with the probationary period lasting from 30 to 60 days), with stipulation that they may not lose the civil servant's status due to the change of the political structure of the RS authorities³¹. Although the Constitution of FBiH does not contain a similar explicit provision, it is clear that the four-year term of the FBiH Parliament also determines the term of the Government of FBiH. The Government of FBiH may be removed either by the President with the concurrence of the Vice-President, or by a vote of no confidence adopted by a majority in the Parliament of FBiH. The President of FBiH, with the concurrence of the Vice-President, may dissolve the Parliament when it fails to adopt the budget of FBiH or is unable to enact necessary legislation. As in RS, civil servants in FBiH are appointed for a permanent tenure of office, and they are required to undergo probationary period if they take office in civil service for the first time³².

What kind of discretion do ministers and officials have with regard to staffing? Promotion? Training? Choosing advisors?

The Chair of CoM appoints Ministers and Deputy Ministers, while senior officials performing functions of managerial nature (i.e. managerial civil servants) are appointed by the related institution, upon prior opinion of the Agency for Civil Service of BiH. Other civil servants are appointed by the said Agency in accordance with the results they accomplished during the selection process. Performance of the Assistant Minister and Secretary is appraised by the Minister and the Deputy Minister, while performance of managerial civil servants is appraised by the Head of the institution³³. Performance of other civil servants is appraised by their direct hierarchical superior. The promotion of a civil servant to a higher working position exclusively takes place through public open recruitment.

The Law on Civil Service in FBiH provides that the performance appraisal for the Deputy Minister and Secretary of Ministry is carried out by the Minister, while other civil servants are appraised by their hierarchical superiors (this is discussed at greater length in the chapter on civil service). The Head of the Administration Authority performs appraisal of the performance of a civil servant, based on which the civil servant may get promotion, except for the category of managerial civil servant, when promotion is based on public competition³⁴. Appointment of advisors is a very controversial issue and as such is explained in great detail in the section dealing with civil service.

Do ministers or equivalent high level officials have the power to make the final decisions in ordinary contract award or licensing cases? Is this power limited to special circumstances? Do they exercise this power in practice?

YES – The Ministers and their Deputies or Assistants, organise, in accordance with their legal powers, the work of the Ministry, manage the work of the Ministry and are held responsible for material and financial resources. Organisation of work and day-to-day functioning of administration authorities, implementation of laws, and execution of projects require procurement of various goods and services as well as co-operation with other institutions and legal entities. The Ministers and heads of institutions contract various services and conclude different legal deals. The public procurement system as well as rights, duties and responsibilities of those involved in procurement procedures are regulated in the Law on Public Procurement³⁵. The Law on Concessions³⁶ provides that the decision on awarding a concession shall be passed by the Government of RS, on the basis of which the Government, i.e. the relevant Ministry authorised by it, and/or a local administrative authority and/or a public enterprise managing the subject of the concession concludes concession agreement. Article 17 of the same Law establishes the Commission for concessions, which is required to give its decisions in writing and to include the reasons for issuing such a decision. In addition, the Commission is required to submit a report to the Government of RS, answer questions posed by Ministers, and revise its decision following a request by a legally authorised person. Almost identical provisions are contained in the Law on Concessions of FBiH³⁷.

Although a number of actions (mainly criminal) have been brought against senior officials who held or still hold office in the executive, no verdicts have been delivered that would confirm that they violated the Law by abusing their authority.

To what extent has the executive branch organised its work or committed itself in any extraordinary way to an agenda of integrity, transparency and good governance? What is evidence for this?

Institutions of the executive branch show formal commitment to improve their performance and become more transparent, which can be seen from the positive legislation (which often emphasises efficiency and

transparency in performance of the executive bodies) and their attempts to familiarise the general public with their work (websites, press conferences, etc.).

The Agencies for Civil Service have made a further step forward by adopting the Code of Conduct for Civil Servants as well as by publishing the Index registry of information in their control and the Guide for accessing information. In 2004, the Sarajevo Canton established the Office for introduction and maintenance of quality standards in administration bodies, administration institutions and administrative and professional services of the Sarajevo Canton in accordance with ISO 9001:2000, and adopted the “Quality policy” which applies to the work of administration.

Municipalities of Laktaši and Banja Luka are outstanding examples of how local administrative bodies can improve publicity and transparency of their work. In late 2003 the city of Banja Luka won second prize for transparency for their “E-Government Portal”, and in 2004 the City administration of Banja Luka was awarded the certificate on introduction of ISO standards. There are also examples of local authorities that entered the ISO 14000 certification process on their own initiative and have continued to introduce administrative improvements having obtained the certificate.

2. Resources/structure

How many institutions comprise the executive? What are the key institutions (please provide a list)?

The executive branch at the level of BiH engulfs 50 different institutions, all which are contained in the list of budget users for 2006. The number of institutions of the executive has gradually increased since the Dayton Peace Agreement was signed. According to the Dayton Agreement, the following matters are the responsibility of the institutions of BiH: foreign policy; foreign trade policy; customs policy; monetary policy; finances of the institutions and for the international obligations of BiH; immigration, refugee, and asylum policy and regulation; international criminal law enforcement, including relations with Interpol; establishment and operation of common and international communications facilities; regulation of inter-Entity transportation; and air traffic control³⁸. Initially, BiH did not perform these responsibilities in full, primarily because of the resistance coming from RS and some for justifiable reasons. For example, air traffic control was delegated to the BiH authorities only in mid 2006. Before that, the BiH's air space had been divided between Croatia and Serbia – not against BiH's will, but due to its lack of capacities for air traffic control. Other responsibilities were also transferred to BiH over time. The most recent case is transfer of responsibilities for defence, and talks are currently conducted on possible transfer of responsibilities for home affairs, high education, etc.

Besides the Presidency of BiH, the top level of the executive is comprised of CoM and its Ministries, 9 of them in total at the level of BiH. There are also five permanent bodies within CoM: General Secretariat, Committee for Economic Affairs, Committee for Home Affairs, Directorate for European Integration and Legislative Office. These act as auxiliary bodies of CoM and they co-ordinate operations of the Ministries, each in their respective area.

The following are the Ministries at the level of BiH: Ministry of Foreign Affairs, Ministry of Foreign Trade and Economic Relations, Ministry of Communications and Transport (the original three Ministries), Ministry of Human Rights and Refugees, Ministry of Security, Ministry of Defence, Ministry of Finance and Treasury, Ministry of Justice, and Ministry of Civil Affairs. Important administration organisations include the Directorate for Implementation of the CIPS Project (personal documents and data), which operates within the Ministry of Civil Affairs, and the Directorate for Civil Aviation, which operates within the Ministry of Communications and Transport.

An initiative has been launched for making changes and amendments to the Constitution of BiH. Following exhaustive negotiations, four amendments were agreed upon, which, however, did not win the necessary support in the Parliamentary Assembly. These amendments did not provide for establishment of new ministries, but only that the composition of CoM should be regulated by law³⁹.

What is budget/staffing of key institutions in the executive branch?

The budget of the institutions of BiH is adopted annually by the House of Representatives and House of Peoples of BiH. If it is not adopted, the budget from the previous year is used. The joint institutions of BiH adopted the budget for 2006 in the amount of KM 954,599,220 which is an increase by around 64% since last year. Such a dramatic increase is the consequence of transfer of responsibilities to the institutions of BiH and a substantial growth in the number of public employees at this level. The largest proportion of budget funds is appropriated for the Ministry of Defence –30% or KM 278,100,000 – almost 3.5 times as much as last year.

The peculiar administrative design of the country, which is made up of two Entities – one republic and one federally organised unit consisting of 10 cantons, is also reflected in the fact that the Entity budgets are even larger than the budget of BiH. This is due to the fact that, after the Dayton Agreement, the Entities practically entered the new state as two fully-formed independent states. The result of this is the budget of BiH considerably smaller than the budgets of its constituent parts. Over the years, however, responsibilities have been gradually transferred from the Entity level to the level of BiH with a view to making the State more functional. The disproportion between budgets was thus reduced, but is still in favour of the Entities budgets. So, for instance, the Budget of RS for 2006 is KM 1,098,600,000. Some cantons also have relatively large budgets, e.g. Sarajevo Canton, which is obvious due to the costs of maintaining a large administrative apparatus of the executive.

What is the budgetary process that governs the executive branch?

The budgetary process at the level of BiH is regulated in the Law on Institutions of BiH Financing⁴⁰. The Ministry of Finance and Treasury is responsible for drafting and implementing the budget and institutions of BiH financing. This Ministry performs its duties in collaboration with institutions and organisations that are funded from the budget ('budget beneficiaries'). The Ministry is obliged to send a circular letter to budget beneficiaries, containing instructions with regard to preparation of requests for appropriation of funds from the budget, deadlines for submission of requests, and spending limitations no later than 1 July of the current year for the following fiscal year⁴¹. Budget beneficiaries develop their budget proposals for the following fiscal year and submit it to the Ministry via their finance officers. This is done not later than 1 August of the current year. All budget beneficiaries' requests must be accompanied by cost-benefit analyses and other appropriate written explanations⁴². The Ministry of Finance and Treasury will consider these requests and, after consultation and discussion with the budget beneficiaries concerned, will determine the amounts to be allocated to each budget beneficiary. In case the agreement on allocation of budgetary funds is not reached, CoM will decide. The Ministry of Finance and Treasury submits the draft budget for the following fiscal year to CoM not later than 1 October of the current year⁴³. CoM then submits the draft budget to the Presidency of BiH, and the Presidency forwards it to the Parliamentary Assembly, which adopts the budget by 31 December of the current year⁴⁴. If the budget is not adopted by the end of the previous fiscal year, a system of temporary financing is used.

Similar procedures are also followed in the Entities, with minor differences concerning the deadlines for specific phases of the budgetary process. In RS, for example, the Ministry of Finance prepares the preliminary budget Memorandum by 15 June, the Government adopts it by 30 June, and then the instruction on the manner and elements of draft budget development for the following fiscal year is submitted to the budget beneficiaries by 1 July. By 1 September the budget beneficiaries submit the budget requests for the following fiscal year to the Ministry, and Ministry submits to the Government draft budget by 15 October.

The Government then adopts the draft budget and submits it to the National Assembly for adoption by 15 November. After the Assembly adopts the draft budget, the Government adopts the budget proposal, which the Assembly is to adopt by 15 December. The Assembly has the authority to change the proposed budget, but only in accordance with the appropriate principles related to the budgetary framework⁴⁵. The same procedure is used in FBiH, where the Minister of Finance submits to the Government the draft budget by 1 October of the current year, the Government submits the proposal to the Parliament by 1 November, and the Parliament adopts it by 31 December⁴⁶.

Budget revenues are: indirect taxes, non-tax income (administrative and court fees, income of the Central Bank of BiH, etc.), current pecuniary aid, current non-pecuniary aid, extraordinary gains, revenues from property and other revenues determined by the law. The budget beneficiary status is acquired on the basis

of the Constitution of BiH, law or appropriate act of the Parliamentary Assembly of BiH, Presidency of BiH or CoM of BiH. A budget beneficiary is required to submit to the Ministry of Finance and Treasury the annual expenditure dynamic plan by months within 15 days from the day of publication of the Budget in the Official Gazette of BiH.

Analytical expenditure projections are presented and brought in line with the purpose of the expenditures, in accordance with synthetic accounts within each category, containing current expenditures, specific-purpose programme and capital expenditures. Based on these plans, the Ministry of Finance and Treasury develops a dynamic plan of revenues and expenditures for implementation of the budget. Implementation of the expenditure part of the plan is operationally harmonised with the dynamic of realisation of revenues envisioned in the Budget.

Furthermore, the Ministry of Finance and Treasury co-ordinates implementation of special programmes with the budget beneficiary, which depends on the realised extent of revenues and this Ministry may, at the request of the budget beneficiary, issue a decision on the restructuring of its expenditures within the total amount approved in the Budget. The budget beneficiary is obliged to determine an internal procedure for creation of obligations, specifically determining the procedures and persons responsible for reporting, entering and approving obligations of budget beneficiaries. This is submitted to the Ministry of Finance and Treasury. This Ministry oversees implementation of laws and bylaws regulating salaries, as well as the income policy of employees in the institutions of BiH.

The budget beneficiary is obliged to pass an internal act regulating the amount of cash at hand (used for covering costs of business trips and other minor material costs), manner of use and responsibility for material and physical cash insurance. This act is approved by the Ministry of Finance and Treasury.

Do ministers have extra-budgetary funds at their disposal?

YES – The Budget of BiH has its reserves, the use of which is decided by CoM following the proposal of a budget beneficiary and with prior approval of the Ministry of Finance and Treasury. These funds may be allocated to non-profit organisations as well as to individuals through open competition, which is announced by the Ministry of Civil Affairs and Communications in accordance with the criteria established by CoM, in the amount not exceeding 20% of the total budget reserve⁴⁷.

Ministries and other budget beneficiaries may also receive incomes other than those envisioned in the Budget, in the form of grants and donations, but they are obliged to notify the Ministry of Finance and Treasury. The same practice is followed in the Entities.

3. Accountability

What kind of laws/rules govern oversight of executive branch? Are these laws/rules effective?

Organisation and work of the highest bodies of the executive (the executive in BiH consists of two heads - Presidency of BiH and CoM), including the oversight, are regulated in the Constitution of BiH and appropriate laws and bylaws. Although one of the major problems BiH is faced with is the gap between the existing laws and the actual level of their implementation, a relatively high level of effectiveness of the laws in this segment has been ensured. The same applies to the oversight of work of the executive at the Entity level.

To whom must executive report, in law? Does this accountability for its actions take place in practice?

CoM, which acts as government in the existing governance system, reports to the Parliamentary Assembly. CoM is obliged, at least annually, to submit annual reports to the Parliamentary Assembly regarding its operations, including reports related to the Budget (the Parliamentary Assembly may request that CoM submit special reports on certain issues)⁴⁸. Collective (joint) political responsibility of CoM to the legislature reflects in its obligation to resign if at any time there is a vote of no-confidence by the Parliamentary Assembly (Article V, Paragraph 4, of the Constitution of BiH). The responsibility of CoM to the Parliamentary Assembly is more specifically regulated in the Law on the Council of Ministers. This Law also provides for individual responsibility of the Members of CoM. Article 15 of this Law stipulates that the Chair of CoM may propose the dismissal of a Minister and Deputy Minister and this decision must be approved by the Parliamentary Assembly of BiH. In addition to the possibility of passing the vote of no-confidence, the parliament's oversight takes place in the form of MPs' questions and interpellation. MP's question means a specific question of a Member of the Parliament addressed to the Government as a whole or to a specific Minister, whereas interpellation means a general question asked by an MP or a group of MPs (this questions opens a discussion in which all MPs may participate). The above means of oversight are provided for in the Rules of Procedure of the House of Representatives and the House of Peoples of the Parliamentary Assembly of BiH⁴⁹.

The parliament's oversight of the executive also takes place at the Entity level. Article 94 of the Constitution of RS stipulates that the Government and its members are responsible to the National Assembly (political responsibility of the Government is reflected in the fact that the National Assembly may vote no confidence to the Government – the proposal for a no confidence vote to the Government is submitted by at least 20 Assembly representatives)⁵⁰. In respect to that, as well as with regard to the traditional instruments of parliamentary oversight, there are no significant differences between the level of BiH and the Entities. Certain divergences do occur as far as the organisation of the executive in FBiH is concerned. Responsibility of this Entity's Government is twofold. Article 5 of the Constitution of BiH

provides that the Government may be removed either by the President with the concurrence of the Vice-President, or by a vote of no confidence adopted by a majority in each House of the Legislature. The Constitution also provides for the individual responsibility of Ministers and Deputy Ministers – they are removed by the President of FBiH following the proposal of the Prime Minister⁵¹.

The parliament's oversight of the executive does take place in practice, although the political parties (or rather, party discipline) still play a crucial role. This means that the possible imposition of sanctions against the representatives of the executive is not based on the quality of their work, but rather is the result of backstage calculations of the political parties' leaderships.

Another peculiarity of the legal system in BiH is the existence of the Office of the High Representative for BiH, established under Annex X of the General Framework Agreement for Peace in BiH (powers of this institution were subsequently expanded by declarations of the Peace Implementation Council (PIC), the most important of which was the Bonn Declaration, adopted at the session of the PIC held on 9 and 10 December 1997).

Large powers vested in the High Representative allow him to exert powerful influence on the executive branch, *inter alia*, by removing the top-ranked officials of the executive (e.g. the High Representative removed the Member of the Presidency of BiH Dragan Čović, President of RS Nikola Poplašen, Minister of Education and Culture of RS Milovan Pecelj, Minister of the Interior of RS Zoran Đerić etc.)⁵². The influence of this institution is also reflected in frequent consultations of the representatives of the executive with the representatives of OHR (this is often stressed in their statements as an argument for acceptability of the proposed solutions).

Is the public required to be consulted in the work of the executive branch? Does this consultation take place in practice?

PARTLY – Although the nature of the executive (enforcement of laws, co-ordination of the work of administration, etc.) does not call for participation of the public to the extent that is required for the work of the legislature, it is vital that citizens are informed in a timely and accurate way of the work of this branch. One of the principles laid down in the Law on the Council of Ministers is transparency of work. Article 40 of this Law provides that CoM is obliged to inform the public about its work, decisions, conclusions and opinions, as well as of important issues being considered or to be considered, through announcements, press conferences, statements and other forms of information dissemination. However, the experience has shown that the public is not consulted to a sufficient degree and is not informed about a number of relevant issues (e.g. semi-secret negotiations on the police reform, the most radical change to the Constitution of BiH since the country was established, etc). The Entity Governments follow a similar practice and consult the public only in exceptional circumstances, in relation to certain draft laws.

4. Integrity mechanism

Are there codes of conduct for the executive branch institutions? If so, for which ones? Do they include anti-corruption provisions? Are they enforced in practice?

YES – There is a Code of Conduct for the executive branch institutions in BiH, which is established by the Law on Conflict of Interest. This Law is discussed in greater detail in other chapters of this publication, e.g. the Legislature or the Election Commission. Codes for civil servants have been elaborated in the related chapter, while such micromanaging codes for ministers and leading executive do not exist.

Are there rules on conflict of interest? Are they effective?

PARTLY – Conflict of interest is regulated in a number of Articles of the Law on Conflict of Interest. Ministers and Deputy Ministers may not serve on the management board, steering board, supervisory board, executive board, or serve as director of a public enterprise or a privatisation agency. In addition, they may not serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorised person for any private enterprise that contracts, or otherwise does business, with CoM. This provision applies only when the value of the contract or the business with CoM exceeds KM 5,000 per year. These provisions of the Law on Conflict of Interest are applied at the Entity, cantonal and local levels of the executive until such time as the laws are enacted in the area of conflict of interest at the level of the Entities, which is not expected in the short run, judging from the current affairs.

These provisions are increasingly adhered to in practice as it becomes ever easier to check whether a public official is at the same time a member of a management board, steering board, supervisory board or executive board. However, they use their positions to propose members of the political party they are affiliated with or other persons they are connected with in any way as members of the aforementioned boards. It is very difficult to determine the existence of such connections in practice.

Are there rules on gifts and hospitality? Are they effective?

PARTLY – The abovementioned Law contains provisions regulating gifts and hospitality, which are also discussed at greater length in other parts of this publication. Despite detailed provisions on gifts and hospitality contained in this Law, there is no effective oversight of their implementation in practice. There is no efficient oversight of private interest. The reporting of gifts rarely takes place in practice.

Are there restrictions on post (ministerial) employment? Are these restrictions adhered to?

YES – There are certain restrictions on post employment of former Ministers and Deputy Ministers. They may not serve on the management board, steering board, supervisory board, executive board, or as director, of a public enterprise, or serve on the directorate or management board, or as director, of a privatisation agency for one year after leaving the office.

5. Transparency**In the executive branch, does the law require assets of ministers or certain officials to be disclosed? Are assets disclosed in practice? Does this include lifestyle monitoring?**

PARTLY – The 2001 Election Law of BiH established equal principles for disclosure of assets for all candidates standing for elected office at the level of BiH as well as at the Entity, cantonal and local levels. These principles are elaborated under paragraph Transparency in the chapter on Legislature.

The above Law states that every candidate standing for elected office at the level of BiH or the Entity, cantonal and local levels is obliged to submit to the Election Commission, on a special form, a signed statement on his/her total assets.

The Law on Civil Service in the Institutions of BiH stipulates that a civil servant must disclose all information on properties at his/her disposal and at the disposal of the members of his/her close family. This is discussed at greater length under paragraph Transparency in the chapter dealing with Civil Service.

In order to more effectively monitor lifestyles of elected officials during their term in office, it is recommended to establish a rule requiring the officials to disclose their assets upon the end of their term in office, which is not the case now. Also, the Criminal Code of BiH should provide for criminal responsibility in case of hiding or withholding information on property of officials and members of their families.

Whose assets are monitored (please include the types of officials, noting if different actors, such as ministers v. officials; elected v. appointed; etc. are treated differently)?

Officials whose assets are monitored include all candidates standing for elected office at all levels in BiH.

At the level of BiH they include:

- Presidency of BiH,
- delegates to the House of Peoples of the Parliamentary Assembly of BiH,

- members of the House of Representatives of the Parliamentary Assembly of BiH,
- General Secretaries of the both Houses of the Parliamentary Assembly of BiH,
- directors and their deputies and assistants in all civil service bodies, agencies and directorates as well as in institutions, who are appointed by CoM, Parliamentary Assembly or Presidency of BiH, and
- Chair and Members of CoM.

At the Entity level:

- President and Vice-Presidents of RS and FBiH,
- Members of both Houses of the Entity Parliaments,
- General Secretaries of the both Houses of the Entity Parliaments,
- directors and their deputies and assistants in all Entity-level civil service bodies, agencies and directorates as well as in institutions, who are appointed by the Government, Parliament or President of the Entity, and
- Prime Ministers and members of the Entity Governments.

At the cantonal level:

- Members of cantonal assemblies,
- directors and their deputies and assistants in all civil service bodies, agencies and directorates as well as in institutions at the cantonal level, who are appointed by the Government or Assembly of the Canton, and
- Prime Ministers and members of cantonal governments.

At the local level:

- Heads and Deputy Heads of municipalities, and
- Members of municipal assemblies.

In Brčko District:

- Mayor,
- members of the Assembly, and
- President and members of the Government.

Who keeps registers of disclosed assets up to date?

All data on the property of civil servants and property of their close family members as well as the data on activities and functions that these persons perform are kept in the Civil Service Register, in accordance with the applicable regulations on protection of data. The property data are also kept by the Election Commission of BiH as elected officials are obliged to disclose their assets on a separate form and submit it to the Election Commission.

Do they have legal powers to enforce disclosure? Does disclosure take place in practice?

YES – The Law provides that the above officials and civil servants are obliged to disclose their assets, which the Election Commission keeps track of based on the special assets forms that these officials are required to fill in when submitting application for candidacy.

To what extent is there fiscal transparency in the executive branch?

Fiscal transparency in the executive branch, i.e. CoM and all Ministries, is ensured by the Law on Budget and Law on Implementation of the Budget of the Institution of BiH, which are adopted annually. These Laws *inter alia* provide for budget expenditures related to the financing of CoM as a budget beneficiary. In addition to that, the Law on Audit was enacted at all levels, establishing SAIs which are responsible for overseeing the spending of public funds. Audit reports are submitted to the respective legislatures, and thus the public has insight into the spending of public funds. This is elaborated on in the section on SAIs.

Must be government budget be published? Where and how is it published?

YES – The Budget is passed as any other law and published in the Official Gazette of BiH or the Official Gazettes of the Entities and the Brčko District. This includes publication of all budget beneficiaries that were allocated funds from the Budget as well as funds from the budget reserve and other funds. The Budget is readjusted in mid-year, so there is possibility of changing the amount of budgetary funds allocated for specific budget users.

Must the amount of extra-budgetary funding (such as that at the discretion of ministers) be made public? Is this done in practice? Where is the information published?

CoM and its Ministries are funded from the Budget of the BiH institutions, while the Governments of the Entities, cantons and municipalities are funded from the budgets of the Entities, cantons and municipalities respectively. In addition to that, Ministries and other budget beneficiaries may also receive funds other than those envisioned in the Budget, in the form of grants and donations, but they are obliged to notify the Ministry of Finance and Treasury. However, grants now represent a rare occurrence in practice. Loans or similar funds from IMF or WB intended for implementation of specific projects are presented in the Budget as budget items.

6. Complaints/enforcement mechanisms

Are members of the executive immune from prosecution? Has executive immunity interfered with prosecution or corruption?

The Law on Immunity was enacted at the level of BiH in 2002. According to this Law, members of the executive are not immune from criminal prosecution. On the other hand, only members of the Presidency of BiH and CoM may invoke immunity from private prosecution (i.e. civic-legal immunity) in relation to any act committed in exercise of their duties defined in the Constitutions of BiH and the Entities. Also, the Criminal Code of BiH provides for a whole range of criminal offences of corruption. Executive immunity has not interfered with prosecution for corruption for a simple reason – there is no such immunity. Civic-legal immunity may not be considered a general impediment to civil procedure either. If, in the course of the civil procedure conducted against such a person, this person states that the act that resulted in the civil procedure was committed in exercise of his/her duties, this matter will be considered and resolved by the decision of the relevant court, which is final and binding and subject to appeal before the Constitutional Court of BiH.

The same practice is followed at the Entity level. So far, there have been no cases of stripping members of the executive of their immunity. It is only after their term in office expires that such questions are raised and sporadic actions are brought. Two cases are worth mentioning, namely the former Prime Minister of RS, who is still eluding prosecution, and the former Serb member of the Presidency of BiH, against whom the procedure was instituted only after his term in office expired. It is rare that the term in office of the members of the executive is terminated for these reasons, as was the case with the former Croat member of the Presidency of BiH.

Do those who monitor the disclosure of assets have staff to investigate allegations? Do investigations take place in practice?

NO – Transparency of assets of ministers and other civil servants is still not adequately solved in the BiH's legal system, which makes it monitoring of their assets before and after their term in office difficult. In addition to the Civil Service Register, containing the data on the assets of civil servants and their close family members, there is a rather well-organised system of auditing of the public sector in BiH, at the level of both BiH and the Entities.

There are attempts to curb corruption in State bodies through both internal and external control mechanisms. Within the Ministry of Civil Affairs there are administrative inspectors who oversee application of regulations concerning the organisation and manner of work of administrative bodies. They have power to propose and issue decisions and order that certain measures be taken with the aim of

eliminating any misconduct on the part of administrative bodies. The identified misconduct is notified to CoM, which takes appropriate measures.

Heads of institutions conduct appraisals of the performance of civil servants working in their respective institutions. Civil servants are dismissed by the Agencies for Civil Service, which exist at the level of BiH and the level of the Entities, upon prior opinion obtained from the relevant institution. A civil servant may be held disciplinarily accountable for the violation of official duties, which occurred as a result of his/her own fault. The case may be transferred to the Ombudsperson, who may make recommendations and/or suggest measures to the appointing authority. Another institution that is vital to combating corruption in public authorities is the Election Commission of BiH, which occupies a crucial role in overseeing the implementation of the Law on Conflict of Interest in Governmental Institutions of BiH. The Commission may report to the relevant prosecutor's office any violation of this law, which might also constitute a breach of criminal law. However, although the system is well designed in theory, the Election Commission cannot manage to investigate all alleged violations of the law in practice.

Can citizens sue the government for infringement of their civil rights?

According to the applicable regulations, citizens can be involved in this internal control procedure only as witnesses. However, there have been cases in RS of procedures being instituted on the basis of citizens' complaints, some of which resulted in dismissals of civil servants based on one complaint only⁵³. Such extreme examples, however, did not happen at other levels of the executive. What remains a problem in the area of internal control is civil servants' mutual solidarity and inability of the Agency for Civil Service (which employs as few as 26 people at the level of BiH) and administrative inspectors to adequately control the huge administrative apparatus of the executive branch. Citizens may, on their own, sue the government and its officials for infringement of their civil rights and claim damage, ask the Ombudsperson for assistance, or to report publicly or anonymously criminal offences or acts of misconduct to the police and the relevant prosecutor's offices. Some investigations are actually launched on the basis of citizens' complaints. However, there is a general understanding that the procedure is still rather slow and that a satisfactory level of effectiveness in solving these issues has not yet been reached.

It is important to note that it is possible to sue the executive by citing the legal grounds for doing so. Citizens can freely sue members of the executive in accordance with the Entity Civil Procedure Codes⁵⁴, when the matter concerns their civil responsibility. There is also the Law on Civil Procedure before the Court of BiH which was adopted in 2004. Criminal responsibility for offences under the Criminal Codes of the Entities and BiH⁵⁵ may be determined in accordance with the rules of the Criminal Procedure Code⁵⁶.

How successfully has corruption been targeted by this institution, as an internal problem? An external problem?

Regrettably, the executive remains much more fearful of the reactions of the international community, in particular OHR, than of the discontent of citizens and their own electorate. Removals of public officials that OHR frequently resorted to during Paddy Ashdown's mandate, without conducting open investigations or giving reasons for its decisions, were far more effective than the whole judiciary in BiH. Sometimes, politicians would be removed from office for verbal offence or for expressing views that the High Representative found inappropriate, while criminals who embezzled millions KM worth of public funds remained in office just because they suited the OHR's political agenda. Executive at all levels have been most ineffective addressing the corruption problem. Anti-corruption strategies have occasionally been adopted that is elaborated in the chapter on anti-corruption agencies.

7. Relationships to other pillars**To what extent is this institution/sector a key part of this country's NIS?**

The executive undoubtedly represents a key pillar of NIS (analyses of governance systems in the countries undergoing transition indicate that the executive branch is being strengthened to a greater degree than the legislature, both at the national and at the local level). In the coming period this role will certainly be played by CoM, given the tendency of expansion of its powers (on the other hand, current proposals of constitutional reform envisage removal of some elements of the vice-president system in BiH, which were reflected in the manner of election of the BiH Presidency).

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

As a clear separation of powers is not possible, of great importance in the system of checks and balances in BiH, as a main presupposition of the rule of law, is the interaction between the executive and the legislature, that is, the establishment of the appropriate model for their mutual co-operation (particularly in the context of the peculiar system of governance in BiH, which is reflected *inter alia* in dominance of the executive branch). In the coming period, as well, in view of the problems in connection with the functioning of the executive (abuse of power, corruption), significant role will be played by SAIs and appropriate watchdog agencies.

Interaction with the international actors in BiH is also considered positive, although the officials in BiH (both at the State and the Entity level) should assume a proactive role and greater responsibility for key decision-making in the coming period. Improvement of collaboration with SAIs, Ombudspersons and

watchdog agencies is imperative (interaction with these pillars is not deemed satisfactory). Co-operation with the media could also be improved, though an encouraging progress has been observed lately in this respect. NGO sector is another pillar that the executive should engage with more actively.

Is there judicial review of the executive? If so, how routine and how extensive is it?

In exercise of its rights and duties, CoM issues decrees, decisions, instructions, conclusions and other enactments/normative deeds. As far as judicial review of the executive is concerned, Article 1 of the Law on Administrative Procedure of BiH provides for the possibility of instituting administrative process in which it is decided on legality of individual and general final administrative acts issued in exercise of public offices of the institutions of BiH (which, in terms of Article 4 of this Law, include the BiH Ministries and their bodies)⁵⁷. Administrative disputes are decided by the Administrative Division of the Court of BiH. General acts of CoM are also subject to the judicial review by the Constitutional Court of BiH. The Constitution of BiH, however, does not directly provide for such a responsibility. It is thought that the responsibility of the Constitutional Court of BiH for deciding on constitutionality of general enactments stems from the provision contained in Article III, Paragraph 3.b, which provides: “The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of BiH and of the constitutions and law of the Entities, and with the decisions of the institutions of BiH”⁵⁸.

Appropriate mechanisms of judicial review of the executive have been established at the Entity level too. Article 115 of the Constitution of RS provides that the Constitutional Court of RS decides on conformity of laws, other regulations and general enactments with the Constitution, and conformity of regulations and general enactments with the law (including general enactments of the Government of RS). In FBiH, the Constitutional Court of FBiH is responsible for determining whether any regulation enacted by any organ of the FBiH Government is in accord with this Constitution⁵⁹. The relevant Entity laws also provide for the possibility of instituting administrative process (against final acts of the administration bodies of RS⁶⁰ and final acts of the administration bodies and administrative institutions of FBiH⁶¹). These disputes are adjudicated by the Supreme Court of RS and Supreme Court of FBiH. FBiH has instituted over 100 administrative procedures before the Constitutional Court of FBiH against its own cantons in connection with nonconformity of cantonal regulations with the supreme laws of FBiH. However, even after the Constitutional Court issues the ruling, the *status quo* is maintained, which only shows the absurdity of the constitutional design of FBiH.

Political Parties

1. Role(s) of institution/sector as pillar of NIS

What are the rules governing political parties? Party registration? Candidates?

Freedom of association of BiH citizens is guaranteed by the Constitution of BiH⁶², Constitutions of the Entities and the Statute of the Brčko District. Foundation and work of political parties is regulated by the Law on Political Organisations⁶³, Election Law of BiH⁶⁴, Law on Party Financing⁶⁵ and a number of bylaws defining specific aspects of work and operation of political parties. Bylaws are passed by the Central Election Commission of BiH (CEC BiH) and they regulate the areas of elections, conflict of interest, political party financing and other aspects of work of political parties.

Laws on Political Organisations govern the manner of exercising the freedom of political association and political engagement, requirements and foundation procedures as well as registration and termination of political organisations. A political organisation is founded at the founders' assembly, when a decision on foundation, statute and programme are adopted. Political organisations are entered into the Registry of Political Organisations, which is kept at a relevant court, whereupon they acquire a legal entity status.

The Election Law provides that independent candidates or candidates of political parties or coalitions acquire the right to stand for elections by being certified by CEC. Precondition is that the candidate is entered into the Central Voters Register.

Are legislative/parliamentary elections organised by parties?

NO – According to the Election Law of BiH, the relevant authorities responsible for the conduct of elections are the election commissions and the Polling Station Committees. The election commission members are appointed for a period of five years and members may only be appointed to the same election commission for two consecutive terms of office. Polling Station Committee members are appointed for each election. A political party and independent candidate whose participation in the election has been certified in any electoral constituency have the right to participate in the drawing of lots for assignment of positions in polling station committees, which is conducted by the municipal election commission. Ultimate responsibility for the organisation and conduct of all aspects of the electoral process and the responsibility for overseeing all electoral bodies rest with CEC BiH⁶⁶.

The cost and expense for the conduct of elections are provided from the budget of the level for which the elections are conducted.

To what extent does the regulatory framework make it possible to form opposition parties? For opposition parties to compete fairly with established parties?

Article 1, Paragraph 2, of the Constitution of BiH defines BiH as a democratic state, which is operated under the rule of law and with free and democratic elections.

Article 1 of the Election Law guarantees all participants in the election process full freedom to carry out activities during the election campaign in the whole territory of BiH. Relevant authorities must ensure that no obstacles impede freedom of movement of candidates, supporters and voters during the entire electoral process and must not discriminate against a person because of his/her affiliation to a political party or coalition, or because of his/her support for an independent candidate or a list of independent candidates.

Chapter 16 of the Election Law – Media in Election Period, guarantees equitable and fair presentation of political actors in the broadcast media during election period and requires the media to observe the generally accepted democratic principles of balance, fairness and impartiality when covering the election activities. The media are forbidden from placing into a privileged position any political actor or official, standing for elections at any level, in relation to other participants in the electoral process. Provisions governing impartiality of the media are not followed in practice. The 2006 “Expert Panel on Democratic Progress in BiH” commissioned by the Open Society Fund BiH, covering 100 experts in different areas, assessed the level of the media’s independence from the government. When asked how independent the media are from the government, as many as 29% of the respondents believed the independence of the media from the government was low or very low, 31% gave the middling response, and 37% of those questioned believed the media were independent from the government⁶⁷.

Are there rules on political party funding? Are these rules exercised in practice?

PARTLY – These rules are contained in the Law on Party Financing and the Election Law of BiH. Pursuant to the Law on Party Financing, the allowed sources of financing are: membership fees; contributions from legal entities and individual persons; income generated from property owned by the political party; the budgets of BiH, Entities, or any subdivision thereof; profit from the income of the enterprise owned by the party (such an enterprise may only carry out culture-related or publishing activity). This Law, however, applies only to the political parties that are represented in joint BiH institutions (and at all levels at which they are politically active), but not to those that operate at lower levels. Entities and cantons therefore remain insufficiently regulated in this respect.

CEC BiH is the relevant authority responsible for overseeing all aspects of party financing. In terms of Article 14 of the Law on Party Financing, CEC BiH is required to establish an Auditing Office, which will be responsible for reviewing and auditing financial reports submitted by the political parties. Although

BiH was one of the first countries in the region to adopt this law, there have been many problems with practical implementation of this law. One of the main reasons for that was the delay in establishing the Auditing Office. The Office was eventually established five years after the Law had come into force. By June 2006, the Auditing Office produced nine reports on the audit of annual and post-electoral financial reports of political parties⁶⁸. Most of these reports had similar findings. In most cases, the parties were found to be in breach of the provisions regulating the allowed amount of contributions from legal entities; parties also failed to present in their financial reports contributions from individual contributors exceeding KM 100, received illicit contributions, and failed to submit financial reports within the prescribed deadline. The High Representative also imposed sanctions against political parties for failure to comply with the rules on financing⁶⁹.

However, the quality of CEC BiH's audit reports is questionable. Vacant positions in the administrative and professional service are filled through the BiH Civil Service Agency and the salaries are within the range applied in civil service, which is significantly lower than the salaries in SAIs. It is therefore very difficult to fill the vacancies envisioned in the job plan and employ staff with appropriate qualifications. This is especially worrying in view of the fact that political parties are constantly perfecting their money-laundering systems and are always several steps ahead of slow legal regulations and investigations.

Are the rules different during campaign periods?

YES – The rules on political party funding are defined in Article 15 of the Election Law of BiH. The number of voters in each electoral constituency, which is determined on the basis of the Central Voters Register, serves as a basis for determining the maximum amount that a political party is allowed to spend for financing its election campaign. Maximum amount allowed to be spent for financing election campaign represents the calculation of the number of voters in all electoral constituencies in which the political entity has candidates' list or candidate, multiplied by: KM 0.30 for elections for the mayor of municipality/city; elections for the Municipal Council/Assembly; elections for delegates to the RS National Assembly/FBIH House of Representatives; elections for delegates of the Parliamentary Assembly of BIH; election for members of the Presidency of BIH; elections for the President and Vice-Presidents of RS; and KM 0.20 for elections for Cantonal Assemblies.

If the elections have to be repeated in any electoral constituency or polling station, the cost of the election campaign per voter may not exceed 30% of the expenses of the cancelled elections in this electoral constituency.

Is there formal operational independence of political parties? Are political parties independent in practice?

PARTLY – The existing legal framework provides for freedom and operational independence of political parties as long as their programmatic goals and activities do not interfere with the constitutional rights and freedoms. At the same time, large powers of the High Representative as well as the severity and the large number of decisions issued by OHR in the past led to situations in which there was no clear division of responsibilities between the domestic authorities and political entities on one side and international community on the other. Based on this, it is fair to say that political parties have limited operational independence.

To what extent have any political parties organised their work based on/committed themselves in any significant way to an agenda of integrity, transparency and good governance? What is the evidence for this?

PARTLY – Political parties' programmes do contain some of the principles of integrity, transparency and good governance. On the other hand, numerous international and domestic surveys have indicated that the practice of political parties in BiH opposes the proclaimed principles.

As part of the activities of the GROZD movement (Civic Organisation for Democracy), the Agency for Local Development Initiatives (ALDI) and TI BiH in September 2006 published an analysis of political parties' election programmes for the 2006 elections. The analysis has shown that more than half of the political parties participating in the elections had not developed election programmes by the time the election campaign started. On the other hand, analysis of the programmes obtained from 26 parties has shown that political parties generally pay very little attention to the basic problems faced by citizens in BiH.

According to the TI 2005 Global Corruption Barometer, political parties were again perceived as most corrupt, with over 70% of the respondents thinking that corruption affected political life of the country to a large extent⁷⁰. In addition to that, the TI BiH's 2005 Annual Report points to a continuing lack of political will for a systematic and organised fight against corruption and organised crime throughout the entire post-war period, while the trail of criminal affairs (in particular in management of public funds, performance of state-owned enterprises, and the privatisation process) in most cases leads to the highest ranked officials⁷¹.

To what extent are there 'anti-corruption' parties? To what extent is there a state party only?

There is no single party that holds both the legislature and the executive branch in its hands. According to corruption perception studies that are periodically conducted by TI BiH, year after year citizens perceive

corruption as one of the major social problems in the country while political parties have continually showed a lack of vision for systemic anti-corruption solutions⁷².

The findings of the abovementioned analysis of political parties' election programmes for the 2006 general election show that only three political parties aligned their programmes with public demands with regard to anti-corruption combat, 16 parties have committed themselves to this issue partly or to a very low degree, while the remaining 7 parties had no anti-corruption programme for the next four years at all⁷³. None of the parties with serious anti-corruption programmes managed to win a significant number of votes in the 2006 general elections, which were held on 1 October 2006, to be able to exert any visible influence. Such election results are common occurrence in BiH. An opinion poll conducted by TI BiH before the 2004 local election showed that, paradoxically, citizens supported those (ethnic) political parties that had been perceived as most corrupt in all previous opinion polls⁷⁴.

2. Resources/structure

How many parties are there in the country? Of these, how many are significant politically?

The related laws provide for political parties to register at the Entities or the Brčko District level. No central registry of political parties exists at the State level. According to CEC BiH, there are around 70 registered political parties in the whole of BiH. Of that number, 36 parties and 8 coalitions applied for participation in the 2006 general elections and were duly verified. Other parties operate mainly at the local level and apply only for participation in local elections.

The number of politically significant parties, i.e. those that have significant number of representatives in the legislature, is much lower. Based on the results of the 01 October 2006 general elections, the House of Representatives of BiH is populated with 13 political subjects out of which 8 have more than one MP. These are the following parties: Party of Democratic Action (SDA) – 9 mandates; Party for BiH (SBiH) – 8; Alliance of Independent Social Democrats-Milorad Dodik (SNSD) – 7; Social-democrat party of BiH (SDP BiH) – 5; Croatian Democratic Union (HDZ)-Croatian Coalition-Croatian People's Union (HNZ) – 3; Serbian Democratic Party (SDS) – 3; Croatian Democratic Union 1990 (HDZ 1990) – 2; Democratic People's Union of BiH (DNZ), Party of Democratic Progress RS (PDP RS), People's Party Working for Progress, BiH Patriot Part-Sefer Halilović (BPS) and Democratic People's Union (DNS) a mandate each.

FBiH Parliament constitutes of the following parties and coalitions, of which as many as 69 mandates belong to the largest three parties: SDA – 28; SBiH – 24; SDP – 17; HDZ – Croatian Coalition-HNZ-HSP – 8; Croatian Unity (HDZ 1990-Croatian Union (HZ)-Croatian Peasant's Party (HSS)-Croatian Christian Democratic Union (HKDU)-Croatian Democratic Union (HDU)-Christian-democrats) – 7; BPS – 4; Patriotic Block Bosnian Party-Mirnes Ajanović (BOSS)-Social-democrat Union of BiH (SDU) –

3; People's Party Working for Progress – 3; DNZ – 2; Croatian Rights Party (HSP) Đapić-Jurišić and Coalition for Equality – 1 and SNSD – 1.

For RS National Assembly, 9 constituent parties secured the following distribution of mandates: SNSD – 41; SDS – 17; PDP RS – 8; DNS – 4; SBiH – 4; Socialist Party (SP) – 3; SDA – 3, Serbian Radical Party RS (SRS RS) – 2; SDP – 1.⁷⁵

What rules govern the funding of parties? What is the nature of these rules?

The funding of parties is governed by the Law on Party Financing and Election Law, while the rules and procedures for financial reporting are contained in relevant bylaws: the Rulebook on Annual Financial Reports by Political Parties, Rulebook on Pre-Election and Post-Election Financial Reports by Political Entities, and Collected Financial Forms⁷⁶. That there is need for further improvements to these regulations, both formally and in practice – through building capacities and strengthening accountability of the bodies responsible for their implementation, is confirmed by one of the conclusions of the scientific and expert conference “2004 local elections – Lessons Learned” stating that, unlike budgetary funding, “incomes of political parties from contributions from legal entities and individual persons are partly transparent or non-transparent”⁷⁷.

At the level of the Entities, cantons and municipalities, funds are still allocated freely and unrestrictedly, which implies numerous violations of the Law in the form of off-the-book funds and funds that are not allowed under the Law. It is for this reason that politicians lack will to regulate this issue at sub-State levels.

What is the balance between private and public funding of parties? Is this balance adhered to in practice?

The Law on Party Financing does not regulate the balance between private and public funding of parties. The Law only provides that the annual income generated by property owned by the political party and the annual profit from the income of the enterprise owned by the party may not exceed 20% of the amount of all annual incomes of the party.

Article 10 of the Law on Party Financing – Appropriations from the State Budget – provides that budgetary financing of the parliamentary groups represented in the Parliamentary Assembly of BiH (PA BiH) is distributed as follows: 30% of the total amount dedicated to the parliamentary groups will be distributed equally, while 70% will be distributed proportionately to the number of seats that each parliamentary group holds at the time of distribution.

In 2005 PA BiH allocated only KM 15,000⁷⁸ for the funding of parliamentary groups, and the same amount was envisioned for 2006. Allocations from the budgets of the Entities or lower administration units are much larger. The report on the audit of financial reports for 2004 and post-election reports of eight politically significant parties, produced by the CEC BiH's Office for Audit of Financial Operations of Political Parties, reveals the shares of public funding in overall incomes of these eight parties: SNSD 85.28%, SDA 77.22%, HDZ 72.32%, SBiH 69.23%, PDP 55.98%, SDP 52.39%, GDS BiH 43.04%, and SDS 40.78%. Budget allocations for some parties reached as much as KM 3 million a year. It is estimated that the budgets at all levels annually allocate around KM 15 million to political parties⁷⁹.

One of the conclusions of the scientific and expert conference "2004 local elections – Lessons Learned"⁸⁰ is that, in percentage terms, budget allocations represent the largest source of funding of political parties and that the law should limit the amount of budget allocations by providing that they may not exceed a certain percentage of the total annual income of a party.

Are there significant lobby groups/think tanks affiliated with the party, subject to different funding rules?

NO – No special law on lobbying has been adopted yet. This is a serious deficiency of the existing legal framework which is nominally aimed at ensuring accountable and transparent conduct of public officials and political entities, providing clear definition of situations that can create conflict of interest, and preventing illegal flow of money. In absence of appropriate law, lobbying activities, which otherwise represent a legitimate right of various interest groups and legal entities, go on without control, which increases the risk of representatives of these groups resorting to illegal means and lobbying for decisions that are not in the public interest.

The only exception provided for in the Law on Party Financing are political youth organisations, which enjoy a somewhat privileged status as the limits to contributions by legal entities or individual persons, which are imposed by this Law, do not apply to them.

Are there donation limits for individuals? Corporations? Are these limits adhered to, in practice?

YES – Pursuant to the Law on Party Financing, legal entities and individual persons may give contributions to the political parties or members acting on behalf of political party. For the purpose of this Law, a contribution includes gifts given to the political party or member acting on behalf of the party, free service or rendering of a service for the party or members acting on behalf of the party or selling of products to the party or to the members acting on behalf of the party under the conditions which provide a preferential treatment for the party in relation to the general public. The total amount of a single contribution may not exceed eight average worker's salaries according to the official information by the BiH Agency for Statistics in a calendar year and may not be given more than once a year⁸¹.

The Law on Party Financing also provides that State, Entity, cantonal, municipal and local community bodies, public institutions, public enterprises, humanitarian organisations, businesses whose activities are exclusively non-profit in nature, religious communities⁸², as well as economic association in which public capital has been invested to the amount of a minimum of 25% may not finance political parties. This provision also applies to the private enterprises that perform public services under contracts with the government⁸³.

According to the reports by the CEC BiH's Office for Audit of Financial Operations of Political Parties, six of the nine audited parties in BiH were found to be in breach of the limits to contributions from legal entities or individual persons⁸⁴. CEC BiH has still not imposed any sanctions for such violations of the Law. The only sanctions CEC BiH imposed against political parties were for failure to comply with the deadlines for submission of financial reports.

Must (substantial) donations and their sources be made public? Is this done in practice?

YES – Political parties are required to submit to CEC BiH financial reports containing information about all donations by legal entities and individual persons exceeding 100 KM⁸⁵. The findings of the CEC BiH's Office for Audit of Financial Operations of Political Parties reveal that none of the nine audited parties fully complied with this legal provision. Again, there have been no sanctions for these violations.

Are there rules on political party expenditures? Are these adhered to? Monitored? If so, by whom?

PARTLY – Political parties present their revenues and expenditures in their regular financial reports. According to the standard form of the financial report developed by CEC BiH, expenditures are divided into three categories: overhead and administrative costs, promotion costs (printed materials, media advertising, promotional meetings, etc.), and other costs. Apart from special rules on campaign financing, there are no other restrictions in connection with political party expenditures.

Until last changes to the Election Law (Official Gazette of BiH, 24/06), the rules on campaign finance allowed the political parties to spend up to KM 1 per voter in each electoral race, based on the number of voters announced by CEC BiH, which is a very high limit. For example, based on the CEC BiH's findings, SDA could spend most funds for financing the 2004 local election campaign – as much as KM 2,110,921. According to the audit report for this party, SDA used up KM 622,762.15 or 29.5% of the allowed amount for financing the 2004 campaign.⁸⁶

Political parties present all their expenditures to CEC BiH in their regular annual or post-election financial reports. These reports are monitored by the CEC BiH's Office for Audit of Financial Operations of Political Parties. The Office did not find any of the audited parties to be in breach of the

provisions of the Election Law regulating expenditures for campaign finance, which was to be expected given the very high expenditure limit that was in effect during the last elections in BiH.

Unfortunately, though, such audit findings are much more indicative of poor competence on the part of the CEC BiH's Audit Office than of the legality of parties' work. Furthermore, party financing at sub-State levels (Entities, cantons and municipalities) is still poorly monitored and it remains unclear to what extent local party committees operate in compliance with the Law.

Do any of the above rules related to political finance vary significantly during election periods?

YES – No political party, coalition, list of independent candidates or independent candidate may spend more than KM 0.2-0.3 per registered voter in each electoral race for the purposes of the election campaign for the electoral constituency in which the political entity has candidate's list or candidate. The number of voters by electoral constituencies is determined by the Central Voters Register published by CEC BiH.

3. Accountability

What kind of laws/rules govern oversight of political parties? Are these laws/rules effective?

The work of political parties is regulated by the Constitution of BiH and the Entity Constitutions, Laws on Political Organisations, Law on Party Financing, Election Law and a number of bylaws. Representatives of political parties elected or appointed to a public office are also subject to other laws such as the Law on Conflict of Interest in Governmental Institutions of BiH and other relevant regulations.

Each of these Laws defines the 'rules of the game' as well as sanctions for failure to comply with these rules. The Laws on Political Organisations, for example, provide for prohibition of foundation or work and termination of work of political organisations whose political goals, as expressed in the statute, programme or other act, are in contravention of the generally accepted principles of democratic rule and the rights and freedoms guaranteed by the Constitution of BiH

Chapter 7 of the Election Law defines the rules of conduct for political parties during election campaigns, while Chapter 15 provides for methods of campaign finance. The Law on Party Financing regulates the methods and conditions under which political parties and their members obtain their funds. Both Laws state that political parties are obliged to submit financial reports to CEC BiH as well as that CEC BiH may impose sanctions or administrative measures against political entities found in breach of the provisions of these Laws. In addition, both Laws provide that before imposing sanctions or taking

administrative action, CEC BiH must seek to achieve voluntary compliance of the political party found to be in violation⁸⁷. The fact that this legislation is quite new and that political parties have still not developed sufficient culture of financial accountability and adopted democratic rules of conduct leaves ample room for suspicion as to whether such provisions are really effective in practice.

Another issue inadequately addressed in the Election Law are the data on the assets of candidates standing for elected office at all levels. The Law requires the candidates to submit to CEC BiH, in a special form, a signed statement on his/her total assets. CEC BiH is obliged to make these statements available to the public, but is not responsible for checking their accuracy. This responsibility rests with the judicial bodies, that is, prosecutor's offices. However, since the prosecutor's offices were recently delegated a lot of new additional responsibilities following the adoption of the new Criminal Code and the Criminal Procedure Code, virtually no institution in BiH has addressed this problem so far. Experiences from the countries with well-established regulations in this area suggest that the responsibility for checking accuracy of candidates' statements should ideally rest with CEC BiH⁸⁸.

To whom must political parties report, in law? Does this accountability for its actions take place in practice?

The main reporting obligation includes submission of financial and other reports to CEC BiH. CEC BiH imposed 40 sanctions against political parties for failing to submit regular annual and post-election financial reports for 2004.

Is the public required to be consulted in the work of political parties? Does this consultation take place in practice?

PARTLY – Communication between the political parties and the public usually flows in one direction only, especially during election campaigns which, contrary to the law, can go on for several months or even a whole year. The first serious, comprehensive steps to address this issue were taken by the GROZD movement, which, throughout 2006 and in particular during election period, attempted to draw attention to the fact that the fight for the mandates should be based on the real needs and problems of citizens, not on populist or nationalist rhetoric. The movement succeeded in mobilising a large number of NGOs and interest associations, developed a Civic Platform for the 2006 elections in the form of a proposal for solving 12 most pressing problems faced by BiH society⁸⁹, and collected over half a million signatures from citizens and 36 political parties in support of this platform. This way, as well as through post-electoral control of political pledges, citizens are consulted on the work of political parties, and the practice of indirect public consultations has been effected.

4. Integrity mechanisms

Is there regulation regarding internal party governance? Is this regulation effective?

PARTLY – The issues of internal organisation, rights, obligations and responsibilities of members and bodies of political parties are regulated by the statutes. Statutes of most political parties provide for similar governance structures. In practice, however, there are differences in the level of internal democracy as some parties are more democratic than others. The fact is that most parties are autocratic in nature, which is often seen through their official titles that contain names of their leaders. In most parties in the whole of BiH, leaders decide on all key issues, the strategy and staffing, while the internal structures of the party serve as a mere formality. Membership is therefore mostly interest-oriented and their main motive for joining a party is not a desire to make a difference and climb on the hierarchical ladder, but to pursue their own self-interest by joining the ruling party.

Is the liability for financial irregularity in party affairs attached to individual officials, to the party, or both?

Pursuant to Article 12 of the Law on Party Financing, every political party must appoint a competent person who will be in charge of filing reports and record-keeping, and who will be authorised to receive communications from CEC BiH. This person signs each such report and is responsible for keeping records that support the reports, and must make such reports available to CEC BiH upon request. Those who file reports, i.e. political parties, must inform CEC BiH about assigning the competent person within three days of his/her appointment, and must, within the same deadline, inform CEC BiH of any changes to his/her status.

The responsibility for preparing financial reports, acting in compliance with the laws and regulations governing financial operations of political parties as well as for establishing an efficient system of internal control lies exclusively with the party leadership.

Do the main political parties have codes of conduct for their members?

NO – Most political parties do not have codes of conduct for their members. Basic rules of conduct are partly contained in party statutes.

Can “unethical” candidates (i.e. those undergoing investigation/convicted of crimes) stand for election?

NO – The Election Law enumerates persons who cannot be recorded in the Central Voter Register or stand as candidates or hold any appointive, elective or other public office in the territory of BiH:

- Person who is under indictment of the International Tribunal for the former Yugoslavia (ICTY)⁹⁰ or serving a sentence imposed by ICTY as well as a person who is serving a sentence imposed by a court in BiH or court of a foreign country or has failed to comply with an order to appear before a court in BiH or a court of any foreign country for serious violations of humanitarian law where ICTY has reviewed the file prior to arrest and found that it meets international legal standards;
- Person who fails to vacate real property which is owned by a refugee or displaced person, or fails to leave an apartment where a refugee or displaced person has an occupancy right, or failed to leave an apartment used as alternative accommodation within a deadline specified by relevant bodies.

Until 31 December 2007 these restriction will also apply to any:

- Person who has been removed from public office by the High Representative for action or failure to act which is in contravention of the obligations stemming from the General Framework Agreement for Peace in BiH or for personally obstructing its implementation;
- Military officer or former military officer who has been removed from service for having engaged in activities that represent a threat or risk to peace process;
- Person who has been de-authorized or de-certified by the IPTF Commissioner for having obstructed the implementation of the General Framework Agreement for Peace in BiH.

Are there rules on conflict of interest? Are they effective?

PARTLY – The Law on Conflict of Interest in Governmental Institutions of BiH⁹¹, which took effect from 15 November 2002, applies to elected officials, executive officeholders and advisors at all levels in BiH. Its main deficiency is that the same provisions apply to the officials at the highest levels – State and Entity, as well as to those at the lowest level – municipalities. This is mainly due to the fact that the Entities have still not enacted their conflict of interest laws, although they were obliged to do so within 60 days following the entry into force of this Law, nor has a new Law been enacted at the State level which would adequately treat officials at different levels of administration⁹². The Law contains a number of other provisions that are difficult to implement in practice, so CEC BiH, which is the relevant authority responsible for its implementation, had to develop several bylaws in order to define these provisions more precisely⁹³.

Are there rules on gifts and hospitality? Are they effective?

PARTLY – The Law on Conflict of Interest in Governmental Institutions of BiH provides for these rules. Elected officials, executive officeholders and advisors are obliged to report to CEC BiH any gift or service, or several gifts given by one person in the course of one year, whose amount exceeds KM 100. The reported gifts are submitted to CEC BiH and become the property of BiH.

This provision is also rather imprecise, so CEC BiH developed a draft bylaw – Rulebook on Gifts in order to regulate these procedures in more detail. For as long as the final version of this Rulebook is in a discussion phase, the implementation of provisions on gifts and hospitality came to a halt⁹⁴.

Are there post employment restrictions? Are these restrictions adhered to?

YES – The Law on Conflict of Interest prohibits elected officials, executive officeholders and advisors from serving as director, authorised person or member of managerial bodies of a public enterprise or a privatisation agency six months after they leave the office. The names of these officials are published in the Official Gazettes of BiH, Entities and the Brčko District, which means that CEC BiH has an easy access to this information and can thus oversee implementation of post employment restrictions. According to the CEC BiH's findings, there have been no cases of public officials failing to comply with post employment restrictions.

5. Transparency

Are there rules on disclosure of party funding? Party expenditure? Are these rules followed in practice? How is this information published?

PARTLY – The Law on Party Financing obliges political parties to submit financial reports to CEC BiH. Pursuant to Article 11 of this Law, political parties shall keep record of their revenues and expenditures and shall file with CEC BiH a financial report for each calendar year (accounting year) by 31 March of the following year as well as any additional reports that CEC BiH may require. CEC BiH is obliged to make all reports available to the public and take appropriate actions to ensure that all citizens have an easy access to information contained within the reports⁹⁵.

Article 14.1 of the Election Law obliges political parties, coalitions, lists of independent candidates and independent candidates to file special reports with CEC BiH. There are two types of special reports: a financial report for the period beginning three months prior to the date of submission of the application for certification to participate in the elections; and a financial report for the period beginning on the day of submission of the application for certification until the certification of the results. These reports must contain the following: all cash at hand; all income and disbursements based on contributions in the country and from abroad, including in-kind contributions; identification of the persons who donated more than KM 100; direct costs for political campaign; and the amount and nature of outstanding debts and obligations owed by or to the entity who files a report. However, the reports are insufficiently transparent and it is very difficult to check whether they are accurate or not. The spending of funds of party caucuses in parliaments is problematic and the expenditures are very difficult to track⁹⁶. Likewise, it is impossible to check the party financing from the budgets of public and state-owned enterprises and

such illegal transactions cannot be covered by the existing auditing capacities. For example, the rigging of procurements from state-owned to private enterprises within a party circle ensures party funding which, from the point of view of the existing laws, verges on being a legal business operation, making it almost impossible to conduct detailed investigations in such enterprises. An example of this are the recent misconducts in the cantonal public transport company GRAS, the largest such company in Sarajevo, which has been making losses for years that are compensated by the cantonal budget. After the audit in 2005, the Tax Administration of FBiH (and probably the prosecutor's office) have been investigating embezzlements of millions KM; however, there were still no indictments at the time of writing of this publication⁹⁷. The reason probably rests with the fact that the management of GRAS is very closely connected with the leaderships of the ruling SDA and especially SBiH at the cantonal as well as the FBiH level. Though fierce opponents, these two parties can easily come close when their financing from business sources is concerned.

Pursuant to Article 15.7 of the Election Law of BiH, every candidate standing for elected office at the level of BiH or the Entity level is obliged, no later than fifteen days from the day of accepting candidacy for the elections, to submit to CEC BiH, on a special form, a signed statement of his/her total assets, containing: current income and sources of income, property, and disbursements and other liabilities. The statement should include the assets of the candidates and close members of his/her family: marital partner, children and members of the family household whom it is the candidate's legal obligation to sustain. All candidates elected at other levels of authority are obliged to submit the same statement, but within thirty days from the verification of mandates⁹⁸.

CEC BiH must make available to the public all the financial reports and statements on total assets of persons directly elected to an office⁹⁹. In practice, this information is made available on the basis of a request for access to information which is submitted to the CEC BiH's PR Department, or is occasionally published on CEC BiH's webpage (see below).

Who is in charge of keeping such records, and are they adequately resourced for this task?

The responsibility for keeping such records rests with CEC BiH. Thanks to the financial support from USAID, CEC BiH has implemented the MAP project (Money and Politics) in co-operation with the International Foundation for Election Systems (IFES). The aim of the project is to assist CEC BiH in promotion and implementation of provisions on party financing. CEC BiH also received expert assistance for development of various financial forms that political parties are required to fill in and submit to CEC BiH.

CEC BiH is not adequately resourced for this task, so the records are not always kept up to date.

To what extent is information (accounts/budgets/assets) on political parties required to be put into the public domain? Is this done in practice? If yes, what form does such disclosure take? To what extent are these forms usable?

The focus of the MAP project was on establishment of a web database containing information on political finance. Thus, the data would be kept in a single place and would be easily accessible to the public. The user-friendly database would allow browsing by political entities as well as by types of reported revenues and expenditures. Such a database is a good example of a proactive approach on the part of public institutions, as the information that is in the public interest, which is expected to be requested by a large number of users on the basis of the Law on Freedom of Access to Information, is published in advance.

Due to the difficulties in the work of CEC BiH's technical services, this database is not always accessible. For example, before the 2006 general elections, when the attention of the media and the broad public was focused on political parties and their representatives, this database was not available on the CEC BiH's website for several months. Instead of the database, one could only find cumulative financial reports submitted by political parties for 2005.

Other data and information that citizens are interested in is available from the CEC BiH's PR department on request. These omissions on the part of CEC BiH harm the reputation of this institution and the very objective of achieving transparency in party financing. On the other hand, CEC BiH deems that, when the database is available, there is not enough interest in it and that neither the media nor the NGOs use the data to the extent that was originally expected of them¹⁰⁰.

CEC BiH also raises a question of assessing the state-owned property, which some parties (direct successors of the Communist Party) use as *de facto* inheritance from before 1990s and which is not rented at market value, while at the same time it cannot be leased by the government. This problem is especially common at the local level. The value of property that parties present in their balance sheets is therefore unrealistic and greatly underestimated.

6. Complaints/enforcement mechanisms (also see next pillar, Electoral Commission)

Are there any provisions for whistleblowing on misconduct within political parties? Are these made use of in practice?

PARTLY – The statutes usually refer to supervisory boards as bodies that are responsible for whistleblowing on misconduct within political parties. According to CEC BiH, conflict of interest of public officials is most commonly reported by members of the same political party¹⁰¹. Such reports are

especially frequent before elections, when removal of a particular person from the candidate list due to conflict of interest automatically makes it possible for another person (usually the one who reported the conflict of interest) to fill the vacant position on the candidate list. This only goes to show to what lengths party members are ready to go to suit their personal interests, which inevitably reflects on the moral integrity of their parties. Chapter on Electoral Commission contains other details.

Have powers of sanction ever been invoked? If so, with what outcome?

YES – It is common for leaderships of political parties to expel party members whose actions in the legislative or executive bodies or in the public are contrary to the party's official positions or whose statements may cause harm to the party leadership. This is a common occurrence in almost all major parties in the country.

Most sanctions against political parties and their members were imposed by the High Representative on the grounds of: failure to co-operate with ICTY, involvement in corruption, mismanagement of public funds etc¹⁰². These sanctions ranged from removal of elected politicians and civil servants from public office, removal from a position in the political party, to the freezing of bank accounts.

However, the Venice Commission (which is discussed in more detail in the chapter on International Institutions) is rather reserved regarding this issue: "The termination of the employment of a public official is a serious interference with the rights of the person concerned. In order to meet democratic standards, it should follow a fair hearing, be based on serious grounds with sufficient proof and the possibility of a legal appeal. The sanction has to be proportionate to the alleged offence. In cases of dismissal of elected representatives, the rights of their voters are also concerned and particularly serious justification for such interference is required"¹⁰³.

Are accounts audited or otherwise checked by an independent institution? Are they submitted to the legislature?

YES – The accounts are audited by the CEC BiH's Office for Audit of Financial Operations of Political Parties. The auditor's certificate must be attached to the financial report of the political party to be submitted and published in the Official Gazette of BiH. CEC BiH is also obliged to report on the reviewed statements of account to PA BiH each year. The report is circulated as a Parliamentary published paper¹⁰⁴.

However, in view of all the aforementioned obstacles besetting the CEC BiH's Audit Office, it is reasonable to assume that the audits conducted by SAIs would be more effective. Both audits assume that the CEC BiH's Audit Office fails to discover the majority of illegal transfers. Whatever the outcome, it is important that uniform auditing standards are applied, which means that poor audit reports on party

financing should not be published in the future as they only provide official seal of approval where there is no basis for it.

Does the public have the right to redress?

PARTLY – Due to the contradictory nature of the relations between the domestic law-enforcement authorities and the international community, BiH citizens were twice deprived of justice and their civic rights in the past. On the one hand, relevant domestic law-enforcement institutions have still not established a practice of imposing sanctions against political parties, with the exception of rather mild sanctions for failure to submit financial report¹⁰⁵, which means that no essential satisfaction of justice has been achieved.

On the other hand, sanctions imposed by High Representatives, in particular removals from public offices and positions in political parties that were not subject to appeal, represent serious breach of democratic rights and the principles underpinning the Constitution of this country. This view is confirmed by the opinion of the Venice Commission, as described above.

How successfully has corruption been targeted by this institution, as an internal problem? An external problem?

PARTLY – The statutes and other acts of political parties define conditions under which a party member may be expelled. However, only a small number of parties cite criminal offences against property as reason for expulsion. In practice, however, such expulsions seldom take place. Far more frequent are decisions by the High Representative removing individuals from public offices or positions in political parties, on various grounds.

Situation is no better when the willingness of political parties to systematically address corruption in the country is concerned. Apart from generalised statements, usually heard during election campaigns, the public is rarely offered concrete and feasible anti-corruption plans and programmes.

Due to the poor legal and institutional regulation of the audit of party finances within CEC BiH, it remains unclear whether this *status quo*, in fact, suits those who do not wish high-quality audit and whether or not there is enough political motivation to solve the issue of party finance in accordance with the highest standards. Lack of institutionalised co-operation with SAIs also indicates poor quality of the existing regulations, which no public institution, save corrupt party leaders, have any benefit from.

7. Relationship to other pillars

To what extent is this institution/sector a key part of this country's NIS?

As in any other democratic state, political parties represent a key segment of the country's NIS. The role of political parties in creating new models of social awareness and accountability becomes so much the more important insofar as BiH is a fledgling democracy.

Despite a large number of political parties with different programmatic orientations, only a small number of them (mainly those that are ethnically-defined) have been in power since the Dayton Peace Agreement was signed and BiH was established as an independent state. Therefore, the most important task ahead of this pillar is redefinition of political priorities and shifting orientation towards economic development, strengthening of rule of law, and anti-corruption combat.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

By their very nature, political parties are expected to interact with almost all pillars of society. They most interact with the legislature and the executive, election bodies, local governments, media and international community. What is more problematic than the number of institutions that parties interact with is the quality of this co-operation, the number and quality of initiatives coming from political parties as well as the level of control that parties attempt to exercise over almost all aspects of society. Another disturbing fact is that a large number of people decide to join one of the leading parties exclusively in order to be able to find employment through it or secure another fundamental right.

Electoral Commission

1. Role(s) of institution/sector as pillar of NIS

Is there formal independence for the Electoral Commission (or equivalent body)?

YES – At the sitting of the House of Representatives held on 21 August 2001 and the sitting of the House of Peoples held on 23 August 2001, the Parliamentary Assembly of BiH (PA BiH) adopted the Election Law of BiH, which abolished the Provisional Election Commission of BiH and established a new standing Election Commission of BiH (EC BiH). Members of EC BiH were appointed on 16 November 2001 by the High Representative from a list of nominees proposed by the Provisional Nomination Commission, which was composed of the members of the Commission for the Appointment of Judges of the Court of BiH and international members of EC BiH. The inaugural session of the Election Commission of BiH took place on 20 November 2001, when the Decision on Establishment of the Secretariat of EC BiH was adopted. The Secretariat carries out professional, administrative and operational duties for the Election Commission of BiH, the Election Complaints and Appeals Council and the Appeal Council.

According to the Law on Changes and Amendments to the Election Law of BiH, which took effect on 11 April 2006¹⁰⁶, the official title of the Election Commission was changed to “Central Election Commission of Bosnia and Herzegovina”.

Formal independence and impartiality of the bodies entrusted with the organisation and conduct of elections, namely the Central Election Commission of BiH (CEC BiH) as well as the Entity, cantonal and municipal election commissions and Polling Station Committees, is regulated in Chapter II of the Election Law of BiH. According to Article 2.6 of the Election Law of BiH, the standing CEC BiH is an independent authority, which derives its authority from and reports directly to PA BiH. The Election Law also provides a list of persons who cannot be appointed as members of an election commission or Polling Station Committee, which aims to ensure that the authorities responsible for the conduct of elections are independent and impartial in practice. This includes members of the highest executive political authority of a political party or coalition (a president, deputy president, the general secretary, secretary or members of the executive board or the central committee); persons who hold an elected mandate or are members of an executive body of authority with the exception of the president of a regular court, the secretary of the municipal council/municipal assembly, and persons professionally employed in municipal administration; persons who stand as candidates for the elections at any level of authority; or persons who have been imposed sanctions against for a serious violation of the electoral laws or regulations where the person was found to be personally responsible for the violation, in the previous four years, starting from the day the decision became final.

CEC BiH and municipal election commissions do operate in practice, while the Entity Election Commissions were either never formed (as is the case at the level of FBiH and most of the cantons in FBiH) or their responsibilities are not legally defined (as is the case in RS).

Is the Electoral Commission (or equivalent body) independent in practice?

YES – Following the signing of the General Framework Agreement for Peace in 1995, the responsibility for all segments of the electoral process in BiH was delegated to the international community, in particular OSCE. Transfer of responsibilities from OSCE to the institutions of BiH began in 2000 and was brought to a satisfactory conclusion in August 2001, when the Election Law was adopted, and in November 2001, when the standing Election Commission of BiH was formed.

The Election Law provided for gradual withdrawal of the international representatives serving on electoral bodies. Of the total number of 7 members of EC BiH, until 30 June 2005, three members were representatives of the international community, whereas four other members were representatives of Serb, Croat, Bosniak and other ethnic groups in BiH. Presence of the international community in CEC BiH was supposed to assist in developing capacity of this institution throughout the transition period, that is, until such time as it becomes fully empowered to carry out its duties professionally and independently.

By decision of the High Representative of 4 April 2005¹⁰⁷, this transition period was brought to an end and the relevant authorities were ordered to immediately initiate the procedure of election of new members of CEC BiH. As of 30 June 2005, the vacant positions were filled with the representatives of the peoples of BiH, so CEC BiH currently consists of two Croats, two Bosniaks, two Serbs, and one representative of other peoples of BiH. In explanation of its decision, OHR notes the progress achieved in the electoral process in BiH and the successful organisation of the general elections in 2002 as well as the fact that the local elections in 2004 have been independently organised by EC BiH and exclusively financed by BiH authorities.

The view that the 2002 general elections and 2004 local elections were the most successfully organised elections since the end of the inter-ethnic conflict and the international recognition of BiH as an independent state, with the lowest number of identified irregularities in connection with voters lists or the manner of data processing, and that they were fair and democratic, is shared by the majority of the general public. Similar opinions were expressed in the reports by election observers who observed these elections.

In addition to the organisation and conduct of elections, CEC BiH has shown independence in implementation of other two laws within its scope of responsibilities – Law on Conflict of Interest in

Governmental Institutions of BiH and Law on Party Financing. Although the implementation of these two laws, in particular the Law on Party Financing, was faced with numerous technical and material obstacles, there were no objections with regard to possible exertion of influence on objectivity, impartiality and independence of this institution. CAC BiH is a relatively young institution which has just recently become fully independent in performing its duties. Whether its independence will stand the test of time remains to be seen in years to come.

If not, what arrangements for monitoring elections are in place? Is this arrangement widely regarded as being non-partisan?

According to the provisions of Chapter XVII of the Election Law of BiH, international observers, associations of citizens, political parties, coalitions, lists of independent candidates and independent candidates may observe all electoral activities in BiH provided they are accredited in accordance with this Law. Observers have access to relevant documents and public election commission meetings, are free to contact any person at any time during the entire period of the electoral process, and have access to all voter registration centres, polling stations, counting centres, and other relevant locations as specified by CEC BiH.

A large number of NGOs from the whole of BiH and other observers have availed themselves of this possibility, which has been widely welcomed.

Who appoints the head of the Commission?

According to Article 2.6 of the Election Law of BiH, the President of CEC BiH is elected from amongst its members. The nominees for CEC BiH are jointly nominated by the members of the Commission for the Appointment of Judges of the Court of BiH and members of CAC BiH (under the joint name: the Commission for Selection and Nomination) and are elected by the House of Representatives of PA BiH. One Croat, one Bosniak, one Serb and one other member of CAC BiH serve as the President on a rotation basis.

According to Article 6 of the Rules of Procedure of CEC BiH, the President of CEC BiH is responsible for:

- monitoring the maintenance of archives, cases and documents kept by CEC BiH,
- acting as spokesperson of CEC BiH,
- proposing agenda, convening and chairing the meetings of CEC BiH
- presenting reports on the work of CEC BiH to PA BiH,
- performing other duties on behalf of CEC BiH, in accordance with the Election Law and Rules of Procedure.

To what extent has the Electoral Commission (or equivalent body) organised its work based on/committed itself in any significant way to an agenda of integrity, transparency and good governance? What is the evidence for this?

Among a broad range of newly-established institutions which came into being as a result of numerous reforms, CEC BiH has built up a solid reputation as a genuinely independent and impartial institution which is governed by principles of integrity and good governance. That CEC BiH is highly open and transparent is shown by a lot of positive examples of its co-operation with the media and the NGO sector. Another proof of its integrity is the fact that it is one of only a few institutions that the international community has decided to withdraw from.

2. Resources/structure

What is the budget/staffing of the Electoral Commission, or equivalent?

The budget of CEC BiH has gradually increased over the last few years, following the rise in the number of its staff.

Based on budget proposal for 2004, the Ministry of Finance and Treasury allocated KM 2,110,000 to CEC BiH for financing regular expenditures and KM 2,922,008 in special purpose funds – the 2004 local elections. CEC BiH used up KM 1,683,149.46 or 80% of the total amount of allocated funds for financing regular expenditure. The reason why 20% of the funds remained unspent is that CEC BiH did not hire additional staff. On 31 December 2004 CEC BiH had 49 staff, instead of 71 as envisioned by the job plan. As for the special purpose funds, the Election Law stipulates that the cost and expense for the conduct of the elections is provided for in the budgets of the level of government for which the elections are conducted. Municipalities paid these funds into a special account. The amount of these funds depends on the number of voters registered in municipalities. A total of KM 2,922,008 was collected in this way, which is the amount that the Ministry decided to allocate for financing of the elections. A total of KM 1,944,826 or 67% of the allocated funds were spent for organisation and conduct of the municipal elections, and the remaining 33% were returned to the municipalities¹⁰⁸.

The proposed budget of CEC BiH for 2005 was KM 2,110,442, and the approved budget was KM 1,959,465. In addition to these funds, CEC BiH received an additional KM 323,119 by the Decisions of the High Representative No. 220/04 and 221/04 of 30 June 2004¹⁰⁹ and No. 376/05 of 22 September 2005 on reallocation of financial means intended to fund the Serb Democratic Party (SDS)¹¹⁰. The amount of budget funds spent in 2005 was KM 2,193,358, or 94% of the total CEC BiH's budget for that year. On 31 December 2005, CEC BiH had 65 staff.

The planned budget for 2006 is KM 5,746,590, of which KM 2,446,590 is envisaged to go for current and capital expenses, whereas KM 3,300,000 are special purpose funds allocated for the organisation and conduct of the 2006 general elections. On 30 June 2006, CEC BiH had a total of 58 permanent staff, while 20 persons were hired to work on a temporary basis for the purposes of the 2006 general elections.

What is the budgetary process that governs the Electoral Commission?

The procedure for proposing the CEC BiH's budget is regulated in the CEC BiH's Rules of Procedure, while the procedure for adoption of the budget is regulated in the Election Law of BiH.

According to Article 30 of the CEC BiH's Rules of Procedure, the General Secretary of CEC BiH is responsible for proposing the annual budget as well as for the overall financial operation of this institution. The proposed budget is adopted at the CEC BiH's regular meetings by a two-third majority of the total number of members. While drafting the budget proposal, CEC BiH's members consult with the relevant institutions in the country.

CEC BiH submits the proposed budget and report on implementation of the budget to the House of Representatives of PA BiH for adoption. The report on implementation of the budget is adopted in the same way.

What is the tenure of the head of the commission?

One Croat, one Bosniak, one Serb and the other member of CEC BiH each serves as the President for one fifteen month rotation in a five year period.

Does the Electoral Commission have access to off-the-books funds?

NO – The CEC BiH's budget is entirely approved by the relevant institutions, whether in terms of funding of current expenses or in terms of special-purpose funds such as those for the organisation and conduct of elections at various levels.

The Law on Conflict of Interest provides that the gifts received by elected officials, executive officeholders and advisors in the amount exceeding KM 100 must be reported and handed over to CEC BiH and that the fines imposed pursuant to this Law are paid to CEC BiH. In practice, these funds are paid into a special account held by the Ministry of Finance and Treasury and transferred to the Budget of the Institutions of BiH, and they do not automatically belong to CEC BiH. The only example of funds being allocated to CEC BiH from this account was on the basis of the abovementioned High Representative's decisions on reallocation of budgetary itemisations intended to fund SDS.

3. Accountability

What kind of laws/rules govern oversight of the Electoral Commission? Are these laws/rules effective?

The work of CEC BiH is regulated by the Election Law of BiH, Law on Conflict of Interest in Governmental Institutions of BiH, and Law on Party Financing as well as by a number of bylaws and internal acts. Of all the internal acts, the most important are the Rules of Procedure of CEC BiH, while no code of conduct has been put in place yet. Although there have been some initiatives to adopt a code of conduct¹¹¹, these efforts have never come to a conclusion.

There are many bylaws that are relevant for CEC BiH's work and they provide detailed procedures and rules of conduct for all subjects of the election process in the following areas: conflict of interest, political parties, the media, registration of voters, elections and voting, accreditation of observers, and complaints and appeals.

The whole legal framework is fairly good. However, in order to further enhance the efficiency of electoral bodies, especially CEC BiH, changes and amendments have to be occasionally made to specific provisions of these bylaws since there is still not much hands-on experience in some of the above areas¹¹².

To whom must the Electoral Commission report, in law? Does this accountability for its actions take place in practice?

Pursuant to Article 32 of the CEC BiH's Rules of Procedure, CEC BiH is required, at the end of each calendar year to submit to the House of Representatives of PA BiH annual report on the state of the electoral administration in BiH, implementation of the Election Law as well as on all other aspects of the electoral process in BiH and all aspects of its operation. The responsibility for preparation of these reports rests with the President of CEC BiH, through the General Secretary. These reports are made publicly available.

The Law on Party Financing¹¹³ stipulates that CEC BiH has to report on the reviewed statements of account of political parties to PA BiH.

Pursuant to Article 17 of the Law on Conflict of Interest, CEC BiH is also required to submit a report on implementation of this Law to the Presidency of BiH once every six months, whereas at least annually to the public.

So far CEC BiH has been regularly reporting the relevant institutions and the general public. Most of the aforementioned periodic reports are published in the Official Gazette of BiH and/or the CEC BiH's website or are available on request from the CEC BiH's Public Relations Office.

Is the public required to be consulted in the work of the Electoral Commission? Does this consultation take place in practice?

PARTLY – According to the CEC BiH's Rules of Procedure, all CEC BiH's meetings are open to the public and the time of holding these meetings must be made publicly available. The Law also provides for cases when the public must be excluded from CEC BiH's meetings. The Rules of Procedure also states that the members of CEC BiH and the General Secretary may invite or request that other persons be present at meetings, fully or in part, with the aim of obtaining information and expert opinions, and they may also invite guests¹¹⁴.

With the exception of numerous foreign experts, mainly from the USA¹¹⁵, who often provided CEC BiH with advice, this consultation commonly takes place in practice at the request of several local NGOs which are active in the electoral process or work on projects aimed at supporting the implementation of other laws that CEC BiH is responsible for¹¹⁶.

4. Integrity mechanisms

Are there rules for the Electoral Commission on conflict of interest? Are they effective?

YES – Article 2.1 of the Election Law of BiH and Article 12 of the CEC BiH's Rules of Procedure provide that the members of CEC BiH are obliged to adhere to the principles of independence and impartiality in their work. No member of CEC BiH may participate in the decision of a case in which the member and/or a close relative has a personal or financial interest or other conflict of interest, which may raise doubt as to the ability of the member to act impartially. A "close relative" means a close family member of the member of CEC BiH: marital partner, child or other member of the family household whom the member of CEC BiH has a legal obligation to support.

Article 12 of the CEC BiH's Rules of Procedure more specifically addresses the stated legal provision and ensures any conflict of interest is removed from the operations of the members of the CEC. This definition of close relative is in compliance with Article 15 (7) of the Election Law of BiH, which defines the term "close family member" of a candidate standing for elected office at the level of BiH or the Entity level. So far there have been no violations of these provisions of the Election Law and CEC BiH's Rules of Procedure.

Are there rules on gifts and hospitality? Are they effective?

NO – Neither the CEC BiH's Rules of Procedure nor any other act regulating the work of CEC BiH contain such rules. Nevertheless, no cases of conflict of interest on the part of members or employees of CEC BiH have ever been identified. One of the possible reasons for that is the fact that CEC BiH is the relevant authority responsible for implementation of the Law on Conflict of Interest, which strictly regulates acceptance of gifts, the amounts of gifts and procedures in cases of gifts or hospitality to public officials. Although the Law on Conflict of Interest does not apply to it, CEC BiH, as a relevant authority responsible for implementation of this Law, is in practice governed by its main ethical principles and rules of conduct.

Are there post employment restrictions? Are these restrictions adhered to?

NO – None of the applicable legal regulations makes specific provisions with regard to post employment restrictions for the members and employees of CEC BiH. However, there have been recommendations to amend the Law on Conflict of Interest, which regulates post employment restrictions for elected officials, executive officeholders and advisors, by including the members of CEC BiH into the list of persons to which this provision applies.

5. Transparency**To what extent is information (budgets, reports, decisions, etc.) produced by the Electoral Commission required to be put into the public domain? Is this done in practice? If yes, what form does this publication take? To what extent are these forms usable?**

On the CEC BiH's website one can find the how-to Guide for requesting information in accordance with the Law on Freedom of Access to Information (LFAI), standard form of the request for access to information, and index register of information in the possession of CEC BiH. The index register contains the types of information that can be requested from various CEC BiH departments in accordance with LFAI: Department for Legal Affairs, Department for Election Operations, Department for Implementation, Department for Financial Operations, and Audit Department. This includes information ranging from CEC BiH's legal acts and decisions, voters lists and other records in connection with elections, to personal and financial information about elected officials, financial reports of political parties, sanctions imposed in accordance with the Laws that are within the CEC BiH's area of competence, to budgets and other financial information about CEC BiH.

Some of these documents may be accessed directly on the CEC BiH's website in various forms, usually tailored to suit the users' needs. These include standard report forms, tables, graphs, presentations, TV clips and other forms of stored data.

What aspects of party affairs must be disclosed by the Electoral Commission, in law? Is this carried out, in practice?

CEC BiH must disclose the statements of account of political parties and information on assets of the candidates standing for elected office, as specified in the Election Law and Law on Party Financing. CEC BiH regularly performs these duties through its webpage and its PR office.

Article 12 of the Law on Conflict of Interest and Articles 35-37 of the Rules of Procedure provide that elected officials, executive officeholders and advisors must file, on a special form prescribed by CEC BiH, regular financial reports containing the following information:

- a. Membership in a management board, steering board, supervisory board, executive board, or acting in the capacity of an authorised person of a public enterprise; name of the enterprise, and position held in the enterprise.
- b. Membership in a management board or directorate, or serving as director, of a privatisation agency; name of the agency and position held in the agency.
- c. Description of any involvement in a private enterprise; name of the enterprise.
- d. List of close relatives and information about them in terms of items a, b, and c.
- e. List of additional incomes, any ownership interest (exceeding KM 10,000) or financial interest (exceeding KM 1,000 per year) held by the elected officials.

These documents contain personal data about public officials and, as such, are exempt from disclosure under the Law on Freedom of Access to Information and are subject to the Law on Protection of Personal Data. These data are not publicly accessible.

6. Complaints/enforcement mechanisms

Are there any provisions for whistleblowing for misconduct within the Electoral Commission? Have these provisions been utilised?

NO – No legal act, internal or otherwise, regulating the work of CEC BiH contains provisions for whistleblowing for misconduct. Such provisions might be included in the Code of Conduct for the CEC BiH's staff, once this act is developed and adopted. However, CEC BiH's work is subject to close scrutiny by the public, the High Representative and other institutions, so there have been no reasons to doubt the integrity of CEC BiH's work thus far.

Following the 2006 general elections, the media reported on the dissenting views among the members of CEC BiH with regard to publication of final election results and regularity of the elections. Some of the members were of the opinion that the public should be informed about the problems, but they were overvoted by those who were in favour of withholding information from the public, despite possible irregularities.

This casts doubt on the integrity and capability of certain members of CEC because the positions left vacant following the withdrawal of international CEC BiH members (see NIS BiH 2004) were filled by representatives of constituent peoples who used to be members of political parties, which may imply their allegiance to certain political groups. Such incidents are very dangerous as they hinder integrity and reputation of one of the rare domestic institutions that has managed to win a public confidence.

Is the Electoral Commission empowered by law to start investigations on its own initiative? Does it do so in practice?

YES – The Law on Party Financing empowers CEC BiH to start investigations and propose audits of political parties' financial operations. CEC BiH may initiate investigation on its own initiative or in response to a complaint filed by a person, in cases when a political party has violated provisions of this Law concerning sources of funding, reporting threshold, obligation to report contributions to the political party and obligation to submit statements of account.

The CEC BiH's Audit Office reviews financial reports submitted by the political parties. The audit of a party's financial statement includes reports from the party's national and Entity headquarters (including District Brčko) and at least two subordinate regional branches chosen by the Audit Department. The auditor's certificate must be attached to the financial report to be submitted and published in Official Gazette of BiH.

Pursuant to Articles 17 and 18 of the Law on Conflict of Interest, CEC BiH is authorised to initiate the procedure and undertake investigative measures in case of suspicion of a conflict of interest. A procedure before CEC BiH may be initiated at the request of CEC BiH or at the request of the person concerned or another interested party.

CEC BiH has used these powers in practice. Most of the investigations have been launched on the basis of the Law on Conflict of Interest¹¹⁷. Based on the Law on Party Financing, the CEC BiH's Audit Department audited a total of nine political parties by 1 June 2006.

Is the Electoral Commission empowered by law to impose sanctions? Does it impose sanctions in practice? If not, how are sanctions enacted?

YES – CEC BiH may impose sanctions in accordance with all three laws within its area of competence. In terms of Article 6.10 of the Election Law, CAC BiH has the authority when deciding complaints or appeals to order remedial action to be taken by an election commission, a voter registration centre or a polling station committee. Furthermore, if political parties, coalitions and independent candidates are found to be in breach of the rules of conduct laid down in chapter VII of the Election Law or of the rules for campaign finance laid down in chapter XV of the Election Law, CEC BiH has the authority to impose the following penalties:

- fines not to exceed KM 10,000;
- removal of a candidate from a candidates list;
- de-certification of a political party, coalition, list of independent candidates or independent candidate(s); and
- prohibit an individual from working in a Polling Station, Voter Registration Centre, or Municipal Election Commission or other election commission

The Appellate Division of the Court of BiH is relevant to hear appeals to a decision of CEC BiH.

The Law on Political Party Financing provides for similar sanctions with regard to spending funds for the purposes of election campaign. If a political party has received funds in excess of the allowed contribution limit set, CEC BiH may fine the political party in an amount not exceeding the amount of three times the unlawfully received sum¹¹⁸. Sanctions may also be imposed if political parties are found in breach of the provisions regulating submission of financial reports envisioned in this Law and the Election Law. CEC BiH's decisions are subject to appeal before the Appellate Division of the Court of BiH. Since it was not until 2005 that the implementation of the Law on Party Financing began, most of the sanctions imposed were in respect of delays in submitting financial reports, rather than for irregularities in party financing that were identified by the CEC BiH's Office for Audit of Financial Operations of Political Parties.

The most severe sanctions against public officials were not imposed by CEC BiH but by international community. Over the last six years, OHR has issued dozens of decisions removing public officials from office and prohibiting them from performing any official, elected or appointed public office, standing for elections and performing any duties in political parties.

This practice has been followed by NATO as well, whose written decision prohibiting political engagement of a number of individuals CEC BiH has been awaiting for several years¹¹⁹. In the absence of the final and legally binding decisions, not only does the insistence on prohibition of elected officials from engaging in political life harm the legitimacy of relevant domestic law enforcement institutions; it is

also perceived by the general public as constituting a violation of human rights – the right to stand for election and the right to work, which are guaranteed by the Constitution of BiH.

How successfully has corruption been targeted and punished by this institution?

CEC BiH's anti-corruption activities are best reflected in its implementation of the Law on Conflict of Interest. This Law provides for sanctions against public officials, executive officeholders and advisors who fail to comply with its provisions. Sanctions range from ineligibility to stand for any elected or appointed office, a civil service position, or for a position of an advisor for a period of four years following the finding of the violation, to fines in the amount of no less than KM 1,000 and not more than KM 10,000 for officials, or no less than KM 1,000 and not more than KM 20,000 for enterprises, which are, in addition, excluded from closing a contract with any government authority or agency for a period up to four years following the violation.

Since the Law on Conflict of Interest took effect on 15 May 2006, CEC BiH has invoked a total of 30 sanctions. Given the severity of the sanctions provided for in this Law and in view of the need for increased individual accountability of public officials, CEC BiH aims to give the Law on Conflict of Interest a preventative character, and has on a number of occasions called on public officials to make enquiries if uncertain about whether they are in a situation that might constitute a conflict of interest. Such an approach has proved very effective. Since 15 May 2006 as many as 781 officials have resigned from elected or other incompatible positions, which is over 15% of the total number of 5,000 officials to whom this Law applies. However, most of these resignations took place and most enquiries were sent to CEC BiH following the first imposition of the sanction prohibiting an official to stand for election for a period of four years. CEC BiH's decisions made in accordance with this Law are subject to appeal before the Appellate Division of the Court of BiH.

To what extent is there a problem of vote-buying in elections?

Although this problem is extensively discussed in public, it has never been included in official reports by domestic or international institutions or organisations. Several vote-buying methods, which the political parties organise and oversee at the very polling stations, are alleged to have been used in BiH, but there is no written evidence or substantiating expert analysis. This is partly due to the very broad definition of the rights of political parties during election campaigns, which is why many activities that are generally perceived as typical examples of vote-buying do not constitute a violation of the relevant laws. Such activities usually take form of large infrastructure projects which are, as a rule, launched during the election years but fall behind schedule soon after the elections are over. Another common occurrence is distribution of provisions and foodstuffs during election campaigns, organisation of transport to polling stations, and a number of similar activities, including undue invocation of national interest, which is still, eleven years after the war in BiH, the most effective means of political campaigning.

Electioneering has taken many different forms. According to Ms. Lidija Korać of CEC BiH¹²⁰, the number of reports on illegal activities in certain electorate units is vastly disproportionate to the number of investigations launched by prosecutor's offices. By way of illustration, as many as 20 reports on violations of the Election Law have been filed for the electoral unit of Zvornik only, and not a single one was given due attention after the local elections. Numerous irregularities were observed in the same electoral unit in the 2006 general elections, again without any response by the relevant authorities. The majority of the reported irregularities were in connection with the rigging of the so-called open lists, where members of the local polling station committees, i.e. the inter-party supervision bodies, wrote additional votes next to the names of individuals on party lists. Such activities are also the result of vote-buying in local polling station committees and inter-party agreements that take place long before the election day. On several occasions relevant authorities remained completely unresponsive to the CEC BiH's statements pointing to numerous electoral irregularities, as was the case of the Goražde electoral unit in the 2006 general elections. The relevant prosecutor's office failed to launch an investigation into the allegations and as a result the elections were not cancelled and the irregular results were confirmed through issuance of mandates. The conclusion is that it is possible to buy votes and that this practice is rather common in BiH.

What legal means do the public have for redressing concerns about electoral transparency? Have these rights been exercised? With what kinds of outcomes?

Article 17.9 of the Election Law provides that accredited observers (associations of citizens, international observers, representatives of political parties or coalitions, and other observers) may submit a complaint regarding any violation of this Law to the relevant election commission, polling station committee or the Election complaints and appeals council.

This means of redress was used by a large number of NGOs in BiH. Even before the new Election Law was adopted, during local and general elections in 2000, when OSCE was still responsible for most of the activities in the electoral process, over 9,000 volunteers, recruited from 310 citizens' associations from BiH, took part in overseeing the conduct of the election at over 70% of the polling stations in BiH. The volunteers organised themselves into a network called "OKO" [Eye], whose creation began in 1997. Although the elections were characterised as being fair, observers identified a significant number of irregularities, which were mainly due to lack of knowledge, promptness and organisational skills on the part of electoral administration, non-compliance with the Rules and Regulations of the Provisional Election Commission, and lack of awareness among citizens about available means of redress.

The first general elections conducted under the new Election Law and organised exclusively by the BiH authorities, in October 2002, were also observed by the "OKO" network with 5,658 volunteers from 307 NGOs from BiH. General conclusion of this campaign, titled "Citizens Observe 2002 general elections in

BiH”, was that, despite minor irregularities, imprecision of the Election Law and the need for additional education of the electoral administration, the elections were conducted in a free and fair environment¹²¹.

The 2004 local elections were observed by a smaller number of individuals and organisations than in the previous years. The reports by these organisations¹²² came to the conclusion, very similar to that of OHR and other international organisations in BiH, that these were the best organised and most regular elections in the post-war BiH.

Some of the recommendations contained in these reports, especially in those on the monitoring of the 2002 elections, were accepted and acted upon by the relevant authorities. For example, changes were made to the procedures for registration of voters in order to simplify the voting process and encourage voters to the polls. This process was rather slow, so the passive voter registration system was introduced for the first time during the 2006 general elections.

7. Relationship to other pillars

To what extent is the Electoral Commission a key part of this country’s NIS?

As an institution responsible for the organisation and conduct of elections and implementation of the Law on Party Financing and the Law on Conflict of Interest in Governmental Institutions of BiH, CEC BiH represents one of the key pillars of the country’s NIS playing a decisive role in promoting democratisation, enhancing accountability and transparency of public officials, and combating corruption. In view of the data from numerous opinion polls carried out by international and domestic organisations, including TI BiH, which indicate that citizens of BiH year after year perceive political parties as the most corrupt institution of NIS, it is clear that the role of CEC BiH and investigative authorities should be further strengthened. This perception is additionally confirmed by the SAIs’ reports indicating abuses and mismanagement of funds, violations of the Law on Public Procurement by favouring certain bidders to the detriment of others, and a number of other irregularities in the public sector¹²³. Oversight of the contracts that the governments conclude with public or private enterprises and a stricter control of party financing therefore remains a major challenge for CEC BiH.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

CEC BiH has proved to be one of the more open law implementing agencies in BiH, which interacts closely with a number of other pillars. CEC BiH’s co-operation with the legislative and executive branches of government is regulated by the laws governing the work of CEC BiH as well as by the laws that are within this agency’s area of competence. This co-operation is free and regular. Outside the formal

framework, CEC BiH has interacted very closely with the NGO sector and the media. So, the reports by numerous NGOs and regular CEC BiH's reports mention examples of this co-operation in monitoring elections, implementing the Law on Conflict of Interest and Law on Party Financing. Following an initiative by two NGOs (Association of Election Officials and Transparency International BiH), over 1,000 public officials and 35 media outlets were educated about the Law on Conflict of Interest through projects implemented jointly with CEC BiH. These projects included intensive media campaigns aimed at increasing public awareness of the provisions of this Law and the means available for reporting those who violate them.

CEC BiH's co-operation with the media was not limited to the abovementioned activities only. Some of the investigations conducted by CEC BiH were launched as a result of information published by the media on alleged conflicts of interest of elected officials, executive officeholders and advisors.

CEC BiH should engage more actively with other law-enforcement authorities, in particular with the judiciary and relevant prosecutor's offices. The Law on Conflict of Interest provides that CEC BiH must report to the relevant prosecutor's office any violation of this Law, which might also constitute a breach of the Criminal Law¹²⁴. This co-operation becomes even more important in view of the existing division of the responsibilities for implementing the provisions of the Election Law related to the data on assets of elected officials. CEC BiH is responsible for collection of these data, but the responsibility for verifying the accuracy of information provided lies with the prosecutor's offices.

Establishment of regular communication and exchange of data between CEC BiH and other specialised anti-corruption authorities and agencies, such as the Public Procurement Agency of BiH, SAIs, etc. would further contribute to the better functioning of the National Integrity System in BiH. This would in turn contribute to better implementation of the laws within the CEC BiH's area of competence as well as of a number of other anti-corruption laws.

Supreme Audit Institution

1. Role(s) of institution/sector as pillar of NIS

Is the supreme audit institution, auditor-general, or comparable body guaranteed constitutionally or through primary legislation?

YES – The Constitution of BiH or the Entities, unlike constitutions in the majority of developed countries, makes no specific reference to audit institutions. This is entirely regulated by the primary legislation passed by all three parliaments. Three Supreme Audit Institutions (SAIs) exist in parallel in the country: BiH level or the Audit General Office of the Joint Institutions of BiH, and the two Entity audits: Audit General Office of the Federation of BiH (responsible for the 10 Federal cantons) and Audit General Office of the Republika Srpska.

Is there formal independence for the supreme audit institution, auditor-general, or comparable body? Is that same body independent in practice?

YES – The formal independence is established through the Law on Supreme Audit at all levels, i.e. in all three governments. New laws have been adopted recently by all three parliaments (Parliamentary Assembly of BiH, Federal Parliament and National Assembly of RS) greatly improving on the original laws dating back to 1999/2000. The three new Laws came into force as follows: (RS) 06 October 2005, (BiH) 31 January 2006, (FBiH) 08 May 2006. They have enhanced the autonomy of the SAIs.

In practice the institutional independence of the three SAIs was in place even before the new Laws were enacted. However, the “national quota system” in FBiH led to appointment of the auditors according to the national balance, which resulted in a greater lenience towards the legal entities from the same national corps. That critique has however been aired widely and a certain (though not sufficient) improvement to the operations and reports of the FBiH SAI has been noted in the past several years.

Somewhat less intensive, yet similar situation was noted in the supreme audit of joint institutions, where there were attempts to exert pressure on the work of this institution in the form of appointments. The Supreme Audit of RS came under pressure only once during reappointment of the Auditor General of RS as well as through refusal of the appointment of the Deputy Auditor General which lasted for two years because the Auditor General, Mr. Boško Čeko, did not want to accept compromise appointment of a partisan figure to this function. OHR had to intervene to solve the problem.

Is the appointment of the head of the institution transparent and merit-based?

YES – The heads are practically appointed by their respective parliaments and the appointments are supposedly merit based. The parliaments undergo the selection procedure through an intra-party committee for selection of the Auditor General. The Law calls for a minimum of 10 years relevant professional experience and implementation of International Organization of Supreme Audit Institutions (INTOSAI) standards. However, the above paragraph talks about the exerting of indirect influence through appointments of deputy auditors general and senior SAI staff.

Is the head of the institution protected from removal without relevant justification?

YES – The head can only be removed if found in a serious breach of the INTOSAI standards, as defined in Article 25 of the BiH Law, Article 25 of FBiH Law and Article 10 of the RS Law.

However, when in June 2004, the BiH SAI reported on many irregular expenditures of the joint BiH Presidency, the two Deputy Auditors General, following a resignation of the Auditor General himself were exposed to numerous pressures¹²⁵. According to the old Law on BiH SAI, presidency could remove the auditor general or their deputy with the approval of both Houses of Parliament, if they have been convicted of a crime, or if the quality of their audit does not meet standards set by law.

Following an enormous political pressure and individual threats, the two deputy auditors (acting Auditors General) were forced into a technical mandate, with no formal recognition by the Parliamentary Assembly, the status quo of which remained for two years. Even the High Representative Paddy Ashdown, who was at the peak of its might at the time, failed to provide public support to the two individuals.

What types of audits does the SAI conduct (financial, compliance, performance, those linked to high-risk operations, and/or others)?

The audits are performed according to the INTOSAI Standards and International Federation of Accountants (IFAC) for state-owned enterprises.

Primarily, the law and the practice foster financial audit that includes compliance of audit with budget laws, i.e. projected expenditures, including risk assessment¹²⁶. Similarly, performance audit examines efficiency and effectiveness in using public resources to perform the institution's legal function¹²⁷. All three Laws envisage a special audit, which can be either of the listed above, but is performed following a special instruction of the relevant parliament and for which additional resources are being made available.

Must all public expenditures be audited by the SAI annually? Is this done, in practice?

PARTLY – This is not specified in the Laws, except every of the three SAIs must adopt annual audit plans that are being presented to the relevant parliamentary committees, which supposedly facilitates the financing of the audits.

In practice between 95 and 100% of the public institutions of BiH, FBiH and RS respectively¹²⁸ are being audited, including all 10 cantons in FBiH, but only a portion of the municipalities, state-owned enterprises and public funds, due to limited resources. The latter three, however, regularly record the largest mismanagement and illegalities found in the course of their audit.

On the other hand, failure to conduct audits in some public enterprises in FBiH such as “Elektroprivreda” [*Electric Power Company*] and “Šume” [*Forest Management Company*] (which are further divided among federal partners in accordance with “national quota” principle) supports the assumption that the SAI of FBiH is politically motivated and partial in its work. The two said companies are key economic giants which are prone to enormous embezzlements and laundering of money intended for political parties and leaders. The existing findings of the audit of public spending in FBiH, especially in the sector of public enterprises, are much softer than in RS, as the auditors in FBiH do not want to “arouse the anger” of the political leadership in this Entity¹²⁹. Even a fleeting glance at the reporting of some of the media outlets in FBiH will provide much more information on such embezzlements than the SAI of FBiH has ever managed to provide in its official reports.

2. Resources/structure**What is the budget/staffing of the Supreme Audit Institution?**

The budget of the BiH SAI amounts to KM 1,599,990 in 2006, while it stood at KM 1,592,836 in 2005¹³⁰. In 2006 KM 1,555,290 or 97.7% targets the staff salaries and related running expenses, while the rest finances equipment purchase and KM 20,000 for the operations of the Co-ordination Board of all the SAIs in BiH (more later in the text). The two Entity SAIs have very comparable budgets and its structures (marginally higher than BiH SAI). However the funds made available to the auditors are hardly sufficient. In comparison, at the BiH level, the small and recently founded Statistics Agency, Concessions Commission or the Institute for Standards receive a higher or a comparable amount of annual budgetary funds. By the same token, most cantonal and regional courts as well as prosecutor’s offices receive far higher amounts from the Entity budgets than their SAIs.

Although the salaries of those employed in SAIs are much higher than the average salary in administration, there has been no public outcry, due to the significance of audit reports and the necessary

quality of work. There have even been ideas to introduce an internal reward system for high quality conduct of audits of very complex auditees¹³¹.

All three SAIs are composed of two departments: general administration and audit department, the latter broken further down by sectors in accordance with the type of clients they audit. The clients are grouped as follows: ministries; government agencies; regional and local level governments; and state-owned enterprises. Their staffing differs according to the scope of institutions they cover. Each of the section has a head, at least one senior auditor and a number of junior ones. On average they employ between 30 and 50 employees, with approximately a quarter of administrative staff and the rest in the audit department¹³².

Hiring of their staff is conducted through the Agency for Civil Service of either BiH or the Entity. The rules governing all the public sector employees are valid for the staff of the SAIs as well. In addition, all the SAI staff is subject to additional professional codes, as spelled out in the relevant laws (e.g. Article 29 of the BiH SAI Law, including references to the INTOSAI Code of Ethics; same provisions in the Entity Laws) and the possible breaches of professional conduct are subject to penalties (activities described under the Article 35 of BiH SAI Law, incl. secrecy of data, failing to act upon orders of the Auditor General etc.; same provisions in the Entity Laws)

What is the budgetary process that governs the Supreme Audit Institution? Who approves the SAI budget, the executive or parliament?

Each of the SAIs proposes its budget to the relevant parliamentary committee, which pre-approves it so that the proposal can be forwarded to the Ministry of Finance for its composing of the annual Budget. Expenses envisaged for the SAIs are therefore adopted as a section of the annual Budget of the joint BiH institutions, RS or FBiH.

Is the SAI able to allocate its budget independently in formal terms? In practice?

YES – The SAIs' budget expenditures are independent following parliamentary approval of the annual Budget of BiH/RS/FBiH. The budget makes a provisional composition of the expenditures, as proposed by the SAIs themselves and based on their best estimates of the current expenditures and staff salaries.

In practice, besides the stated shortage of funds (some of which still come from the international donor sources, channelled through the budgets), the SAIs can allocate the finances as they consider suitable, yet following the budget composition as they have proposed them to the Ministries of Finance and parliaments.

Does the Supreme Audit Institution have access to off-the-books funds?

NO – No such funds exist for SAIs.

3. Accountability**What kind of laws/rules govern oversight of the Supreme Audit Institution? Are these laws/rules effective?**

Laws on Supreme Audit of BiH, RS and FBiH govern their oversight. BiH SAI is being inspected every four years by a special commission of five members, formed by the BiH Parliamentary Assembly experts in accounting and finance or the parliament may hire a specialised agency/audit firm to do this on their behalf. RS and FBiH SAIs are being inspected in the same manner every year, following publication of the SAIs Annual Report where the items of such reports are being verified by the parliamentary commission.

In practice this has never materialised, as the annual reports of the SAIs were adopted/approved by the parliaments. The Auditors General have stated on several occasions that they would automatically resign, should that have not been the case.

To whom must the Supreme Audit Institution report, in law? Does this accountability take place in practice?

According to the Law, the SAIs dispatch their reports to the institution that was subject of control and to all the relevant public institutions. However, prior to the development of the final report, the draft report is submitted to the audited institution for comments and the final report is published only after the auditee's official comments have been collected. SAIs are not accountable to any particular institution, although implicitly they remain accountable to the parliaments, which elect the Auditors General and approve their financing. The newly-established Audit Committees within the Parliamentary Assembly of BiH and in the Entity parliaments are aimed at specialisation of their members and better understanding of SAIs' reports.

The influence of politics is still not fully eliminated and some auditors are afraid of reactions from political parties' centres of power¹³³. However, auditors' estimates indicate that hundreds of millions of KM were saved thanks to the existence of SAIs and that the total amount in BiH might be over a billion, which would certainly have been lost in expenditures or non-presented revenues if there had not been for this institution¹³⁴.

Is the public required to be consulted in the work of the Supreme Audit Institution? Does this consultation take place in practice?

NO – Public has full access to all the reports of the supreme audit through their websites. However, media reports following the publishing of the SAIs audits are rather extensive. Public confidence in supreme audit remains very high in RS, reasonably high in BiH and lower but growing in FBiH.

4. Integrity mechanisms**Are there rules on conflict of interest within the Supreme Audit Institution? Are they effective?**

YES – INTOSAI Code of ethics as part of the INTOSAI accounting standards regulates conflict of interest in this profession.

Again, the ethics provisions have been more effective in BiH and RS and somewhat less in FBiH up until now¹³⁵. Rules guiding professional behaviour and code of ethics for civil servants throughout BiH are also valid for the employees of the SAIs. In addition, the BiH Conflict of Interest Law governs prevention of the conflict in case of the Auditors General and their deputies, covered by this Law.

Are there rules on gifts and hospitality? Are they effective?

YES – This section is covered by the Conflict of interest provisions in the INTOSAI Code of Ethics as well as by the BiH Conflict of Interest Law in case of the Auditors General and their deputies.

Are there post employment restrictions? Are these restrictions adhered to?

YES – The BiH Conflict of Interest Law in case of the Auditors General and their deputies regulates the post employment restrictions in the period of up to a year following their leaving the post. These restrictions spelled out in the Article 5 of that Law primarily focus on state-owned enterprises, privatisation agencies and similar public offices.

5. Transparency**Must reporting on government audits be kept up to date, by law? Is this done in practice?**

YES – It is required by law and it is done in practice according to the annual audit plans. Not all public institutions may be subject to an audit every year, but all are regularly inspected.

Must reports be submitted to a Public Accounts Committee in the legislature and/or debated by the legislature? Is this done?

YES – They must be submitted to the Parliaments but there are no legal requirements for a parliamentary debate. Moreover, by the end of 2006, the BiH Parliamentary Assembly did not have a single debate on the SAI reports¹³⁶. On the other hand, the Entity Parliaments did debate the reports (more in RS than in FBiH in the past five years) although in practice the parliaments never insisted the recommendations be implemented or public officials in breach of the law or the audit recommendations be removed from the public office. This has been changed by the recently introduced provisions of the new SAI Laws.

The audited institutions are now obliged to act upon the audit recommendations and a failure to improve accordingly and as instructed within 60 days from the report's publishing will entail legal penalties. In such cases, where the corrected institutional behaviour has not been documented to the Ministry of Finance of BiH or the respective Entity, the relevant parliament may cut its budgetary allocation when these decisions are being made annually. These provisions have only come into effect in this financial year and such consequences have not been taken against any public office yet.

Must all public expenditures be declared in the official budget? Are they?

PARTLY – In fact, they must, but they often are not. The key findings of the three SAIs suggest frequent illegalities in implementation of the Budgets and a misuse of fiscal funds that is therefore not in accordance with the law regulating operations of the public institutions. A large portion of the audit reports deal with this issue indeed.

Failures to comply with the Law on Budget and Law on Implementation of the Budget constitute direct illegal activities. However, they take place often, even during budget revision and often after the expiry of the calendar year which the budget applies to (in case of several municipalities). However, there has been evident progress and the very establishment of this institution has significantly improved budget implementation. Problems often arise as early as the budget planning phase, which is conducted poorly and unprofessionally, so there are significant departures from the original plan by the end of the year.

Expenditures are planned in accordance with the current spending, rather than on the basis of development strategies and plans. Furthermore, financial prudence is not rewarded; on the contrary – budget is planned and negotiated on the basis of requests by ministries, which often seek excessive funds, expecting answer at the session of the executive, which will lineally reduce budget items proposed by ministries or other executive bodies. The spending of public funds is still uncontrolled, which would not be the case if these were revenues of a private company, for example.

Must there be public access to SAI reports? Is there? In what form?

YES – Websites of all three SAIs contain all published reports in the electronic form: (BiH) <http://www.revizija.gov.ba/>, (RS) <http://www.gsr-rs.org/>, (FBiH) <http://www.saifbih.ba/>. In addition, highlight of the reports are regularly present in the media.

6. Complaints/enforcement mechanisms**Are there provisions for whistleblowing for misconduct within the SAI? Have these provisions ever been used, in practice?**

YES – The Law enables the SAI staff to report irregular behaviour of their colleagues, particularly when found in breach of Article 35 referred to above in case of the BiH Law. Also, all audited institutions can file complaints to the Auditor General on the misconduct of their staff. Sanctions are partly defined in the Law and in greater details in the Rulebook that each Auditor General prescribes for their staff.

On the other hand, while the parliamentary commission supervises operations of SAI, the INTOSAI Code of Ethics does not envisage whistleblowing.

Is the public able, in law, to redress grievances regarding budget irregularities with this body? Has this taken place?

YES – The public can submit their information, observations etc. to the SAI. This however does not guarantee that the SAI will automatically inspect the reported institution.

Respective parliaments can call for special audits based on reasonable suspicions of misconduct of a public entity, but most often even when the special audits have been performed, the reported irregularities are not being sanctioned properly.

7. Relationship to other pillars**To what extent is the SAI a key part of this country's NIS?**

To a very large extent. SAIs have a very good and ever improving reputation. They are often seen as a rare well-functioning integrity pillar by the public, media, business community, NGOs etc. This provides all the more reasons to continue the know-how build up, monitoring and reporting on their work and ensuring that their audits of the public sector are regular, up-to-date and in line with the best international

audit standards. As a result of that the illegal practices in the executive branch and perhaps more importantly – public enterprises will have to be minimised.

Indeed, ministries at all levels continuously mismanage public funds, as audit reports show one year after another. Particularly frustrating is the fact that the audit reports find the same irregularities upon every control. The law requires SAIs to analyse the measures undertaken to implement the previous audit's recommendations and to a large extent, the new reports show no progress.

The control of the public enterprises is not nearly as extensive as it ideally would be, neither in term of the number of audited companies, nor in the depth of audit controls. Even so, companies are being found in serious mismanagement, money laundering, loss of profits, procurement fixing etc. A dozen of multi-million embezzlement reports are issued by the SAIs every year and in some instances the management of such firms intimidate and threaten Auditors General. Notably, Mr. Boško Čeko the Auditor General of RS, following publication of the 2005 audit report of the electric power company "Elektroprivreda RS"¹³⁷, was being molested and sought protection and support. At the time, the Elektroprivreda's management was threatening to press various charges against Mr. Čeko and to get him formally indicted for 'professional misconduct' and other unfounded claims seeking indemnity. This incident actually goes to show that the unscrupulous criminals in charge of public companies, appointed by their respective political parties in power, do not fear any sanction, as they have a tight grip around the executive but possibly also prosecution and judiciary. In support of the assumption goes the fact that none of the responsible persons were ever indicted or prosecuted and most often even never removed from the public enterprise post.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

In terms of its audit controls it interacts both formally and in practice with all executive public offices including regional and local governments and state-owned economy. SAIs are indirectly accountable to their respective legislature. On the other hand, prosecution and afterwards judiciary supposedly follow up the possible criminal acts. Media uses reports most widely and investigates the irregularities further, as well as follows up on the related law enforcement. Business sector benefits from a greater transparency and legal performance of the public enterprises as well as the executive.

The key missing link therefore is the audit follow-up of the prosecution. Although complex audit reports do not automatically point to criminal offences, but rather to irregular spending of public funds, prosecution at all levels have been too slow bringing indictments against those identified for fraud in the audit reports, as potential perpetrators of criminal offences. A frequent excuse was that no reports were being submitted to the prosecutor's offices (despite the fact that these reports are immediately available publicly and the fact it is the role of prosecutors to investigate and look for information). Then the SAIs

jointly decided to start forwarding all the reports to the prosecutors and the latter complained they were being swamped with documentation, which they find difficult to follow. Excuses were numerous and the responsibility was being shifted away from prosecution. This is a very serious misconduct and a breach of their professional duties, which cannot but eliminate doubts about the prosecutors' integrity. The very indolence of prosecution leads to years-long justice procedures that often result in no charges pressed or no lawsuit against the responsible individuals.

Such a case happened in Bijeljina after publication of the Report on Audit of Financial Reports of the Bijeljina Municipality for 2003¹³⁸. Four months after the report had been published on the webpage of the SAI of RS, an RTRS journalist asked the district prosecutor at a press conference if any investigations have been launched following the audit report, given the fact that the report identified a number of irregularities in the spending of public funds. The district prosecutor said that he had not received the report and that he was not familiar with its contents, and the media carried that statement. Investigation against municipal officials in Bijeljina which were identified in the Report on Audit of Financial Reports of the Bijeljina Municipality for 2003¹³⁹ as having spent budget funds for purposes other than specified was launched only in late 2004, six months after the report had been published, and the trial is still ongoing. Not a single investigations launched following audit report has been brought to a conclusion, and trials are even less likely to take place in near future. In RS only, of the total number of 244 reports finalised by the end of 2006 containing allegations against over a hundred persons, only 13 investigations have been launched. Inadequate prosecutor's offices and the judiciary compromise audit reports, and the public, which initially had great expectations from quality audit reports, is now losing interest and confidence in the sanction system.

To what extent are there review mechanisms to assess whether other organisations/sectors have implemented SAI recommendations?

Most frequently the audit reports are being picked up by the media, which gives them a greater visibility and thus importance. Some of the NGOs, including Transparency International BiH as well as business associations have been very vocal. Nevertheless, the reports' findings of misconduct very often repeat themselves. The legal changes now envisage penalties for those legal entities that do not conform to the SAIs recommendations. However, these provisions are very new and their implications at the time of writing remain unknown.

The instruments of the executive and the legislative to act upon the audit reports have never been utilised properly, which adds to the SAIs' frustrations regarding the institutional inactivity following the audit publications. One therefore concur with the view of Mr. Milenko Sego, the Auditor General of BiH that the "parliament never debated any audit report and the government never removed an official for inadequate financial management"¹⁴⁰. In his own words, the noblest role of the SAIs would then be to

generate the change and lead the institutional accountability process. This also emphasises educational role of SAIs as they teach institutions how to eliminate the identified problem.

Is there evidence of the government (regularly) acting on SAI reports?

PARTLY – Records are indeed improving after many years of failing to act on the reports. The State and Entity governments are somewhat more accountable and transparent with their expenditures, particularly regarding public procurement, but very large irregularities remain. Certain improvements have been noted amidst extensive irregularities in: appropriate planning, expenditures and monitoring of the budget execution; budget drafting process; double-entry bookkeeping; use of public funds as envisaged by the budget; off-the-book funds still in existence; inventory, claims and obligations; public procurement; unrecorded obligations leading to extra expenditures not envisaged by the budget; payroll documentation; hiring and firing; purchase of apartments for public employees; insurance and protection against losses; appropriate documentation of financial transactions etc¹⁴¹. The only removals from office as a result of shocking audit reports (Elektroprivreda RS [*Electric Power Company of RS*]) were imposed under the pressure of the international community, i.e. OHR.

Much fewer behaviour corrections are noted at the local level and particularly in smaller Cantons and municipalities, where audits when they happen, record proportionally greater embezzlement than in the larger ones. Likewise, few or no sanctions are being brought against the responsible individuals and offices.

In addition, internal audits are being established in some public offices for the first time. Their appointment and collaboration with the SAIs will greatly assist the Auditors General, save costs and time and thus enable them to focus their efforts to the essential in-depth controls. Public enterprises and regional and local governments are much slower in establishing internal audits, despite the legal requirements and audit report recommendations. Appointment of internal audits is not the task of SAIs. The whole cycle should be more precisely defined through additional legal regulations: from their appointment and operation to removal from office. In public enterprises, internal audits should report to the supervisory board, and in the governments or government cabinets, they should report to the minister of finance. A few existing internal audits play the role of budget inspectors, rather than auditors that consider the effects, educate and give independent assessments.

What is the relationship and division of responsibilities between the SAI and the parliamentary oversight body (such as the parliamentary accounts or finance committees)?

Formally, parliaments merely act upon the produced reports, with very little initiative of their own. Even that follow-up is very rare and ineffective. The new SAI Law will give more authority to the legislative to act upon the audit recommendations.

What are the links to regional and international institutions with regard to national audits?

All three SAIs are linked to the key professional international associations, particularly INTOSAI while within BiH they have an excellent collaboration with the World Bank and the Swedish National Audit Office (RRV), which provided significant know-how in the process of setting up the BiH SAIs, as funded by SIDA.

Among themselves, the three SAIs have formed a Co-ordination Board that brings the three Auditors General and their deputies together with an aim to: establish and upgrade the audit standards in BiH; ensure consistent quality of audits; perform joint audits; and maintain representation in international associations. This Board is expected to ensure a greater adherence to the INTOSAI standards and in particular its Code of Ethics, while performing the daily SAI duties. The Board came into effect with the signing of the mutual Memorandum of Understanding¹⁴² on 07 August 2003, while the Swedish RRV pledged to provide the necessary technical assistance to its operations.

Judiciary

1. Role(s) of institution/sector as pillar of NIS

Does the law guarantee judicial independence? Is there judicial independence in practice?

YES – The Law on High Judicial and Prosecutorial Council (HJPC) of BiH governs the procedure for appointment and removal of judges and prosecutors. HJPC has the exclusive responsibility for appointing judges and prosecutors, except for judges of the Constitutional Court of BiH and Constitutional Courts of the Entities (who are elected by their respective parliaments).

The 2002 constitutional changes provided for the transfer of the responsibility for appointing judges and prosecutors from the legislature to HJPC. This has been the most significant step towards achieving independence of the judiciary from the legislature and the executive. Likewise, it is important to note that the majority of HJPC members are professional judges and prosecutors, rather than other professions, which paves the way for appointment of good and highly qualified judges and prosecutors.

Are recruitment and career development based on merit, by law? In practice?

PARTLY – The Law on HJPC defines requirements for appointment to judicial or prosecutorial office. In addition to basic requirements (BiH citizenship, professional aptitude, degree in law, and passed bar examination)¹⁴³, the candidates are also required to meet specific professional requirements: judges and prosecutors must be “individuals possessing integrity, high moral standing, and demonstrated professional ability with the appropriate training and qualifications”¹⁴⁴, and must have relevant legal experience after having passed the bar examination. Judges of the Court of BiH, Constitutional Courts of the Entities and Appellate Court of the Brčko District must have a minimum of 8 years of relevant practical experience following their bar examination. The same applies to the prosecutors of the Prosecutor’s Office of BiH and Prosecutor’s Offices of the Entities. Judges of the district/cantonal courts and district and cantonal chief prosecutors must have a minimum of 5 years of relevant practical experience, while judges of basic/municipal courts are required to have at least 3 years of legal experience.

It is interesting to note that judges of the Constitutional Courts of the Entities are not expected to meet the requirements regarding minimum practical experience after having passed the bar examination. What is taken into consideration, though, is the candidate’s “academic experience and achievements”¹⁴⁵ and other information which, in the opinion of HJPC, is relevant to the candidate’s suitability to serve as a judge of the Constitutional Court.

Given the fact that not all judges have been appointed yet¹⁴⁶ (unlike prosecutors), it is difficult to assess if those who have, are really the best candidates. In addition to the basic and professional requirements set forth in the Law on HJPC, it is important to note the ‘aggravating’ circumstances which can sometimes prevent the appointment of the best candidates to judicial or prosecutorial office. According to the 2002 decision of the Constitutional Court of BiH on “constitutionality of nations”, due steps should be taken, in principle, to ensure that the composition of courts/prosecutor’s offices reflects the composition of population in the given jurisdiction according to the last population census from 1991. In some cases, this obligation may lead to certain judicial or prosecutorial offices being left vacant for lack of qualified candidates from the ethnic group to whom these offices “belong”. However, due to the ethnic quota principle, these vacant positions cannot be filled by candidates from other peoples even if they meet all the necessary requirements. To compound the matter, the judicial reform in BiH has reduced the number of courts and judges, while the number of cases has remained the same or even increased.

Are the appointees protected from removal without relevant justification, by law? In practice?

YES – Judges/prosecutors are appointed for life. However, the judicial or prosecutorial mandate is subject to mandatory retirement age. Presidents of courts/chief prosecutors have a limited mandate and in case they are not reappointed, they continue to perform a judicial or prosecutorial function in the same court or prosecutor’s office¹⁴⁷. Apart from that, judges/prosecutors may resign or be removed from office. Likewise, a judge or prosecutor may be suspended from duty if the performance of official functions is impaired because of his/her mental, emotional, or physical condition. The removal may take place only through disciplinary proceedings instituted by the HJPC’s Disciplinary Counsel based on a complaint filed by a third party. Disciplinary measures are imposed by the HJPC’s First Instance Disciplinary Panel. The decision of this panel is subject to appeal before the HJPC’s Second Instance Disciplinary Panel, whose decision is subject to appeal before the full membership of HJPC. A judge or prosecutor who has been removed by decision of HJPC may appeal to the Court of BiH.

According to the most recent relevant information, in 2005 the Office of the Disciplinary Counsel (ODC) received a total of 1,760 complaints (1,516 related to judges and 244 related to prosecutors). In the same year, ODC investigated and processed 864 complaints (1,140 still pending). Of these, only 18 (2%) were evaluated by ODC as founded. Of 18 disciplinary measures imposed, two were written warnings, 4 public reprimands, 8 reduced salaries, 1 removal from office, and 3 resignations¹⁴⁸. The vast number of complaints related to alleged procedural errors (misapplication of law, failure to schedule a hearing, unjustified delay in solving backlogged cases, long appeal procedure, enforcement impossible to render, etc.) and ODC was asked to either rectify the alleged errors or to order the court to speed up the proceedings. Neither HJPC nor ODC is entitled to influence the course of the proceedings, nor can they rectify procedural errors or order for a judge to expedite the proceedings. The ODC’s decision rejecting a complaint is not subject to appeal.

Are judges elected or appointed?

Judges are appointed through public announcement of vacant positions. Public announcements are published in official gazettes, in print media and on the HJPC's website. The process of re-appointment of judges and prosecutors began in 2002. Although the Constitutions that were in force at that time guaranteed that judges and prosecutors are appointed for life, all holders of judicial offices, pursuant to the decision of the High Representative, had to reapply for the positions they already held or for other positions. The process of appointment to judicial and prosecutorial offices was also open to all other interested parties meeting the relevant basic and professional requirements.

Following the submission of the application, applicants' qualifications are tested through competitive examination, and the candidates are then interviewed. The decision to appoint a candidate to a judicial or prosecutorial post is issued by HJPC. The law does not provide for remedy to contest the HJPC's decision on appointment.

The main HJPC's objection was that the criteria for the reappointment process were unclear and the process itself was not entirely transparent as the candidates who were not appointed were not given enough information justifying their non-appointment. It is yet important to note that the three international principles for appointment of judges, namely: citizens' influence, citizens' oversight of the judiciary, and citizens' influence on removal of judges, are not fully observed due to the nature of HJPC's work. It may even be said that the judiciary 'alienated' itself from citizens, so in addition to independence from the executive and the legislature, the judiciary is also independent from the public. HJPC appoints and removes judges and prosecutors without appropriate consultation with citizens or consideration of their experiences and opinions, so the accountability of the appointed judges and prosecutors to citizens is even lesser.

Have judges received any particular training for prosecuting corruption cases?

Mandatory advanced professional training for judges and prosecutors was introduced following the establishment of the Entity Centres for Judicial and Prosecutorial Training (working under the HJPC's supervision). Pursuant to a HJPC's decision, each judge/prosecutor must undertake at least four days of advanced professional training organised by the Entity Centres for Judicial and Prosecutorial Training or other organisation recognised by the Training Centres.

Judges working on criminal cases and prosecutors are obliged to undertake advanced professional training in criminal law. According to the programme of advanced professional training of the Centre for Judicial and Prosecutorial Training of FBiH, 37 judges and prosecutors will undergo a two-day seminar on criminal offences of corruption in 2006¹⁴⁹.

2. Resources/structure

What is the institutional framework of the judiciary?

The institutional framework of the judiciary is affected by the constitutional structure of BiH. The judiciary is also organised across several levels, but these levels are not always interlinked.

At the level of BiH there is the Court of BiH and the Prosecutor's Office of BiH. The Court of BiH has Criminal, Administrative and Appellate Divisions. The Criminal Division is made up of three departments: for war crimes, for organised crime and corruption, and for other criminal offences. Consequently, the Appellate Division of the Court of BiH has three appellate departments: for war crimes, organised crime and corruption, and other criminal offences.

At the level of the Entities, there are Supreme Courts, District/Cantonal Courts and Basic/Municipal Courts. In the Brčko District there are the Basic Court and the Appellate Court. No formal link exists between the courts at the level of the Entities and the Brčko District, i.e. the Court of BiH is not competent for deciding in an appellate procedure or extraordinary legal remedy procedure on the decisions of the Entity courts. More precisely, each of these court systems act autonomously and their competences cannot be transferred from one system to another. In addition to the system of ordinary courts of law, there are constitutional courts and minor offence courts. These courts belong to the judiciary in the wider theoretical sense of the word. The restructuring of minor offence courts is underway and will result in their incorporation into the ordinary first-instance courts.

What impact do the various levels (apex, local) and types (criminal, tribunal, civil) of courts have on the justice system?

Ordinary courts have competence over all types of disputes and cases: criminal, civil, administrative, commercial, and there are no specialised courts for specific branches of law (e.g. commercial, labour, family, etc.). The fact that there is no single structure of courts, but rather four autonomous systems of courts, has a significant impact on the work and efficiency of the judicial system.

What is the budget/staffing of key judicial bodies?

The judiciary is financed from the budgets, depending on the administrative unit that established the particular court. The judiciary is currently funded from 14 different budgets. The Court of BiH is financed from the budget of the joint institutions of BiH, all courts in RS are financed from the RS budget, and the courts of the Brčko District are financed from the District's budget. As far as FBiH is concerned, the Supreme Court of FBiH is financed from the FBiH budget, whereas cantonal and

municipal courts are financed from ten cantonal budgets. Recently there has been much public debate about the comparatively high salaries of judges (ranging between KM 2,400 for judges of basic and cantonal courts to KM 3,800 for judges of supreme courts¹⁵⁰), which are grossly disproportionate to their efficiency and totally disproportionate to the number of closed cases, in particular those related to corruption.

The budget of the Court of BiH for 2006 amounted to KM 5,000,000, the budget of courts in RS (Supreme Court of RS, 5 district courts and 19 basic courts) for 2006 amounted to KM 25,951,268, while the budget of courts in FBiH (Supreme Court of Federation of BiH, 10 cantonal courts and 28 municipal courts) for 2006 amounted to KM 68,683,382. The budget of courts in the Brčko District (Basic Court and Appellate Court) amounted to KM 3,766,664. It follows that the total budget of all ordinary courts in BiH (i.e. excluding the constitutional courts and minor offence courts) in 2006 amounted to KM 103,401,314, according to the HJPC's Annual Report.

What is the budgetary process that governs the judiciary?

Court budgets are prepared by court presidents for “the following year, based on the expenses in the current year and projected expenses for the following year”¹⁵¹. Such budget proposal is submitted to HJPC for opinion. After that, the budget proposal is submitted to the Ministry of Justice (there are 14 ministries of justice at different levels), which forwards it to the Ministry of Finance, that is, the Government (14 ministries of finance and 14 governments). Budgets are adopted by parliaments in the form of laws. Within one year, it is possible to make a reallocation of certain budget itemisations, in accordance with the appropriate procedure, in the amount not exceeding 10% of the whole budget.

Does the judiciary have access to off-the-books funds?

YES – Courts may receive donations, but exclusively upon HJPC's approval, provided that such donations do not undermine, or raise a reasonable suspicion as to, the independence or impartiality of the court.

Adoption of regulations establishing an independent judicial budget would lead to an even greater independence of the judiciary from the executive and the legislature. As things stand now, the financing of the courts can play a significant role in exerting indirect pressure on the judiciary, especially by the executive branch.

3. Accountability

What kind of laws/rules govern oversight of the judiciary? Are these laws/rules effective?

The Laws on Courts govern the work of courts (organisation, jurisdiction, finance, court administration). In addition to that, HJPC exercises a certain level of oversight of judges and courts. The relevant ministries also oversee the work of courts, but exclusively in administrative matters (court administration and court budget).

Aggrieved parties may contest court decisions through ordinary or exceptional legal remedy procedures. It is not possible, either formally or in practice, for the legislature or the executive to change court decisions.

To whom must the judiciary report, in law? Does this accountability for its actions take place in practice?

Courts are obliged to submit their reports to the relevant ministry of justice and HJPC. As mentioned above, judges may be held responsible for their work only through disciplinary proceedings conducted before HJPC.

Are public hearings and/or proceedings required, by law? Are they the rule or the exception, in practice?

YES – Procedural laws introduce the principle of openness of the work of courts. Free access of the public to all court activities has been established as a general rule. Exceptions to this rule are regulated by law: for example, the public is excluded from criminal proceedings conducted against a minor or in case of marriage disputes (divorce proceedings, alimony, etc.). It may be concluded that the rules on openness of proceedings and the prescribed exceptions are fully adhered to in practice. There are certain initiatives for introduction of trials with jury, since some of the judicial standards for determination of criminal liability are exceptionally high, while civil jury would establish guilt much more easily, thus speeding up marathon trials for corruption and bringing them to a successful conclusion.

4. Integrity mechanisms

Are there rules on conflict of interest for the judiciary? Are they effective?

YES – The procedural laws (Criminal Procedure Code and Civil Procedure Code) provide for situations in which the judge leading the case must suspend his/her work on the case when there are reasons for

his/her disqualification. In criminal procedures, this includes cases when the judge is personally affected by the offence, when the judge is related to the suspect or the accused or his/her defence attorney, or if the judge has already participated in the same proceedings as prosecutor or defence attorney. Similar reasons for disqualification are set forth in the Civil Procedure Code. The rules on disqualification are followed in practice.

Are there rules on gifts and hospitality? Are they effective?

YES – The Code of Judicial Ethics, adopted by HJPC in late 2005, contains rules governing the conduct of judges with regard to acceptance of gifts and other benefits. The Code stipulates that “a judge and members of the judge’s family, shall neither ask for, nor accept any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties”¹⁵². In addition to that, a judge is obliged to prevent other court staff from soliciting or accepting any gifts. Notwithstanding this, a judge may receive a token gift or benefit, provided that such gift or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties. Failure to act in accordance with the Code of Judicial Ethics may constitute grounds for instituting disciplinary proceedings against the judge. As the Code has been adopted only recently, it would be too early to make conclusions about its observance as well as about the actions of the HJPC’s Disciplinary Counsel in cases of alleged infringement of this Code constituting grounds for initiation of disciplinary proceedings.

In addition to that, the Law on HJPC lays down rules on incompatibility of functions and immunity.

Are there post employment restrictions? Are these restrictions adhered to?

NO – There are no rules preventing removed judges or judges who resigned from becoming employed in a governmental agency, enterprise or in legal profession. There is a general trend among judges who were not reappointed to judicial office to become lawyers by joining the Bar Association.

5. Transparency

Are there rules on disclosure of assets applicable to judges or other senior judiciary officials? Are the rules adhered to, in practice? Is there any lifestyle monitoring?

YES – When applying for a judicial or prosecutorial office, the applicant must, in addition to other information, submit to HJPC the data on compliance with property laws as well as his/her personal data. The data on compliance with property laws refer to the applicant’s housing status, i.e. data on whether the applicant uses other person’s real estate (these data are in connection with the return of refugees and

displaced persons, in accordance with Annex VII of the Dayton Peace Agreement). The applicant's personal data include general data (personal information, military service, service in governmental institutions and courts, etc.) as well as data on personal income, assets and liabilities. As far as assets are concerned, the candidate for judicial office must include information on his/her own assets as well as their family assets (i.e. assets of the marital partner and members of the family household), including real estate, bank accounts and stocks. In addition to that, candidate is required to include liabilities (accounts payable and account receivable) and estimate of his/her entire property.

Finally, the candidate is required to submit to HJPC data on whether they, their marital partner or any member of their family household is a private enterprise founder and whether they have been members of the executive or supervisory board in a private or public enterprise (from 1990 to the day of submission of the application for judicial office). In addition to that, appointed judges are obliged to inform HJPC, for the duration of their mandate, of any changes to their personal income, personal assets, family assets, liabilities or change in the value of the entire property.

Likewise, the appointed judge is required to inform HJPC of any changes to the activities of their marital partner or member of his/her family household in public or private enterprises (see above). Finally, the appointed judge or prosecutor is required to file by 31 March of the current year with HJPC their annual financial statement describing, among other things, "the extra-judicial or extra-prosecutorial activities performed, including the amounts of remuneration"¹⁵³. This obligation is in force during the entire judicial or prosecutorial mandate.

At the end of November 2005, HJPC adopted the Code of Judicial Ethics. This Code promotes independence, impartiality and professionalism in the judicature, calling on the judges to carry the burden of outstanding conduct that is not expected from other citizens¹⁵⁴. Currently, there is no authority responsible for monitoring the judges' lifestyles, but there is an idea to establish ethical committees within the existing judges' associations. This idea is yet to be developed.

Who monitors the above? Is the information they gather required to be made publicly available? Is this done, in practice?

HJPC collects these data through its secretariat. HJPC does not have the authority to check authenticity of the data presented in applications. The applicant is required to confirm with his/her signature in the application form, under financial and criminal responsibility, that the data provided are accurate and that he/she is aware that the provision of untruthful or misleading information will lead to their exclusion from consideration for appointment or to removal from office. These data are not publicly available. In practice, HJPC gives out very little information on this topic and the public is not informed if any of the data provided have been found to be inaccurate.

Are court records required to be made publicly accessible? How open and accessible are court records?

YES – Publicity of work is one of the principles underpinning the judiciary in BiH. The work of a court is open to the public, except in cases when, pursuant to the applicable laws, the public is excluded in order to ensure protection of other overriding interests in specific cases (minors, family relations, etc.). In addition to that, the law guarantees free access to all procedural documents and registers. What is more, the Law on Freedom of Access to Information applies also to judicial institutions, which further increases accessibility of court cases and registers. Generally speaking, the accessibility of court cases and relevant procedural documentation is at a satisfactory level.

6. Complaints/enforcement mechanisms**Are there any provisions for whistleblowing on misconduct within the judiciary? Have these provisions been made use of?**

The Law on HJPC defines the procedure for conduct of disciplinary proceedings against judges. Every citizen, whether a party to proceedings or a third party, may contact ODC when he/she believes that grounds exist to initiate disciplinary proceedings against a judge. In all judicial or prosecutorial buildings in BiH, posters and notices are put up in conspicuous places providing information on how to initiate disciplinary proceedings against a judge/prosecutor.

Complaints may contain the complainant's full name or be anonymous. In addition to that, complaint forms are available to interested persons in courts/prosecutor's offices. In case it finds the complaint to be unsubstantiated (latest available data indicate that only 2% of the complaints are substantiated), ODC will dismiss it. The complainant suffers no consequences if his/her complaint is dismissed as unsubstantiated. If the complaint is accepted, the complainant does not suffer any legal consequences either.

Have there been recent instances of successful prosecutions of corrupt judges or senior judicial officials?

YES – Criminal proceedings are conducted before the Court of BiH against the President of the Constitutional Court of BiH Mate Tadić and others, on charges of criminal offences of corruption. The case is still on-going. Despite indictment being brought and confirmed against him, Mr. Mato Tadić remains the President of the Constitutional Court of BiH. There is no legal way for the Parliament of BiH, Council of Ministers of HJPC to initiate the procedure for removing Mr. Tadić from office. If it were a judge of any other regular court, HJPC could suspend the judge in question until such time as the

criminal proceedings are brought to a conclusion. In this particular case, only all judges of the Constitutional Court may decide, in a plenary session, if the judge in question should be suspended. In case of Judge Tadić, this has not happen, so he still presides the Constitutional Court of BiH, even though the indictment against him has been confirmed and criminal proceedings instituted before the Court of BiH.

Indictments for corruption have also been brought against Judge Vlado Adamović and Judge Petra Bijelić. Mr. Adamović obtained, among other things, a luxury three-room apartment in Sarajevo and similar services from the Government of FBiH¹⁵⁵, while Ms. Bijelić abused her office and authority in inheritance cases, while there is reasonable doubt that she did it with the aim of making material gain¹⁵⁶. Statistically, so far, corruption has been better addressed by the judiciary in RS than in FBiH.

What are the main mechanisms for oversight of the judiciary?

There are two basic methods of oversight of the judiciary. The first is connected with the complaint procedure and extraordinary legal remedy procedure. As a general rule in criminal and civil procedure, aggrieved parties are allowed, without exception, to file complaints against court decisions. In addition to that, in certain circumstances, aggrieved parties may pursue extraordinary legal remedies, and when all ordinary and extraordinary remedies are exhausted, they may appeal to the Constitutional Court of BiH. The other method of oversight is by HJPC and the relevant ministries of justice. While the ministries of justice have the authority to oversee the work of the courts, HJPC has the authority, through ODC, to conduct disciplinary proceedings and impose disciplinary measures against judges found to be in breach of judicial discipline.

Do judges have to give reasons for their decisions? Do they do so, in practice?

YES – The procedural laws (Criminal Procedure Code and Civil Procedure Code) stipulate that every court decision must contain an explanation. In the explanation of the verdict, the court must explain the allegations of the parties, evidence and evaluation of the evidence, as well as the regulations on the basis of which the court reached the verdict. The content of the explanation depends on the factual and legal complexity as well as on the extent of the case.

Prosecutor's offices often complain about very high standards for proving criminal offences¹⁵⁷, especially in economy, where they are often faced with almost impossible burden of proof, especially when they need to prove an intention, where court practice is also problematic. Moreover, courts have the authority to suspend investigations launched by prosecutor's offices. For example, there were cases of sensitive political investigations that ended as soon as they were launched or cases where the court ruled in favour of the accused because the court had demanded proofs that were impossible to obtain.

Does the judiciary protect witnesses in cases of corruption?

PARTLY – In 2003 the High Representative for BiH imposed the Laws on Protection of Witnesses under Threat and Vulnerable Witnesses (at the level of BiH and the Entities). In terms of these Laws, a witness under threat is a witness whose personal security or the security of his family is endangered through his participation in the proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony¹⁵⁸. A vulnerable witness is a witness who has been severely physically or mentally traumatised by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive, a child and a juvenile¹⁵⁹.

Unfortunately, application of these Laws in practice is severely limited for lack of adequate witness protection programmes.

Does the judiciary protect prosecutors/judges in cases of corruption?

Establishment of the court police has helped improve security of judges/prosecutors/ court staff, particularly in court buildings during proceedings, but also outside court buildings when certain actions had to be undertaken in the field (on-the-spot investigation, enforcement, etc.). In cases of sensitive criminal proceedings, judges/prosecutors have the right to seek protection for themselves and their families if they deem that there is a real danger to them arising from the conduct of the criminal proceedings. However, this protection is rather limited and may only be undertaken during criminal proceedings, not after they have been brought to a conclusion, although the danger might continue after the proceedings.

Do citizens have access to justice/recourse to the courts, by law? In financial/practical terms?

YES – Generally speaking, there are no formal obstacles for any citizen to appear before the court as complainant or defendant in a civil procedure. There are several situations that can limit to a certain extent citizens' access to the courts. "Access to the court" does not only mean that a citizen may contact the court, but also that the court is obliged to decide on citizens' right in a timely manner and in accordance with the law. The first situation limiting the citizens' access to the courts are high court taxes compared to average salaries in BiH, high unemployment rate and large number of social categories (pensioners, refugees, etc.). Comparatively high court taxes have a dual role: the first is positive as they prevent citizens from burdening courts with minor cases, and the second is negative as they deter certain groups from seeking recourse in the court.

Secondly, if a citizen seeks recourse in the court and pays the necessary court taxes, in most cases they will need professional legal assistance, given the very strict procedural laws (in particular the Criminal Procedure Code and Civil Procedure Code) and a highly complicated judicial system. A citizen may seek

assistance either from a lawyer, although lawyer tariffs in BiH are very high and most people cannot afford such professional assistance, or from an NGO offering legal assistance free of charge. NGOs offering free legal assistance are focused either on a particular population group (e.g. refugees, returnees, etc.) or on a specific type of disputes (e.g. return of property or labour disputes), so not all citizens have access to such NGOs. Finally, even if they overcome these obstacles, citizens must face a very long court procedure as the courts are literally overwhelmed by backlogged cases and are not able to finish the proceedings within regular deadlines.

How successfully has corruption been targeted by this institution, as an internal problem? An external problem?

There is a general perception in the country that the judiciary is corrupt, although there have been very few cases of criminal proceedings against a judge, prosecutor or court staff on charges of corruption. Such a conclusion is the result of undue delay in the work of courts due to the backlog of cases. Of course, corruption in the judiciary is only one part of the general problem in society. Corruption in the judiciary does not necessarily have the same characteristics as corruption in other aspects of life (soliciting or offering bribe, privileged position in public procurement, etc.), but it takes a rather sophisticated form of achieving certain benefits in court proceedings. As court proceedings are conducted in two instances (i.e. right to appeal is a generally accepted principle), there is no place for common bribery, e.g. bribing the judge to rule in favour of one party, because the decision will be overruled in appellate proceedings if it is not founded on law. Likewise, it is difficult to imagine that someone could bribe both the first-instance judge and the judges of the appellate court (the appellate court usually decides in panel of three judges). On the other hand, solving cases before their turn, solving cases in an accelerated procedure, undue prolongation of the decision, or delaying the forwarding of the case to the appellate court may all be characterised as corruption. In addition to that, favouring certain lawyers in cases of mandatory defence in relation to others may also have characteristics of corrupt behaviour. Proving corruption in all such cases is almost impossible.

At the local level, situation is even less transparent, and the work of courts is less often subject to independent oversight. For instance, it took three years for the Basic Court in Bijeljina to conclude a court case against 12 officials and civil servants of the Bijeljina Municipality who had illegally awarded funds for construction of apartments for municipality officials and granted building permits in contravention of the law. The famous “apartment affair” in Bijeljina was eventually brought to a conclusion and the accused were fined in the amounts ranging between KM 1,500 and 3,000¹⁶⁰. In April 2006 similar court proceedings against a group of officials from Doboje were brought to a conclusion and the accused were sentenced to three months imprisonment each¹⁶¹.

It is impossible to maintain that the management of the judiciary has been significantly improved for as long as proven criminals continue to live free or even hold highest public or judicial offices.

7. Relationship to other pillars

To what extent is the judiciary a key part of this country's NIS?

The role of the judiciary as the third pillar of national integrity is highly significant. The fact that regular courts have the responsibility for deciding on legality of final administrative acts (administrative disputes), that the constitutional courts have the responsibility for checking the legality of legal enactments (laws), and that the decisions of the constitutional courts are binding for all, gives the judiciary, in a broad sense of the word, a significant role as a NIS pillar.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

Given the position of the judiciary in the system of separation of powers, the judiciary, as a pillar of national integrity, interacts most closely with the legislative and the executive branches. The interaction with the legislature is reflected in the fact that the legislature adopts laws and other regulations which organise the work of judiciary in terms of organisation (laws on courts, laws on court taxes, etc.) as well as in terms of application of substantive and procedural laws. The interaction with the executive (government) is most commonly reflected in the financing of the judicial institutions and ensuring material conditions for the work of judiciary (salaries, material costs, premises/buildings of courts and prosecutor's offices). Interaction with other pillars is indirect and less significant than that with the legislature and the executive.

Do courts have the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other Ministers and their officials)? How effective is this review, in practice?

YES – According to the Law on Administrative Disputes (at the level of BiH, Entities and Brčko District), it is possible to initiate an administrative dispute against a final administrative act issued in an administrative procedure. Final administrative acts issued by the institutions of BiH are subject to administrative dispute before the Court of BiH, while final administrative acts issued by the institutions of the Entities and the Brčko District are subject to administrative dispute before a relevant court (District Courts in RS, Cantonal Courts in FBiH and Basic Court in the Brčko District). The defendant is exclusively the institution or agency that issued the final administrative act and that the administrative dispute is initiated with the aim of quashing this act. The decision of the relevant court issued in an administrative dispute is not subject to complaint, but the aggrieved parties may appeal to the Constitutional Court of BiH if they think that some of their rights guaranteed by the Constitution of BiH (Article 1) and the European Convention on Human Rights and its protocols have been violated.

In addition to that, according to official court data from 2005, the Supreme Court of FBiH has a total of 5,517¹⁶² and the Supreme Court of RS 2,538¹⁶³ unsolved administrative disputes. According to HJPC estimates, around 1.3 million cases remain unsolved in all courts in the country, of which, for example, around 10,000 in the Basic Court of Banja Luka only¹⁶⁴. It is only in the late 2005 that the Entity parliaments enacted new Laws on Administrative Disputes giving exclusive competence in this matter to the district/cantonal courts. The previous Laws on Administrative Disputes divided this competence between supreme courts and district/cantonal courts. In practice, however, almost all administrative disputes were decided by the supreme courts because of the principle that provides for two instances in administrative procedures, and the second-instance (complaint) authorities are, as a rule, Entity administration bodies (ministries). This means that the administrative disputes against decisions of Entity administration bodies were initiated before the Entity supreme courts. This explains the vast number of unsolved cases before the Entity supreme courts. The new Laws stipulate that the supreme courts must clear the backlog of the administrative disputes that had been instituted before them until the Laws came into force and that they may not receive any more administrative disputes.

It is already evident that the complainants who initiated administrative disputes that are still decided by the Entity supreme courts will have to wait very long for the conclusion of their cases (experts estimate that it will take more than three year to clear the backlog), while the complainants who initiated administrative disputes before the district/cantonal courts after the new Laws entered into force may expect the courts to decide their administrative disputes within a reasonable period of time.

As mentioned above, ordinary courts (i.e. district/cantonal courts) decide on legality of final administrative acts (through administrative disputes). It should be noted that administrative disputes may only be initiated against individual administrative acts (issued in an administrative procedure deciding on a certain right or duty of an individual person or legal entity) and only in cases when one of the aggrieved parties initiates an administrative dispute. It follows that it is not possible to initiate an administrative dispute *ex officio*, but only at the request of the aggrieved party.

It is not possible to initiate an administrative procedure against general acts issued by the executive, but it is possible to initiate a procedure for determination of legality of general acts issued by the executive before the relevant constitutional court.

The newly-adopted Laws on Administrative Disputes at the level of the Entities enable the decisions on administrative disputes to be adopted within a reasonable period of time (competence of district/cantonal courts), while there remain thousands of backlogged cases before the supreme courts, which, according to the estimates of these courts, will take years to clear.

On the other hand, there is an acute problem of non-compliance with court decisions issued in administrative disputes. It is common for administration bodies to fail to act on court decisions or refuse

to accept them although the law provides that court decisions are binding for the relevant administration bodies. Unfortunately, there is no legal mechanism in place allowing ordinary courts to force administration bodies to act on their decisions (i.e. this mechanism is very complicated – it is referred to as “administrative procedure of full jurisdiction”, in which courts may issue a decision which replaces the decision of the administration body in full, but courts avoid this practice because the administrative enforcement procedure is again carried out by the administration authority that failed to act on court decision in the previous procedure). Thus, the responsibility for acting on court decisions issued in administrative disputes rests with the executive, which sometimes renders the appellate procedure meaningless and inefficient.

Civil Service/Public Sector Agencies

1. Role(s) of institution/sector as pillar of NIS

Is bribery of civil servants/public sector officials an offence? If so, is such bribery governed by criminal or administrative law, or both?

YES – The Criminal Code of BiH and Criminal Codes of the Entities as well as the Criminal Code of the Brčko District define criminal offences of corruption and criminal offences against official duty or other responsible duty. They are classified as illegal acts against proper functioning of public services committed by official or responsible persons in exercise of their official duties.

Likewise, the Law on Civil Service in the Institutions of BiH¹⁶⁵ defines breaches of discipline and the disciplinary procedure (violation of official duties by a civil servant), and provides for sanctions against civil servants who are found guilty of committing the violation. Similar provisions are contained in the Entity laws on civil service.

Is there formal independence of the public sector? Is the public sector independent in practice?

PARTLY – The Laws on Civil Service and creation of the Agency for Civil Service (at the State and Entity levels) established formal independence of the public sector. The Laws on Civil Service define the principles of work of civil service, which are as follows: legality; transparency and publicity; accountability; efficiency and effectiveness; and professional impartiality¹⁶⁶. The adopted laws represent discontinuation of the common practice of replacing the entire governmental structure in public offices after each general elections. These laws provide for full professionalisation of the staff working in public services ranging from the lowest-ranked civil servants to assistant ministers. The recruitment and the professional career advancement of a civil servant are based on open competition and professional merit. “All the appointments carried out by the Civil Service Agency so far have been conducted in line with the Civil Service Law that prescribes that the managerial civil servants shall be appointed by their respective institutions upon the procedure conducted by the Agency and from the list of successful candidates so that there will be no more room for political appointees”¹⁶⁷. Although the Agencies in BiH and in RS were formed in a very short period of time, the establishment of the FBiH agency was significantly delayed. The civil service agency in this Entity remains of poor quality and lacking professional approach.

In March 2006 a new RS Government was elected. After assuming office, the newly-appointed Prime Minister of RS, Mr. Milorad Dodik, publicly “invited” Assistant Ministers in the RS Government to resign from their posts. Almost all Assistant Ministers submitted resignations from their posts¹⁶⁸. Representatives of the former (SDS-controlled) RS Government expressed their disagreement with the

Prime Minister's invitation¹⁶⁹. Following these events, the National Assembly of RS adopted the Law on Changes and Amendments to the Law on Civil Service in RS Administration¹⁷⁰.

The Assistant Ministers who resigned from their posts used the option provided for in the law – the so-called 'internal transfer' within the same institution "for reasons of extended scope of work"¹⁷¹. By inviting civil servants to resign, politicians demonstrated their power and indirectly avoided to observe the applicable Law that has been harmonised with other laws on civil service in administration and generally accepted principles of the European Administrative Space: reliability and predictability, openness and transparency, accountability, efficiency and effectiveness¹⁷². Unfortunately, such actions on the part of politicians have had a very adverse effect on the establishment of professional civil service and created an impression among employees that the civil service apparatus does not operate independently, which led to a long-term loss of confidence among civil servants in the system.

When asked if any civil servant would lose his/her job if there were a change of government, the following answer was offered: "No. One of the key provisions enshrined in the Law is protection of civil servants from changes in the Government which ensures that they stay in their jobs after elections and provides continuity and stability of administration in RS"¹⁷³.

What safeguards exist to prevent political interference in the public sector? Are they effective?

The Laws governing civil service in administration make direct stipulation that the recruitment of a civil servant must be based upon open competition and professional merit.

Recruitment of a civil servant is conducted exclusively through open competition, i.e. employment advertisements as well as through internal vacancy notices (for lower positions). The Agency for Civil Service is responsible for advertising the vacancy. The selection committee must be composed of civil servants of the institution concerned and experts approved by the Agency. The composition of the selection committees varies between three and five members depending on the level of governance. Likewise, the Laws are based on the principle that no discriminatory is permitted in the employment process.

However, the Laws still leave ample room for exertion of political pressure on the public sector while being in seeming compliance with the Law on Civil Service. Elected officials often take advantage of the legal possibility of appointing advisors, who are engaged only for the duration of the term of office of the official who appointed them, and who do not have the status of a civil servant. "Due to the fact that they are accountable for their actions exclusively to the official who appointed them, advisors have become the favourite solution for the problem of the lack of loyalty among the personnel and of the inability to exercise adequate control over a particular professional administration"¹⁷⁴. So advisors *de facto* "came to

constitute a sort of a parallel administrative service absolutely loyal and accountable to particular ministers and heads of offices that exists outside the jurisdiction of the Civil Service Agency¹⁷⁵.

Special Report on Violations of the Right to Equal Access to Public Service by the FBiH Ombudsmen states: “The series of shortcomings include a huge and irrational organisation, inadequate professional competence of the employees, so that of the total number of staff, most are with secondary education, which as a consequence results in employment of a greater number of staff than what is really needed, in a, lack of professionalism at work, accompanied by corruption, and in smaller communities, politicisation of staff (...)”¹⁷⁶.

Similarly, although the institution of open competition for vacancies in civil service was introduced, the selection commission often receives instructions in advance from their superiors on how to score candidates, i.e. which candidate to offer the job through the Agency. Some members of selection commissions discreetly refuse such a humiliating function¹⁷⁷. The rigged filling of vacancies in civil service is this way legally covered and seemingly in line with the administrative reform.

Are there rules requiring political independence of the public servants? Are they followed?

PARTLY – The Laws on Civil Service stipulate that civil servants must demonstrate professional impartiality and ensure compliance with the “constitutional and legal order of BiH”¹⁷⁸ as well as that a civil servant may not be a member of governing or others boards of political parties and may not follow political parties’ instructions¹⁷⁹. Similar provisions are contained in the Entity laws on civil service. In addition to that, the Law on Civil Service in RS Administration states that “expressing or advocating political views while performing the duties and tasks within the Civil Service bodies”¹⁸⁰ constitutes a violation of official duties. The corresponding laws at the levels of BiH and FBiH do not contain such provisions.

The Code of Conduct for the Civil Servants of RS¹⁸¹ stipulates that the “civil servant shall inform his/her immediate superior of his/her affiliation to an association or organisation [...]; civil servant shall not oblige the other employees to membership in the associations and organisations, or guide them toward it by promising them promotion at work (Article 4); in the course of an electoral campaign, civil servant shall not undertake the activities that may challenge civil servant’s political impartiality (Article 5)”.

The beginning of the process of passing laws dealing with the establishment of Civil Service Agencies as well as the process of establishing a professional state administration in BiH coincided with the 2002 general election: “the social-democratic parties used (and to an extent influenced) the slow pace of establishing the new administration in order to be able to make many appointments to newly professionalised positions before the end of their technical mandate. When the national parties finally

took over, they were unable to make almost any changes in the ministries and other administrative bodies except for appointing the institutions' heads."¹⁸².

“For civil servants, the [2006 general] election is different from the previous ones because, according to the new Law and the recently adopted amendments to it, civil servants will remain in their jobs regardless of the election results. But this also means that all of us, as civil servants, will take upon ourselves a new obligation to act professionally and remain politically impartial during the electoral campaign”¹⁸³.

Another absurdity in BiH is that ethnic quotas are observed in the filling of vacancies in civil service without informing candidates of ‘positive discrimination’. For instance, if the ethnic quotas require that a Bosniak should fill a vacant position, there is no way to prevent Serbs and Croats from participating in a highly complex and expensive open competition procedure. Instead, elimination of the applicants of ‘undesirable’ ethnic background is being discouraged by imposing impossible selection norms.

What rules govern appointments? Are they followed?

Appointments are governed by the Laws on Civil Service. The Law on Civil Service in the Institutions of BiH regulates the legal status of civil servants in joint institutions. The Law on Civil Service in the Institutions of FBiH governs the employment and legal status of civil servants at the levels of the Federation, cantons, cities and municipalities, and the Law on Civil Service in RS Administration governs the employment of civil servants only at the level of the Entity, while the employment of civil servants at the level of cities and municipalities are governed by the Law on Local Self Government¹⁸⁴.

No other means exist to commence employed in public administration except through the procedure of internal advertising or open competition. In 2005, the RS Agency for Civil Service advertised 58 open competitions and three internal advertisements for filling 142 vacancies. Seven open competitions for filling 7 vacancies were annulled, of which 5 open competitions for filling 7 vacancies were annulled at the request of civil service bodies, and 3 open competitions for filling 3 vacant positions were annulled at the request of the RS Government”¹⁸⁵.

What is the percentage of political appointments to the civil service, career civil servants, and public service employees (i.e. non civil servant status) in the public sector?

The Laws on Civil Service differentiate between specific categories of civil servants, depending on who decides on their appointment after the open competition has been conducted. So, according to the Law on Civil Service in the Institutions of BiH, top civil servants (secretary general, secretary general with a special assignment, assistant minister, assistant director and chief inspector) are appointed by the Council of Ministers of BiH, while other civil servants (head of internal organisation unit, expert advisor, senior expert advisor and specialist) are appointed by the Civil Service Agency¹⁸⁶. In FBiH “civil servant is

appointed by the manager of the civil service authority, upon prior opinion obtained from the Agency, from the list of successful candidates who have undergone the open competition”¹⁸⁷.

In RS, top civil servants in the civil service bodies (assistant minister, secretary to the ministry, head of the administrative organisation, deputy and assistant head of the administrative organisation) are appointed by the Government on the basis of an open competition and upon the proposal of the Agency for Civil Service¹⁸⁸. “Ensuring stable administrative structure based upon professional merit and independent of political influences that will serve every democratically elected Government and citizens of RS alike¹⁸⁹” is the stated mission of the RS Agency for Civil Service. In contrast to such slogans, there are examples of numerous appointments just ahead of the transfer of power to the new election winners. Before leaving offices, the individuals holding politically appointed offices employ themselves in civil service so that the coming government could not remove them.

Are recruitment/career development rules required to be based on merit? Are they?

PARTLY – The promotion of a civil servant to a higher working position within the same or a different institution must exclusively take place through open recruitment procedure. The Report on operations of the Civil Service BiH Agency states that “recruitment and professional promotion of a civil servant are based upon open competition and professional merit”¹⁹⁰.

In addition to that, the Law provides for the assessment of civil servants’ performance, which serves as one of the criteria for promotion. The RS Agency for Civil Service adopted the Rulebook on Performance Assessment and Promotion of Civil Servants¹⁹¹, which provides that the head of a public authority conducts an assessment of and gives his/her opinion on the performance of the civil servant. However, this does not always take place in practice. None of the governmental bodies has thus far achieved full professionalism in the recruitment or promotion of their civil servants. So, nepotism, partisan influences and acquaintance with the immediate superiors can still ensure privileges in civil service.

Are there specific rules to prevent nepotism? Cronyism? Are they effective?

PARTLY – The laws governing civil service do not directly address nepotism. However, they are based on the principle of ‘professional merit’ and others such as open competition, non-discrimination, honesty and objectivity in performance of their professional duties and the obligation of civil servants to “neither pursue nor accept any gain, benefit, advantage in monetary, service or other kind for themselves or for their relatives”¹⁹², which means that these laws do not allow such a practice to take place.

In addition to that, Article 6 of the Ethical Code for the Civil Servants in FBiH¹⁹³ states that a “civil servant is barred from accepting gifts from third persons”, while the Code of Conduct for the Civil

Servants of RS¹⁹⁴ provides that “civil servant shall neither seek, whether for him/her or for others, nor accept, even in formal occasions, gifts or other benefits from the persons who have fulfilled their civic rights or evaded an obligations based on a decisions of the public authority that employs him/her. Civil servants shall neither seek gifts, whether for them or for others, nor accept any other benefits from their subordinates or the subordinates’ relatives” (Article 3).

According to a survey conducted by magazine “Dani” [*Days*], concerning an affair at the Sarajevo University relating to employment of relatives of the University’s employees, professors and politicians, “in parallel to their public functions, most politicians in BiH are also university professors – ‘alphas and omegas’ at their respective faculties. Besides them, their children will, as things stand now, inherit their positions at the faculties”. The magazine warns that it is common for professors at the Sarajevo University to employ their own children or close relatives as assistants at faculties, thus offering them a possibility of academic career to the detriment of other students who do not have close relatives at the University”¹⁹⁵.

As for cronyism, although this term is not explicitly used, the Code of Conduct for RS Civil Servants states that “civil servant shall not offer gifts or other benefits to his/her superiors or superiors’ relatives, as well as to the persons from their immediate surrounding” (Article 3)¹⁹⁶.

According to a 2006 survey conducted by Prism Research, when asked “How effective are arrangements for protecting office holders and the public from involvement in bribery?”, 83% of the respondents said efficiency of arrangements for protecting office holders and the public from involvement in bribery was very low or low¹⁹⁷. “Moreover, the major problem is inappropriate communication between the public services at higher and lower levels, nepotism in employing new staff, non-professional employees and insufficient involvement in keeping updated records and statistics data. A low level of self-assessment and internal control and supervision has also been identified. This is illustrated by the fact that the FBiH Ombudsmen in their 2003 Report on Status of Human Rights in FBiH, highlighted, among other issues, that the citizens are treated in an arrogant manner by civil servants”¹⁹⁸.

What rules govern tenure? Are tenure rules followed?

The Laws on Civil Service provide that civil servants have the right to a permanent tenure of office until the time the conditions for retirement are met¹⁹⁹. Under certain circumstances, civil servants can be employed on a temporary basis (as a replacement for a member of staff who is temporarily absent). In addition to reaching legal retirement age, a civil servant may lose his/her civil service status only in cases defined by the law: voluntary resignation from the civil service; permanent inability to fulfil their official duties; two consecutive negative performance appraisals; dismissal from the service as a result of a disciplinary procedure; and conviction against him/her for a criminal offence; and due to their serving of a prison sentence for more than six months.

Upon taking office a civil servant undergoes a probationary period. The probationary period has an overall duration of twelve months in the institutions of BiH, six months in FBiH, and 30-60 days in administrative bodies of RS, depending on type and complexity of duties attached to a particular position.

The civil servant's direct superior is designated as a supervisor responsible for carrying out a performance appraisal at the end of the probationary period. If the performance appraisal is satisfactory, the appointing office confirms the appointment of the civil servant. However, if the performance appraisal is unsatisfactory, the appointing office dismisses the civil servant. The dismissed civil servant is entitled to have their case reviewed by the Civil Service Board²⁰⁰.

Since the disciplinary procedure is conducted within each individual administrative office and is carried out by the disciplinary commission which is appointed by the head of this office, there are no reliable aggregate data on whether public offices follow tenure rules in practice.

To what extent has the civil service/public sector organised its work based on/committed themselves in any extraordinary way to an agenda of integrity, transparency and good governance? What is the evidence for this?

“The Feasibility Study for BiH identified the need for BiH to ensure a functional state, because only integrated, functional states can successfully negotiate the EU Stabilisation and Association Agreement. In order for the SAA negotiations to be successful, the Feasibility Study stresses the need for BiH to urgently and decisively implement further administration reforms. Public administration reform in BiH is based on professionalising the civil service and developing human potential through a permanent training of civil servants to respond to new challenges”²⁰¹.

“The Agency is responsible for [...] establishing and promoting the highest standards, rules and procedures in managing civil service”²⁰². However, in contrast to the official views stands an independent opinion: “Given the overall situation in administration, civil service is not seen as adequately serving its citizens. A lot of civil servants still exercise power against citizens”²⁰³.

The Agency's website demonstrates a large number of seminars and trainings for civil servants. In addition, transparency of public offices has improved, which is also required from their employees. For more than a year, recruitment of new employees has been conducted on the basis of open competition at the level of joint institutions and the Entities. In practice, however, recruitment continues to be vulnerable to private arrangements and rigging of the results of open competitions.

2. Resources/structure

How many institutions comprise the public sector agencies? What are the key institutions (please provide a list)?

There are three Agencies for Civil Service (one at the level of BiH and two at the Entity level, namely RS and FBiH). It is interesting to note that, apart from the common principles on which they are based, these Agencies are not formally and legally connected nor does the Agency for Civil Service of BiH have any administrative control (in terms of appeals) over the Entity Agencies.

What is the budget/staffing of these key institutions?

Depending on the level of governance, the Agencies for Civil Service are funded from the budgets at their respective levels of government. Therefore, the Agency for Civil Service of BiH is funded from the budget of the joint institutions, while the Entity Agencies are funded from the Entity budgets. In 2006 the Agency for Civil Service of BiH was allocated KM 874,489 (or 0.091%) from the budget of the joint institutions, the Agency for Civil Service of RS was allocated KM 656,925 (or 0.062%) from the RS budget, and the Agency for Civil Service of FBiH was allocated KM 1,747,906 (or 0.15%) from the FBiH budget²⁰⁴.

The staffing and other aspects of internal organisation (departments, temporary working bodies, etc.) of the Civil Service Agencies are defined in the Rulebooks/Regulations on Internal Organisation. The Agency for Civil Service of FBiH has 45 employees, while the Agency for Civil Service of RS has 9 employees (of 12 jobs envisaged by the Rulebooks on Internal Organisation).

What is the budgetary process that governs the public sector?

The budgetary process that governs the public sector does not greatly differ from the process that applies to other budget beneficiaries (such as legislature, judiciary, etc.). So, e.g. the Law on the Budget System of RS²⁰⁵ provides that by 1 September of every year the budget beneficiaries are to submit to the Ministry of Finance the budget requests for the following fiscal year. By 15 October the Ministry is to submit to the Government the draft Budget for the following fiscal year, by 5 November the Government is to adopt the draft Budget, and by 15 December the National Assembly of RS is to adopt the RS Budget for the following fiscal year.

Do civil servants generally have access to off-the-books funds?

NO – All payments in connection to budgetary transactions are effected exclusively through Treasuries, so civil servants have no legal possibility of accessing off-the-books-funds.

However, it is important to note that the public administration reform is a recipient of significant international donor support. Some of the most generous donors include the British Government (DfID) and EU, which have been providing financial support to establishment of professional administration and strengthening of the civil service agencies (BiH and RS).

What kinds of agencies are engaged in public spending other than public institutions (e.g. quasi-governmental agencies or public private partnerships)? Who spends public money other than the public sector?

The budgets provide for grants to non-public institutions. For example, the 2006 Law on Budget of RS awarded a KM 2,569,908 grant to sports organisations under budget item “Current Grants, Co-Funding and Earmarked Funds from the RS Budget” and this grant is implemented through the relevant Ministry. Likewise, a 3 million KM grant was awarded to underdeveloped municipalities and this grant is implemented through the Ministry of Administration and Local Self Government.

3. Accountability

What kind of laws/rules govern oversight of the civil service/public sector agencies? Are these laws/rules effective?

Oversight of the Agencies for Civil Service is governed by the Laws on Civil Service. The Agency for Civil Service of BiH must “submit to the Council of Ministers an annual report and a plan of activities for the next year for approval”²⁰⁶. Similar provisions are contained in the Entity Laws on Civil Service, with the only difference that the Entity Agencies submit their reports to their respective Entity Governments.

In addition to that, “Ministries and administrative organisations shall be obliged to submit an Activity Report on their work and the situation in the administrative areas of their operations for each calendar year”²⁰⁷. Activity Reports are submitted to the Council of Ministers. The aforementioned Laws provide for the so-called administrative oversight of the public offices, primarily in connection to the application of substantive regulations and procedural laws (e.g. the Law on General Administrative Procedure).

On the other hand, the Laws on the Audit of the Financial Operations of the Public Institutions (one at the level of BiH and two at the Entity levels) established the Public Sector Audit Institutions, whose “goal is to enhance economisation, efficiency and legality of public funds spending of state and public institutions as well as to encourage development of sound financial management through issuing objective, independent and timely audit reports on public accounts”²⁰⁸. This is discussed in more detail in the section dealing with the Audit Institutions.

Are there rules for audit oversight? Does such oversight take place?

YES – “In the exercise of his/her functions [...], the Auditor General shall not be subject directing or controlling by any person or institution”²⁰⁹. The SAIs are obliged to submit reports to their respective parliaments and they can also send copies of their reports to the governments, relevant prosecutor’s offices and ministries of interior.

The Parliamentary Committee (of the Parliamentary Assembly of BiH) for Financial and Economic Policy may appoint an independent Quality Controller who will review operations of the Auditor General’s office to establish whether such work is in accordance with the law, sound audit standards and internationally acceptable audit quality. The Quality Controller shall be an internationally recognised organisation with expertise in operations of SAIs²¹⁰. No such review has been conducted so far.

Are there administrative checks and balances on decisions of individual public officials? Are these effective?

PARTLY – In accordance with the Laws on Civil Service, the Agencies for Civil Service have issued the Rulebooks on Performance Assessment and Promotion of Civil Servants²¹¹. Civil servants’ performance is assessed at least once every 12 months. Indicative assessments for appraising civil servants’ performance are: “not satisfactory”, “fair”, “good” and “excellent”. If the civil servant’s performance is “not satisfactory”, the civil servant must, in order to improve their professional skills, pass through the additional professional training programme. Positive assessment of the civil servant’s performance constitutes a basis for promotion. Should there be two consecutive negative performance assessments, the Agency initiates a procedure for dismissal of the civil servant in accordance with the relevant Law²¹².

To whom must public sector agencies report, in law? Does this accountability for its actions take place in practice?

Accountability of public sector agencies is defined in accordance with their status. If public sector agencies are defined as independent administrative bodies, they report to their respective governments. For example, the Administration for Geodetic and Real Estate Legal Affairs (at the Entity level), as an independent administrative body, reports to the Entity government.

On the other hand, tax administrations are positioned within the ministries of finance and therefore report to the ministers of finance. Ministries report to the cabinets, and cabinets in turn report to the parliaments that appointed them. This is a matter of political accountability that manifests itself through support to the government in the parliament as granting or withholding support to the government through regular elections.

Is the public required to be consulted in the work of key public sector agencies? Does this consultation take place in practice?

The legal principles underpinning work of the public sector include *inter alia* “transparency and publicity”²¹³. Apart from these principles, the Laws on Civil Service do not contain any other provisions governing transparency of the public sector’s work (e.g. requesting reports on the work of the Agency).

On the other hand, other regulations stipulate that the Agency for Civil Service must consult the public when making certain decision. For example, the Rulebooks of the House of Representatives and the House of Peoples of the Parliamentary Assembly of BiH provide that, in the course of adoption of laws, other interested bodies, professional institutions and individuals (experts and general public) should be consulted on the proposed law under discussion. These Rulebooks also provide for public hearings or public discussions on the proposed law in question, which can last 15 or 30 days, as appropriate. During the consultations, the public is allowed to express their opinion on the proposed law and, eventually, a commission in charge of conducting the public consultations submits its report to the relevant House of the Parliament²¹⁴.

Some other laws also require the public sector to consult the public while making certain decisions. For example, according to the Law on Concessions²¹⁵, the work of the commission that is in charge of awarding concessions must be open to the public. The commission may call a public debate on any matter within its jurisdiction if the public interest so requires. It is interesting to note that it is the commission itself that determines if a matter within its jurisdiction is in the ‘public interest’²¹⁶ and the commission may decide whether or not to hold a public debate. Finally, the Law does not contain provisions that would oblige the commission to act in accordance with the results of the public debate when deciding on concessions. Although the commission is required to provide explanation for its decisions, these explanations are not made publicly available and neither are the concession contracts.

4. Integrity mechanisms**Are there codes of conduct for public servants? What is their legal status? Is there any evidence of their effectiveness?**

YES – In addition to the rules of conduct for civil servants contained in the relevant laws, the Agencies for Civil Service have prepared the Codes of conduct for civil servants. The purpose of these Codes is to ensure that “the civil servant, as a representative of public service bodies, conducts himself/herself in such a way as to protect the public and private interest enshrined in the Constitution and the Law and, by doing so, contribute to strengthening of the role and reputation of civil service”²¹⁷. When dealing with some administrative cases and acting outside civil service, the civil servants are expected to comply with

the provisions of these Codes. All employees in civil service, as well as the civil servants who commence their employment in civil service, are required to sign a statement that they are conversant with the provisions of the Code.

According to the 2005 public opinion poll conducted by Prism Research agency, when asked how much confidence they have in public services, 20.4% of the BiH institution employees, 20.6% of the FBiH employees, 20.3% of the RS institutions employees, and 18.1% of the Brčko District employees responded “No confidence at all”²¹⁸.

Are these codes nation-wide, local, or sector-specific? Are there rules on conflict of interest? Are they effective?

There are no sector-specific codes of conduct for civil servants, rather they are applied at different levels of government. The Code of Ethics for Civil Servants in FBiH applies at all levels of governance in FBiH (Entity, cantons, cities and municipalities). In RS the Ministry of Administration and Local Self Governance has drawn up a special Code of Conduct for Civil Servants in Local Administration Units²¹⁹, which applies to the civil servants working in local administration (cities and municipalities). The Law on Civil Service in RS Administration applies only at the level of RS (and consequently the Code of Conduct adopted by the RS Agency for Civil Service applies only to the civil service bodies at the Entity level), while the status of the civil servants working in local administration is governed by the Law on Local Self Government.

The Laws on Civil Service and Codes of Conduct contain provisions dealing with conflict of interest (gifts and benefits, membership in political parties, associations and other organisations, availability of funds/incomes, additional activities, etc.). In addition to that, the Council of Ministers of BiH issued a Decision governing the cases in which civil servants may be allowed to perform additional activities²²⁰. The Decision lays down conditions that a civil servant is required to fulfil in order to perform additional remunerated activities. “The additional activity may be performed if it is not incompatible with the duties of the civil servant under the applicable regulations and if it is in line with the present Decision”²²¹.

In addition to that, the Laws on Civil Service contain provisions on incompatibility with the position of civil servant: a civil servant may not exercise a function or be in a position which constitutes conflict of interests with their official duties, nor perform such activities for which remuneration is provided, unless this is specifically approved by the Minister or the Head of the administrative body²²².

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

YES – As already mentioned, civil servants must “neither pursue nor accept any gain, benefit, advantage in monetary, service or other kind for themselves or for their relatives”²²³. Likewise, the Codes of

Conduct strictly forbid civil servants from accepting any gift, benefit or gain in money or services for their work and the failure to comply with such provisions may constitute a disciplinary offence.

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

NO – There are no registries that would record gifts received by civil servants.

Are there restrictions on post public service employment? Are these restrictions adhered to?

PARTLY – Article 16 of the Law on Civil Service in the Institutions of BiH provides for restrictions on post public service employment: “a civil servant who has been released from office may not, within two years after the date of release of office, be employed by an employer over whom, or join a company over which, he/she exercised regular supervision”²²⁴. It is important to note the following: first, this ban applies only to civil servants who have been “released from office”, not to civil servants who left civil service willingly.

Civil servant is “released from office” only if he/she has been dismissed from the civil service as a consequence of a disciplinary measure or in case of two consecutive negative performance appraisals. Secondly, a civil servant who has been “released from office” may not, within two years after the date of release of office, be employed by an employer over whom he/she exercised regular supervision. This is a situation when the “employer” used to be a civil servant subordinated to the civil servant who has been “released from office”, and who now runs his/her own private business. This means that the “released” civil servant is not forbidden from starting his/her private business, even in the same branch of business that he/she used to manage while in civil service, but the Law only applies to the employment with a specific employer. Thirdly, a ban on employment of the “released” civil servant in the firm that he/she used to regularly supervise makes sense, but the civil servant who is not “released” can freely join a company over which he/she exercised regular supervision, which is a deficient legal solution.

5. Transparency

What kind of disclosure rules governs the civil service?

“A civil servant is obliged, when nominated or appointed, to disclose all the information on his/her property, as well as the information on the activities and duties performed by his/her family members”²²⁵. This information is kept in the records of the Civil Service Register in accordance with the regulations on protection of data.

Do some civil servants have to disclose assets? Does this take place in practice? Who is monitored?

YES – As mentioned above, civil servants are required to disclose all the information on their property (and the property of their closest family members).

Is such disclosure required to be publicly accessible? Is it?

NO – The Law on Protection of Personal Data²²⁶ governs, *inter alia*, availability of data on civil servants to the public. Without the consent of the civil servant concerned, third persons are not able to access these data. In addition to that, the Law on Freedom of Access to Information²²⁷ contains very restrictive provisions regarding access to personal data. A relevant authority may claim an exemption [from the protection of personal data] where it reasonably determines that the requested information involves the personal privacy interests of a third person²²⁸. The Decision governing establishment of exemptions from the disclosure of information and determination of confidentiality of data from the Central Register of Civil Servants²²⁹, which was issued by the Head of the Agency for Civil Service of BiH on 18 May 2004, provides that individual personal data from the Central Register of Civil Servants, which is maintained by the Agency for Civil Service of BiH, are exempt from disclosure and all such data are confidential²³⁰. Exceptions are the following data: surname, father's name and first name of the civil servant, position in civil service, institution in which the civil servant works and other non-personal data.

Must procedures and criteria for administrative decisions be published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc)? Are they?

NO – Individual decisions dealing with the rights and obligations of individuals and legal entities are not published. According to the Law on General Administrative Procedure, an administrative body must issue a decision which contains reasons for granting or denying a request of the party concerned. This means that the party concerned is given reasons why their request was granted or denied, but the general public is not informed of individual cases. The aggrieved party is entitled to lodge an appeal against e.g. the decision denying a building permit. Administrative proceedings against final administrative acts can be instituted before a relevant court.

To what extent are there electronic provisions for public services, i.e. making use of the internet? Have these demonstrably had an impact?

On 20 October 2004 the Head of the Agency for Civil Service of BiH passed a Rulebook on Acceptable Use of the Internet by Employees of the Agency for Civil Service²³¹. However, this Rulebook applies only to the employees of the Agency for Civil Service of BiH, while there are no similar documents that would govern use of the Internet in other administrative bodies. In addition to that, in late 2005 the Agency for

Civil Service of BiH, in co-operation with UNDP, launched an E-Government project²³². The purpose of this project is to assess the current situation with regard to utilisation of the Internet in public administration and to give recommendations with relation to the use of ICT for delivering services to citizens and businesses by electronic means.

6. Complaints/enforcement mechanisms

What are the provisions for whistleblowing on misconduct in the civil service/public sector? Have these been exercised?

Official and responsible persons in all governmental bodies, public companies and institutions are legally obliged to report criminal offences that they have been informed of or have knowledge of. These include criminal offences against official duty or other responsible duty (also known as criminal offences of corruption). In such cases, the official or responsible person must take measures to secure the evidence of the criminal offence. The offence is reported to the police or to a relevant prosecutor's office.

If the official or responsible person fails to report a criminal offence or a perpetrator, he/she may expose themselves to criminal prosecution²³³. In addition to that, the Criminal Code of BiH (as well as the Entity criminal codes) defines the criminal offence of disclosure of official secret²³⁴, which comes into force if an official or responsible person in the institutions of BiH without authorisation communicates, conveys or in any other manner makes accessible to another person information which constitutes an official secret, or obtains such information with the aim of conveying it to an unauthorised person.

On the other hand, the Law on Civil Service in the Institutions of BiH²³⁵ provides that if a civil servant receives an allegedly illegal order from his/her superior, they shall draw the attention of the issuer of the order to its illegality. If the issuer of the order repeats it, the civil servant is entitled to request a written confirmation indicating the identity of the issuer and the precise content of the order. If the order is confirmed, the civil servant shall notify the immediate superior of the issuer of the order but remains compelled to perform it unless the order constitutes a criminal offence. In such a case, the civil servant shall refuse to perform it and report the matter to the relevant authority.

Although there is a legal obligation to report criminal offences and breaches of discipline, there are no relevant sources that could confirm that whistleblowing on misconduct in the civil service indeed takes place. The very fact that the organisation chart requires corruption to be reported to the immediate supervisor places the individual in an awkward position, as the superior may often be aware of the illegality or even take part in it. Only the head of an institution may initiate disciplinary proceedings against an employee.

What kind of oversight mechanisms are in place for such organisations?

There are three different oversight mechanisms for public administration bodies:

- a) control of legality of administrative acts: by means of lodging an appeal through an administrative procedure or through court control of final administrative acts – administrative court proceedings (provided for in the laws on general administrative procedure and laws on administrative court proceedings);
- b) inspection oversight of the application of relevant laws: through administrative inspections. These inspections oversee the application of the Law on General Administrative Procedure when administrative bodies regulate rights and obligations of citizens and legal entities; and
- c) administrative oversight of a public authority, which is carried out by the heads of administrative bodies. This oversight takes place through application of rules regarding the observance of work discipline and in particular through application of the Codes of Conduct for civil servants.

Who investigates allegations of corruption committed in the civil service?

The Criminal Procedure Code of BiH²³⁶ and the Entity criminal procedure codes stipulate that criminal proceedings may only be initiated and conducted upon the request of a relevant prosecutor (accusatory principle). In addition to the prosecutor, the other actors who participate in the investigation into alleged corruption include police, which acts under the prosecutor's supervision, as well as courts, which act through the preliminary proceeding judge and preliminary hearing judge.

What powers of sanction are in place against civil servants? Have they ever been invoked?

As already explained, criminal sanctions may be imposed against civil servants in criminal proceedings when a final judgment is issued pronouncing a civil servant guilty (amercement or prison sentence). Other criminal sanctions that can be imposed on civil servants include: conditional sentence and security measures (e.g. ban on performing a certain occupation, activity or duty).

Unfortunately, the official websites of the highest instance courts in BiH (the Court of BiH, the Supreme Court of RS, and the Supreme Court of FBiH) do not contain statistics data on the number of judgements delivered with regard to criminal offences against official and other responsible duty (that are committed by civil servants), but only data on rulings of courts in criminal proceedings for all offences.

On the other hand, the Laws on Civil Service provide for disciplinary and material liability of civil servants. The Law on Civil Service in the Institutions of BiH²³⁷ defines disciplinary sanctions that may be imposed against a civil servant following an appropriate disciplinary procedure: written warning; written reprimand; suspension of the right to participate in open competitions during a maximum of two years; punitive suspension of duties and salary during a period from two days up to 30 days; downgrading to a

lower position or category; and dismissal from the civil service. Likewise, Article 58 of the Law provides for 'preventive suspension', i.e. a situation in which a civil servant is immediately suspended if criminal proceedings for a criminal offence of corruption or criminal offences against an official or other responsible duty committed during his/her operations are instituted against the civil servant; and/or if he/she is held in preventive detention. A civil servant is held responsible for any damage that they have intentionally caused to the civil service authority in their work²³⁸.

How successfully has corruption been targeted by this institution, as an internal problem? An external problem?

In BiH corruption is treated primarily as an external problem. Perception of corruption is very high. In 2005, BiH shared 88-96 position at the global TI Corruption Perceptions Index²³⁹ among 159 countries ranked. It is also important to note that corruption is commonly perceived to be most widespread in those governmental bodies that citizens generally have most interaction with, and civil service traditionally has the closest contact with citizens. In that respect insufficient efforts have been invested in eradicating corruption and the Agency failed to reach its goal of exterminating or at least reducing corruption in the public sector/civil service.

Have civil servants been investigated or prosecuted in the last five years?

PARTLY – in 2005, the RS Ministry of the Interior brought 117 criminal charges against 174 persons on suspicion of abuse of office or official authority²⁴⁰. "Police identified nine criminal offences of bribery and criminal offences against official and other responsible duties: three cases of abuse of office or official authority, three cases of malfeasance in office, one case of counterfeiting an official document, one case of fraud in office, and one case of accepting gift and other benefits"²⁴¹.

"When particularly significant cases such as criminal offences against economy, payment operations and official duty are concerned, in 2005 the prosecutor's offices conducted a total of 931 investigations against 1,401 persons, of which 487 investigations against 637 persons (or 52.4%) were completed, while 443 investigations were still in progress at the end of the year"²⁴².

What capacity is there for citizen complaints/redress?

Civil Service bodies are legally obliged to consider submissions, petitions and proposals that the citizens file with them, to act upon them and to inform the citizens accordingly²⁴³. "More than 30 percent of the complaints made by citizens to the TI BiH's Centre for Legal Assistance referred to the administrative bodies, local governance organs and other public services"²⁴⁴.

Is there a particular right of redress regarding employment?

Vacancy for a civil servant position may be advertised either internally or through open competition. If a vacancy for a civil servant position exists within an institution, the institution shall first advertise this vacancy internally²⁴⁵. This is the so-called internal transfer of a civil servant within the institution (only a vacant position of a specialist with secondary school qualifications can be filled through an internal transfer pursuant to Article 6 of the Rulebook on the Agreed Rules and the Procedure for Implementation of the Open Competition Process for Recruitment, Selection and Appointment of Civil Servants)²⁴⁶. In all other cases, the vacant position is filled through open competition. Based on the submitted applications, the Agency for Civil Service administers a written exam, and after that conducts an interview with the candidate. Upon the interview, the chair of the committee (within the Agencies) draws up a list of successful candidates in order to accomplish and propose selection of the most suitable candidate. The selection committee submits to the Agency the documentation related to the election of the candidate, whereupon the Agency confirms that the election of the candidate was carried out in accordance with the law. Also, the Agency submits a written proposal to the head of the administrative body concerned to employ the best proposed candidate. Decisions of the Agency are subject to appeal before the Civil Service Board²⁴⁷. Decisions of the Board are final but are subject to court review, depending on the level of the Board (BiH or Entity level).

7. Relationship to other pillars**To what extent is this institution/sector a key part of this country's NIS?**

In the governance system in BiH, the basic functions of the executive branch are performed through the civil service. The newly-adopted legislation safeguards civil service against unjustified removals that might otherwise happen as a result of post-election changes in the legislature and the executive. Given the role of the executive in comparison to the other two branches of government (the legislature and the judiciary) and the marked tendency towards the strengthening of the executive (particularly in relation to the legislature), the civil service as the main implementer of political and legal actions of the executive branch represents one of the most important pillars of integrity.

Which other pillars does it most interact with? Rely on, formally and in practice?

Civil service mostly interacts with the executive. Civil service, generally speaking, does not and cannot exist outside the system of the executive. Formally speaking, civil service constitutes a legal mechanism by means of which, after elections, the appointed members of the executive branch implement their policy and enforce laws and other regulations.

Are there others with which it should engage more actively?

Civil service should engage more actively with:

- Judiciary: with regard to the enforcement of court judgements delivered in administrative court proceedings (court control of administrative acts), by being more efficient in acting upon instructions issued by the court while issuing decisions on rights and obligations of natural persons and legal entities;
- Ombudsmen: with regard to the observance of human rights and compliance with ombudsmen's recommendations;
- Civil society: with the aim of creating partnerships with civil society for the purpose of promoting democracy and the rule of law;
- Business community: with the aim of creating an environment that is conducive to doing business. In its relations with the business community, civil service should be supportive in terms of facilitating the process of business registration, operations as well as during inspection controls and not represent a bureaucratic hurdle;
- Local administration and self government: civil service should make an additional effort to harmonise its activities with the bodies of the local administrations and self government with the aim of creating uniform policies and procedures so that the beneficiaries of the services offered by civil service, local administration and self government are not faced with an unequal address of the same problem by these institutions.

If relevant, what role do public servants play in the decisions regarding privatisation?

According to the existing legislation in BiH, privatisation is within the purview of the governments and Agencies for Privatisation (one agency at the level of RS, one for FBiH as well as one in each Canton, and one in the Brčko District). The privatisation agencies report to their respective governments. The directors of the privatisation agencies and persons working in them have the status of civil servants. However, privatisation of every economic entity is conducted by commissions (for tender sale, special auctions) whose members are appointed by the director of the agency²⁴⁸. Civil servants employed in the agency cannot be members of these commissions but can act as advisors to the commission. There are no indicators that would show the impact of civil servants on the privatisation process.

Law enforcement agencies

1. Role(s) of institution/sector as pillar of NIS

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

Reforms such as changes and amendments to the legal framework allowing public prosecutors to tackle corruption more effectively have intensified over the last six years. At the same time, changes to the criminal and procedural laws expanded the powers of public prosecutors and the police for utilisation of mechanisms for detection of perpetrators of criminal offences, including criminal offences of corruption²⁴⁹. Furthermore, a number of laws and legal provisions have been passed with the aim of eliminating institutional gaps that allow public officials at all levels to engage in various forms of corruption.

New legal regulations governing the scope of work and organisation of the executive²⁵⁰ establish in more detail the status, rights and duties of civil servants with the aim of reducing the influence of political parties and groups on the conduct of civil servants and helping civil service fulfil its main function – implementation of the law and public interest. Judicial reform was carried out with the same goal – to prevent political influence on judges and prosecutors and eliminate cronyism and corruption in the judiciary and prosecutor's offices.

Legal instruments available for use by the police and public prosecutors for prosecuting cases of corruption are: European Union Convention on the Fight against Corruption and Criminal Codes (BiH, FBiH, RS and Brčko District)²⁵¹.

Are prosecutors able to include the military in their remit? Do they do so in practice?

NO – Anti-corruption combat is not within the remit of the military. However, due to the peculiar political situation in BiH, which is under the monitoring (or, unofficially, under the protectorate) of international security forces, the international armed forces making up the EUFOR Mission have been engaged in anti-corruption combat over the last two years through preventative campaigns, but also in the form of concrete investigative actions. Such investigations have been triggered by the possibility of using illegal incomes for funding of the war crime suspects at large, and these materials are forwarded to the Court of BiH or the Hague Tribunal, as applicable.

Is there formal independence of the police? Public prosecutors? Are the police independent in practice? Public prosecutors?

PARTLY – The police in BiH are a part of the executive and are organised at three levels: State, Entity and cantonal. In addition to these three levels, there is also police of the Brčko District which is organised according to a separate law and is now, both formally and in practice, independent from other police structures in BiH.

Formal independence of the police can be considered from the point of view of ‘new’ and ‘old’ police structures. Until 2000, the police of BiH operated through two completely separated Entity Ministries of Interior, which were, both formally and in practice, entirely controlled by the ruling political parties or centres of power from within and outside the system. The ruling political majority appointed the Entity and cantonal Ministers of Interior, and they in turn recruited all leading staff from heads of investigation departments to heads of police units. Although there were rules of procedure governing promotion and attainment of ranks in the police, the leading positions were not always filled with the best and most experienced personnel, but with individuals closely affiliated with the ruling parties. In several cases, politically active individuals, who were not even employed in the police, were appointed as heads of public security centres.

Although the laws were partly modified, the Entity police remain influenced by political structures. The Ministers of Interior in both Entities are appointed by the ruling political parties, and all other positions, with the exception of the police director, are filled through internal appointments, as selected by the Minister or the police director, which gives these heads ample room for appointing loyal or partisan people to key positions. Given such situation and in view of other reasons relating to the establishment of more efficient police structures, based on the Communiqué of the Peace Implementation Council Steering Board dated 7 April 2005, an Agreement on Restructuring of Police Structures was signed on 5 October 2005²⁵². The principles were established by the European Commission and they constitute a basis for the reform of police structures in BiH. The second principle contained in this agreement is elimination of any political interference in the operational work of the police.

The newly established agencies, created over the last few years (State Investigation and Protection Agency – SIPA, State Border Service – SBS), as well as police of the Brčko District do enjoy a certain level of formal independence. Operating and managerial positions in these agencies are filled through public competitions under the supervision of the international community, which makes their work more independent and political interferences less felt. However, during the establishment of these agencies there was a visible separation by ethnicity. The ethnic quota principle determined how many officials and employees must be selected from each of the three constituent nations and which ethnic group will secure the position of the head of a particular agency. The appointment of the Director of SIPA sparked off a crisis in the executive a year ago. The Chair of the Council of Minister, Mr. Adnan Terzić (a

Bosniak), addressed the media stating that he removed the Minister of Foreign Affairs, Mr. Mladen Ivanić (who is a Serb), because he influenced in mid-2005, in contravention of the agreement between political parties, the appointment of Mr. Sredoje Nović as the Director of SIPA, although this position should have been filled by a Croat²⁵³. This only goes to show that the public competitions for this and similar positions are meaningless and absurd. So far, the ethnic quota principle that is applied in new police agencies has proved to be a significant obstacle to their efficiency and independence because, among other things, there is a lack of mutual trust among staff of different ethnic origin working in these agencies²⁵⁴.

In addition to the abovementioned police agencies, the Intelligence and Security Agency of BiH (ISA) was established in 2004, which had operated by that year as part of the Entity security system. The Intelligence and Security Agency of RS and the Federal Intelligence and Security Agency (FOSS) merged into ISA. In addition to collecting security intelligence important for BiH, this agency is responsible for fighting organised crime and terrorism. However, ISA does not have the police powers, so its work stops at the collection of intelligence and submitting it to the Council of Ministers and law enforcement agencies at the State level. General Director and Deputy General Director of ISA are appointed and removed from office by the Council of Ministers, following the proposal of the Chair of the Council of Minister and in consultation with the members of the Presidency, Steering Board, and Intelligence and Security Commission²⁵⁵. The responsibility for overseeing the work of the Agency rests with the Presidency of BiH, Council of Ministers of BiH, and Executive Intelligence Committee as well as with the Parliamentary Assembly of BiH through the Security and Intelligence Commission, as the joint commission of the both House of Representatives and the House of Peoples.

The judicial reform in BiH was carried out more thoroughly and a legal framework was created for increased independence of judges and prosecutors in practice. Prosecutor's offices at all levels in BiH are part of the judiciary and the appointment to prosecutorial office is formally outside the control of governments and parliaments, which is considered the best solution for a transition country such as BiH.

According to the Law on Prosecution of RS²⁵⁶, imposed by the High Representative for BiH, the Prosecutor's Offices are autonomous state bodies which, within the rights and duties of RS, undertake, as provided by Law, certain measures concerning the investigation and prosecution of persons that may have committed criminal offences, and file legal expedients for the purpose of protecting legality and constitutionality. An identical legal position of the Public Prosecutor of F BiH is defined in the Law on Public Prosecutor of F BiH²⁵⁷.

All prosecutors, from the level of district/cantonal prosecutor's offices to those at the level of BiH, were appointed, based on the powers vested in it, by the High Judicial and Prosecutorial Council of BiH (HJPC) through open competition. Prosecutors are appointed for life, while the Chief Prosecutor and two Deputy Chief Prosecutors of RS, chief district/cantonal prosecutors, and the Chief Prosecutor and

two Deputy Chief Prosecutors of FBiH have a mandate of six years and may be reappointed only once. The prosecutor's offices, at all levels – from the BiH Prosecution to the Brčko District Prosecution of the – are headed by the chief prosecutors. They have the authority to assign prosecutors within the departments of the same prosecutor's office or to lower prosecutor offices²⁵⁸.

“The Chief Republic Prosecutor shall supervise the performance of Chief District Prosecutor Offices in order to guarantee the legality and efficiency of proceedings. Upon their request the District Prosecutor Offices shall provide case reports with details of measures undertaken by the office”²⁵⁹. The Chief Republic Prosecutor of RS submits, on an annual basis, activity reports to the National Assembly of RS, HJPC, and the Prosecution of BiH. However, the Prosecution of RS enjoys operational independence from the parliament, HJPC and the Prosecution of BiH, while there is a clear subordination within the Entity between the Chief Republic Prosecution and five Chief District Prosecutions. The situation is almost identical in FBiH, with only difference being that instead of Chief District Prosecutions there are Chief Cantonal Prosecutions. More details on this topic may be found in the chapter dealing with the judiciary.

Significant speculations exist about the extent to which the judicial reform yielded independence to the judiciary and the prosecutor offices (as a main segment of the judicial branch). This topic is frequently discussed in the media. In May and April 2006, the Sarajevo print media²⁶⁰ levelled heavy criticism at Ms. Biljana Simeunović, a prosecutor in the BiH Prosecution, for the investigation she conducted in the Communication Regulatory Agency (CRA), accusing her of being governed by partisan and ethnic motives, although the SAI had identified irregularities in the work of CRA. The investigation is still ongoing.

Another important fact is the continuous work of international judges and prosecutors, whose appointment cannot be influenced by HJPC. The responsibility for appointment of international prosecutors to the BiH Prosecution (but not to prosecution at lower levels – districts/cantons) rests with the High Representative. This responsibility stems from the powers vested in the High Representative by Article V of Annex 10 to the General Framework Agreement for Peace in BiH (this is discussed in greater detail in the chapter on international institutions). The BiH Prosecution has 16 domestic and 8 international prosecutors, four of which work in the Special Department for Organised Crime, Economic Crime, and Corruption and another four work in the Department for War Crimes²⁶¹.

Who heads the prosecution agencies/the police?

The Law on HJPC²⁶² establishes HJPC, and regulates its work, organisation, competencies and powers. HJPC appoints Chief Prosecutors, Deputy Chief Prosecutors and prosecutors in all prosecutors' offices at the State, Entity, Cantonal, and District levels in BiH, including the Brčko District. In addition to these appointments, HJPC appoints the Chief Special Prosecutor, Deputy Chief Special Prosecutor and special

prosecutors in the newly-established Special Prosecution of RS. HJPC also receives complaints against judges and prosecutors, conducts disciplinary hearings, determines disciplinary liability, and imposes disciplinary sanctions against judges, lay judges, reserve judges and prosecutors. Oversight of legality and operations of prosecution in conducting investigations, applying investigative measures, in particular special investigative actions, is carried out by the court that approves the measures or confirms indictment in each investigative procedure individually²⁶³.

Following the changes to the criminal-procedural laws in BiH, the work of the police in criminal investigation has been placed under direct control of prosecution, with an aim to increase independence of police from the centres of political power. This, due to the general political dependence of the Entity police forces, only produced limited results. The laws on home affairs regulate the competencies, scope of work, duties and rights of authorised and responsible persons in the police.

The RS Ministry of Interior and the FBiH Ministry of Interior are headed by the Ministers of the Interior. Police tasks are conducted, organised, directed, supervised and guided by the Police Director, who acts as the manager of overall operational tasks. The Police Director is accountable for his/her work to the Minister of Interior and the Government. The procedure for appointment of the Police Director is described later in this chapter.

SIPA is headed by the Director. SBS is also headed by the Director who is elected through public competition, as is the Chief of the Brčko District Police, who is appointed by the Assembly of the Brčko District following the proposal of the commission for public competition.

Control over the police work is exercised by the Entity parliaments, that is, appropriate committees responsible for supervision and oversight of the bodies and institutions in the field of defence and home affairs, as well as by governments, ordinary courts, and independent committees for selection of the police director.

Is the commissioner of police independent? Is it so in practice? Are appointments required to be based on merit? Are they?

PARTLY – All police agencies have internal rules of procedure regulating promotion and attainment of ranks, ranging from junior inspector to chief inspector. In the RS police, an inspector may be promoted by a rank every four years, while in the FBiH police this possibility is granted once every year. Police ranks are awarded based on years of service and achieved results, and ranks should form a basis for appointment to senior functions. What often happens in practice, though, is that an inspector with a junior rank is appointed to a senior function and is, for that purpose, awarded a senior rank. Lack of public competition prevents clear insight into the criteria for appointment or removal of police heads, which casts doubt on their independence.

Is the appointee protected from removal without relevant justification? In practice?

PARTLY – Prosecutors are appointed for life; however, their mandate is subject to resignation, mandatory retirement age or removal from office following disciplinary proceedings. List of disciplinary offences for prosecutors is provided in Article 57 of the Law on HJPC²⁶⁴. Disciplinary offences for prosecutors include violations of the duty of impartiality; disclosure of confidential information arising in the prosecutorial function; neglecting or careless exercise of official duties; interfering in the jurisdictional activity of a judge or prosecutor, with the intention of obstructing their activities or demeaning them; being engaged in activities that are incompatible with the prosecutorial function; and any other behaviour that represents a serious breach of official duties or that compromises public confidence in impartiality or credibility of the prosecutor. Based on the complaints filed by any interested party, the HJPC's Office of the Disciplinary Counsel (ODC) initiates disciplinary proceedings against the prosecutor in question. The procedure takes place in two instances (First Instance Disciplinary Panel and Second Instance Disciplinary Panel)²⁶⁵. An appeal to the full membership of HJPC is possible against a disciplinary measure determined by the Second Instance Disciplinary Panel. The aggrieved party may initiate an administrative dispute against the decision of the full membership of HJPC before the Court of BiH. The following disciplinary measures may be imposed against prosecutors: a written warning which shall not be made public; public reprimand; reduction in salary up to a maximum of 50% for a period of up to one year; temporary or permanent reassignment to another court or prosecutor's office; demotion of a Court President to an ordinary judge or the Chief Prosecutor or Deputy Chief Prosecutor to an ordinary prosecutor; and removal from office²⁶⁶. From 1 January 2005 to 31 December 2005, ODC received a total of 224 complaints about the work of prosecutors. In 2005 three judges and prosecutors resigned from office after ODC initiated an investigation regarding their alleged violation of duty. In five cases joint consent agreement was reached (a voluntary disposition of the alleged disciplinary violation of which the judge or prosecutor is accused)²⁶⁷. This is discussed in more detail in the chapter dealing with the judiciary.

All changes in the structure of the governments in BiH, at the level of the State and the Entities, and appointments of new ministers of the interior are accompanied by changes in the internal structure of the ministry. It is common occurrence that senior police officials (such as heads of police administrations or heads of public security centres, and other senior officials) are reassigned to the position of inspectors, while the previous inspectors are appointed to managerial functions without any explanation as to their qualifications, aptitude or results achieved while in service.

Police Director in the Entity police forces is a newly established professional function. The laws on home affairs in both Entities provide that the Police Director is selected through public competitions and appointed for a mandate of 4 years by an independent committee of the Entity parliament. Similar to RS²⁶⁸, the Law on Home Affairs of FBiH²⁶⁹ provides that the Police Director is selected by the Independent Committee, and the Police Director is selected amongst the candidates who do not have any

political affiliation or engagement, who have at least ten years of police experience, of which four years in managerial positions. The Police Director may be reappointed for another four-year mandate²⁷⁰. However, the experience in the Entity police structures demonstrates that the Police Director leaves office together with the government. This is yet another proof that the political structures find it very difficult to give up the control they exercise over police forces.

2. Resources/structure

How many institutions comprise law enforcement in the country? What are the key institutions (please provide a list)?

The following institutions at various levels comprise law enforcement in BiH:

State level:

- Ministry of Security of BiH
- State Border Service (SBS)
- State Intelligence and Protection Agency (SIPA)
- ISA
- Prosecutor's Office of BiH

Entities:

RS

- Ministry of the Interior of RS
- Public Prosecutor's Office of RS

FBiH

- Ministry of the Interior of FBiH
- Public Prosecutor's Office of FBiH
- 10 cantonal Ministries of the Interior

Brčko District

- Public Prosecutor of the Brčko District
- Police of the Brčko District

What is the budget/staffing of these key institutions?

Budget funds are usually spent on salaries. For example, the budget of the RS Ministry of Interior for 2006 was KM 108.7 million. Of that amount, KM 88.9 million were used for salaries, KM 13.8 million for material costs and services, and KM 5.6 million for capital investment. The amount envisioned for operational purposes, i.e. investigations, is only KM 50,000²⁷¹. Similar situation governs prosecution.

Most budget funds allocated to prosecutor's offices are spent on high prosecutors' salaries and it is not uncommon that courts suspend their work due to lack of funds for basic services. "HJPC was informed by the president of the Basic Court in Sokolac that the public post office stopped delivering their mail because of unpaid bills. Furthermore, the president of the Banja Luka Basic Court was informed that the water supply may be cut off due to unpaid bills"²⁷². Taking the RS example, the budget plan for 2006 envisaged around KM 5 million for prosecutors' salaries and only KM 882,000 for the costs of criminal procedures, overall for the five district prosecutions and the Public Prosecutor's Office of RS²⁷³.

What is the budgetary process that governs law enforcement agencies?

The police budgets are determined by the parliaments in BiH, that is, the Entity, cantonal and Brčko District parliaments, following the proposal by the respective governments. The spending of budgetary funds is subject to the laws governing the budget expenditure²⁷⁴ and is regulated by internal rules of procedure issued by the Minister. The control of expenditure of budget funds is subject to the audit by independent audit firms. The latest report by the RS Auditor General on the financial operations of the RS Ministry of Interior identified a number of irregularities in this Ministry and determined that the funds were spent for purposes other than specified²⁷⁵. Similar irregularities were discovered in the cantonal police structures in FBiH, e.g. in the Herzegovina-Neretva Canton and the Sarajevo Canton²⁷⁶. The budgets for prosecutors, except for the Prosecution of the Brčko District, is created and proposed by HJPC in co-operation with the Chief Prosecutors. The Budgets are adopted by the relevant parliaments.

Do police or prosecutors have access to off-the-books funds?

NO – Significant donor funds have been provided to the joint institutions of BiH over the last five years with the aim of establishing efficient SBS and SIPA, as well as to the Entity police structures, although to a smaller degree. However, over the last few years all donations are channelled through the budgets of the relevant level of the executive, so they are entered in the books in accordance with the law. Some of the activities, such as "Krimolovci" [*Crime-Stoppers*], remain funded to a significant extent by international donors. Similar donations are given to the prosecution, among which the BiH Prosecution is the largest beneficiary.

The budgets of the prosecution maintain no off-the-book funds for special investigative actions, while in the Entity Ministries of Interior these funds are envisioned in the regular books and they are managed by the Police Directors. However, the abovementioned audit reports indicate embezzlements of public funds, which can be compared, in terms of criminal offence, to abuses of off-the-book funds.

3. Accountability

What kind of laws/rules govern oversight of key law enforcement agencies? Are these laws/rules effective?

The Law on the State Investigation and Protection Agency²⁷⁷ regulates the responsibilities and organisation of SIPA as the police authority of BiH. The Law on State Border Service²⁷⁸ regulates the work of this institution. The scope of work of the RS Ministry of Interior is regulated by the Law on Home Affairs²⁷⁹. The home affairs in FBiH are regulated by the Law on Home affairs of FBiH²⁸⁰, while the operation of the Brčko District Police is regulated by the Law on the Police of the Brčko District²⁸¹. Effectiveness of these laws is directly proportionate to the results that these institutions achieve in protection of legality, that is, anti-corruption combat.

Effectiveness of the laws is also impaired by the fact that there is very little State-level co-ordination among the police structures, that there is no single database, and that the competencies of the State and Entity policy agencies are not clearly separated. Another important factor affecting efficiency of the police agencies is lack of technical equipment and insufficient funds for operational expenses.

Negotiations on the police reform in BiH have been on-going since 2005. The aim of the reform is to make the police more efficient, more professional, and better organised, with a single management system throughout BiH and headquarters in Sarajevo. The Agreement on Restructuring of Police Structures, signed in October 2005 contains the following European principles determined by the European Commission, the acceptance of which presents the requirement for the start of negotiations on the part of BiH on the association and stabilisation with the European Union:

- All competencies for legislature and budget issues concerning the police must be vested at the State level,
- No political interference in the operational work of police,
- Functional local police areas must be determined by technical policing criteria, where operational command is exercised at the local level²⁸².

The Agreement on Restructuring of Police Structures must be implemented within 5 years, starting from the day the Agreement comes into force. The working body responsible for implementing this Agreement is the Directorate for Police Restructuring Implementation.

OHR thinks that the political parties “must enable the Directorate for Police Restructuring Implementation to finalise its report by the end of November 2006”. The High Representative emphasised that that the political agreement from October 2005 remains the basis for police restructuring. “The Directorate for Police Restructuring Implementation must continue fulfilling its task. Mr. Javier Solana and the European Enlargement Commissioner Mr. Oli Rehn have clearly stated that they expected the Directorate to accelerate its work”, said Mr. Schwarz-Schilling in late 2006²⁸³.

“BiH needs strong, trustworthy and efficient police. In order to be worthy of every citizen’s trust, the competencies for the police must be vested at the State level. Only in this way will the police work in BiH be real work for all of its citizens. The Entity borders must not be the only criterion for establishing police areas. In many places in BiH, the Entity borders are not always drawn up so as to ensure an efficient police work. Whoever insists on a strict respect of the Entity borders in these places wants to prevent the establishment of efficient police”²⁸⁴ stated a representative of the international community, which remains highly interested in accomplishing such political changes.

However, officials in the country, especially in RS do not share this opinion. They justify their view with the decentralised constitutional organisation of BiH and large centralising changes that this reform would trigger: “The police reform will be in line with the Agreement on Restructuring of Police Structures at the level of BiH, which must be consistently implemented. The Government will demonstrate the necessity of organisational and any other strengthening of the RS police as part of the security structure of BiH” said Prime Minister of RS, Mr. Milorad Dodik, defending the position of the Entity police²⁸⁵. “However, we will persist in our demand that RS should have its own police. This must not be a mere technical issue, but a matter of political consensus”²⁸⁶.

To whom must the police report, by law? To whom must prosecutors report? Does this accountability take place in practice?

Director of SIPA is accountable for his/her work and the work of SIPA to the Minister of Security of BiH and the Council of Minister. The report on the work of SIPA is submitted to the Minister of Security. The Ministry of Interior of RS (MI RS) is obliged, at least annually, to submit a report on its work to the National Assembly of RS. For the purpose of establishing co-operation with the Committee responsible for supervision and oversight of the bodies and institutions in the field of defence and home affairs, MI RS is obliged to allow the Committee to supervise and oversee its operations and, as a part of this supervision, to submit quarterly reports on its work as well as any other reports as per the Committees request. In addition to that, MI RS is obliged to report to the President of RS on all important issues. The Ministry of the Interior of FBiH (MI FBiH) submits a report on its work to the Prime Minister of FBiH, President of FBiH and Parliament of FBiH, at least twice a year. Ten cantonal interior ministries have large powers in comparison to MI FBiH, which is a major stumbling block to efficient work of the police in BiH.

The Chief Prosecutor of RS oversees the work of district prosecution with the aim of ensuring legality and effectiveness of the procedure. At the request of the Chief Prosecutor, district prosecution must submit reports on cases with detailed description of actions undertaken. Once a year or upon request, the Chief Prosecutor of RS reports, in written form, to the National Assembly of RS and also submits their report to HJPC and Prosecution of BiH. The reporting procedure is identical in FBiH, where the Federal Prosecutor is connected with cantonal prosecutors. The crime police assigned to the prosecutor for the conduct of investigation are not directly responsible to him/her, but to the immediate superior in MI, which implies a direct influence of the executive on the preparation of indictments. If a prosecutor is dissatisfied with the co-operation with the assigned police officers, they cannot do anything to change this.

Reports that MI produces for purposes of the prosecutors often contain serious allegations of criminal offences against individuals, but the prosecutors remain too slow in bringing charges. This is illustrated by an example from central Bosnia. The report by the police administration of MI FBiH, which conducted an investigation into the financial operation of “Elektrobosna” and “Elektrobosna-N” in January 2005 at the request of the BiH Prosecution, provides a list of 13 persons suspected of contributing to the bankruptcy of the company. No indictment has been brought against any of the thirteen suspects so far²⁸⁷.

Is the public required to be consulted in the work of law enforcement agencies? Does this consultation take place in practice?

Law enforcement agencies communicate with the public through spokespersons, or the head of the agency addresses the public in person. Agencies do not consult the public in their work, but citizens are allowed to submit proposals.

4. Integrity mechanisms

Are there rules on conflict of interest for police? For prosecutors? Are they effective?

YES – The rules on conflict of interest for police and prosecutors, that is, all elected officials, executive officeholders or advisers are regulated by the Law on Conflict of Interest in Governmental Institutions of BiH²⁸⁸. In addition to that, the rules of procedure of the MIs provide for even more detailed restrictions for authorised persons, whose close family members cannot have private business that might raise suspicion as to whether the police officer will abuse his/her position for a private gain.

There is not much information available to the public on whether these provisions are effective and whether the police officers and prosecutors adhere to them. The work of the internal control inspectorate

in all police agencies is not open to the public, and police officials do not willingly publish information on internal investigations, except in extreme situations²⁸⁹. According to the abovementioned report by ODC²⁹⁰, far fewer complaints were received about the work of prosecutors in BiH than about the work of judges, and no disciplinary measures were imposed.

However, involvement of the crime police in investigation can be a very sensitive issue, because certain individuals are frequent sources of influence on the investigation due to their connection with political circles or connection of their superiors with politicians. Apart from that, the information obtained in investigation can be easily sold for significant amounts of money, despite it ruining the investigation and the evidence collected. Therefore, the police connections with the ruling elites are not adequately regulated in the laws.

Similar is the case when logistics support is expected in investigation from other law enforcement agencies such as tax administration. Prosecutors say that it suffices to warn an individual that he/she is under investigation for the whole investigation to fail, and this is how 'informers' protect members of the same groups²⁹¹.

At the same time, mutual accusations for failure to act in investigations of corruption multiply: "I am disappointed in the Central Bosnia canton and the Livno canton because of activities that the prosecutor's offices in these two cantons undertake in the conduct of certain investigations. As things stand now, it looks as if there was no crime at all in these cantons", says Mr. Zufer Dervišević, Head of the FBiH Financial Police. "We find that there is crime, and they do not act on our orders", says Dervišević²⁹².

Are there rules on gifts and hospitality for police? For prosecutors? Are they effective?

PARTLY – Article 10 (Accepting Gifts) of the Law on Conflict of Interest in Governmental Institutions establishes the rules on gifts. The Law provides that elected officials, executive officeholders and advisors (including those in the police and prosecutor's offices) may keep a gift in the amount not exceeding KM 100. However they may not keep any gifts exceeding the value of KM 100 and they are bound to report them to the Election Commission of BiH, whereupon these gifts become the property of BiH. There are no data on any gifts being reported by the police or prosecutors.

Are there post employment restrictions? Are these restrictions adhered to?

There are no post employment restrictions for the police or prosecutors. However, prosecutors are *inter alia* forbidden to engage politically. Political neutrality is mandatory for all authorised persons in the police force as well as for all civil servants working in the interior ministries.

5. Transparency

Are any police officials/prosecutors required to disclose assets? Do they? Is there any lifestyle monitoring?

YES – When applying for the position of police director, candidates are obliged to enclose a statement on their assets, which is made available to the public. There is no lifestyle monitoring, nor does the law require any record to be kept that might be disclosed or made publicly accessible.

Who is monitored? Must any records of such assets be disclosed publicly? Are they?

According to the Law on HJPC, all candidates applying for prosecutorial or judicial office are obliged to fill in the form on observance of property laws. In this form, the candidates, and subsequently elected judges and prosecutors, report all their assets and real property as well as the property of their family, earlier places of residence and housing status and other relevant information on property status. Once a year all prosecutors are obliged to report any changes to their property status that have taken place over the last year. So far, the data on assets of police officers and prosecutors have not been made publicly accessible. There are no rules forbidding publication of these data.

What aspects of law enforcement work are required to be publicly disclosed? Does this take place?

The MIs are by law open to the public and the media, except where publication of certain data would compromise the results of the police operations or public security, or would be in contravention of the law. For the purpose of achieving the principle of openness of work in the interest of security, the MI must inform individual persons and legal entities and other Entity authorities of any matters that might be of interest for their protection and security. What is more, Article 12 of the Law on Home Affairs of FBiH²⁹³ stipulates that the MI FBiH and Police Directorate must, at least once a month, inform the public of the issues falling within their scope of duties as well as of the measures taken to solve these issues. In accordance with the law, the Head of the Brčko District Police is responsible for ensuring transparency of the Police work and providing, in the interest of public security, individual persons and legal entities with all the information that might be of interest for their protection. The law does not regulate the SIPA's relations to the public, but in practice SIPA subsequently informs the public of some of its actions, through spokespersons.

Police structures have their own rules of procedure concerning public relations and in particular relations with the media. In addition, the Law on Freedom of Access to Information is binding for all state bodies.

6. Complaints/enforcement mechanisms

What provisions exist for whistleblowing on misconduct in law enforcement agencies?

Within SIPA there is an Internal Control Department which is responsible for conducting internal investigation in accordance with complaints on misconduct of SIPA employees as well as in cases of use of excessive force or firearms, corruption, and abuse of power by police officers. However, ever since it was established, SIPA has not conducted a single investigation into any of such issues or worked on any such case. The first case investigated by the Internal Control Department is still ongoing, so information is not available to the public. The case was initiated following the “Paint Revolution” against members of SIPA who were securing the building of the BiH Presidency. In late September 2006, members of the youth NGO “Tutto Completo” from Kakanj threw paint at the building and caused minor injuries to two members of SIPA who were securing the building²⁹⁴. The public is not informed whether the investigation relates to malpractice or use of excessive force. SIPA also has a hot line “Crime-Stoppers” (0800 20505) for reporting organised crime, corruption, providing information in connection with war crimes, etc., which could also be used for reporting information in connection with abuses in law enforcement agencies. No information is publicly available on whether there have been any cases of whistleblowing on misconduct in law enforcement agencies.

IN RS the law provides that citizens and legal entities may file complaints and proposals concerning the work of MI RS to the Complaints Department, which is obliged to inform the person who filed the complaint of the outcome of the complaint procedure. Police Directorate has the Internal Control Inspectorate to which citizens, parties to the procedure, or authorised persons may file reports on misconduct by the police, whether because they exceeded their powers, or failed to follow the procedure, or are suspected of corruption. The Inspectorate reports to the Police Director. The findings of the Inspectorate are considered by the Police Director, who decides on sanctions against members of the police. Likewise, individual persons and legal entities can file complaints against the Police Director with the independent board for selection of the Police Director, on the basis of which the board can even consider his/her removal from office.

Within MI FBiH there is the Public Complaints Office, composed of one chair and two members, one of which is a representative of MI FBiH and two are members of the public. In Brčko District, police must consider all complaints, grievances or proposals, and respond to them in writing. All complaints, grievances, proposals and responses by the Police Director must be included in the report to be submitted to the District Assembly.

The Law on HJPC defines protection of the public and the judiciary from judges and prosecutors who fail to comply with professional and ethical standards. The Law on HJPC provides clear and transparent criteria for conduct of disciplinary proceedings against judges and prosecutors by ODC.

Finally, citizens can report misconduct in law enforcement agencies through TI BiH's toll-free hot line (0800 55555), which is, unlike "Crime-Stoppers" hotline, exclusively dedicated to reporting cases of corruption. Since it was put into operation in 2004, over 8,500 calls were received from citizens reporting different types of irregularities including misconduct in law enforcement agencies. Whenever relevant conditions were met, such cases were forwarded either to a higher instance authority or directly to the prosecutor's office. A part of these reported cases resulted in institutional sanctions against persons found to have abused office, and several employees were dismissed. Information about the results of the hot line is regularly updated on TI BiH's website (www.ti-bih.org).

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

Since the Dayton Agreement was signed, all police structures in BiH have been under the monitoring of the international police forces. Until 2004, the monitoring was carried out by IPTF. After that, the monitoring responsibility was transferred to EUPM. Citizens can contact EUPM if they believe that the police have not adequately conducted an investigation or responded to security needs. EUPM has introduced the toll-free phone line at the level of BiH for reporting criminal offences – "Crime-Stoppers" – which citizens may also use for anonymously reporting cases of corruption. The project was funded by the Government of the United Kingdom in the amount of € 120,000. Since March 2005, when SIPA took over the responsibility for this project, over 20,000 phone calls were received, on the basis of which 1,450 useful pieces of information were reportedly collected. Many investigations were launched on the basis of these information, and a total of 37 persons were arrested²⁹⁵.

In certain circumstances, citizens may file complaints against any public services or public enterprises, even against the police, courts, prosecutor's offices, etc. with the relevant Ombudsperson's office. If corruption, due to action or failure to act in accordance with the rules of these institutions, is regarded as violation of human rights, the Ombudsperson is obliged to receive the complaint and issue in accordance with his/her authority a recommendation to the agency whose employee failed to fulfil his/her obligation or violated the law. The Ombudsperson's office rarely intervenes. For example, MI RS has received only one recommendation from the Ombudsperson's office in connection with the demeanour of police officers during a seizure of a motor vehicle²⁹⁶.

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

Since the State Border Service was established, around 20 employees of that Service were dismissed on charges of being involved in crime, especially trafficking in human beings. Most of them were criminally prosecuted, while some were convicted. A number of staff members of Entity interior ministries were also criminally prosecuted and dismissed for involvement in crime. It is interesting to note that only low ranked police officers or inspectors were criminally prosecuted and against whom disciplinary measures

have been imposed. Noteworthy is also the fact that of the total number of criminal offences of corruption (532) reported in the period 2000-2004, 27.2% (or 145) were committed by individuals employed in law enforcement agencies²⁹⁷.

In 2002 IPTF permanently removed from office the Head of the MI RS Public Security Centre in Bijeljina, Mr. Savo Cvjetinović. In its written explanation, IPTF stated that the official was removed from office in MI RS because he had been involved in women trafficking. However, the local police and prosecutor's office have never launched an investigation to determine criminal liability of the removed official, nor has any investigation been launched against former members of the police who had been barred from the police force by IPTF. During the certification process, IPTF banned around 500 persons from ever working in the police. Only one appeal was upheld – as filed by Mr. Zoran Petrić, Head of the Crime Department of the Public Security Centre in Bijeljina. It is interesting to note that the former High Representative, Mr. Paddy Ashdown, permanently banned Mr. Petrić from the police²⁹⁸.

Are there any cases of corruption within the prosecuting agencies?

None of the judges or prosecutors against whom initiation of disciplinary proceedings was considered or against whom criminal proceedings were conducted, resigned in 2004²⁹⁹.

In the period from 1 January to 31 December 2005, ODC received a total of 1,760 complaints, of which number 244 related to prosecutors. In addition, a total of 243 complaints which were unresolved as of 31 December, 2004 were transferred to 2005. Of the total number of complaints (both those transferred from 2004 and those received in the course of 2005), ODC investigated and processed 863 complaints. As of 31 December 2005, 1,140 complaints remained to be reviewed and investigated, out of which 82 complaints were unresolved from 2004, and 1,058 complaints were unresolved from 2005. In the course of 2005 three judges and prosecutors resigned after ODC initiated an investigation regarding their alleged violation of duty. Various forms of disciplinary measures were imposed against 12 more judges and prosecutors. The HJPC's report does not specify how many of these complaints were in connection with corruption³⁰⁰. To date, no prosecutor has been removed from office.

Are there special units for investigating and prosecuting corruption crimes?

PARTLY – In BiH there are no specialised anti-corruption agencies. Anti-corruption activities are divided between several agencies, which is discussed in more detail in the relevant chapter. Within SIPA, in the Criminal Investigation Division there is a Department for prevention and detection of financial crime and for anti-corruption. In regional SIPA offices, these tasks are performed by teams for prevention and detection of corruption.

Within MI RS and MI FBiH, in the Crime Prevention Administrations there are the Departments for Fight against Organised Crime, while within public security centres/cantonal MIs there are departments responsible for investigating corruption. Crime Unit of the Brčko District Police also has a Department responsible for fighting organised crime and curbing corruption. Competence for curbing corruption often overlaps with the work of the Department for Fighting Economic Crime. In the BiH Prosecution, corruption falls within the remit of the special department for fighting organised crime.

New Draft Criminal Procedure Code provides for the institution of investigator with the aim of increasing the accountability of prosecution (investigators would in this case be selected among citizen ranks).

How many prosecutions for corruption have been undertaken in the past years? How many have been successful? If the number is low, why?

Dozens of investigations are currently conducted by prosecutor's offices against public officials and civil servants for malfeasance in office and suspicion of involvement in crime or corruption, while newspapers are packed with articles on misconduct in civil service. In 2001 and 2002 the District Prosecution of Banja Luka brought indictments against Mr. Milorad Dodik, all the ministers from his former cabinet and a large number of officials for abuse of power. After three years of trial, the court returned a verdict of not guilty for the former and incumbent Prime Minister, some of the ministers were acquitted, while the majority of cases are still pending³⁰¹. However, the very fact that the investigations were launched while Mr. Dodik was in the political opposition compromises the integrity of judiciary and prosecution as they do not launch investigations or bring charges against these persons while they hold high offices, but when they leave office, as per the instructions of the new ruling elite. These investigations and court trials are therefore used as a means for exerting political pressure. In cases when court trials are brought to conclusion, sanctions imposed are not severe and include minimal fines, conditional discharge or several months' imprisonment³⁰². Stricter sanctions for organised crime are rare, and only recently have such sanctions been imposed more often³⁰³.

Also, a large number of indictments were brought at the request of the international community i.e. OHR, but these indictments were also often based on a poor evidence and were consequently dismissed by the court. International prosecutors and judges at the level of BiH succeeded in initiating and successfully concluding several significant trials, which can be attributed to their integrity, protection, and financial resources available to them.

Does the public have a legal role in complaint mechanisms? To what extent is this exercised?

PARTLY – The public has almost no legal mechanisms for exerting any significant influence on the work of the police, prosecutor's offices or courts. Parliamentary committee for selection and appointment of

the Police Director is one of the rare such mechanisms. The Committees of the Entity parliaments annually receive several internal complaints (by police officers). Complaints mechanisms available within ODC were discussed earlier in this chapter as well as in the chapter dealing with the judiciary. However, a number of investigations launched on the basis of citizens' complaints or following the disclosure of criminal affairs by SAIs or the media is vastly disproportionate to the number of such cases.

7. Relationship to other pillars

To what extent are law enforcement agencies a key part of this country's NIS?

To date, law enforcement agencies have not demonstrated a relevant degree of determination and capacity to tackle corruption and general criminalisation of society. However, they remain one of the key pillars of the system, which is yet to undergo a major reform. It is only after this reform is implemented that this pillar may be able to assume its proper role in the system.

Which other pillars do they most interact with? Rely on, formally and in practice? Are there others with which they should engage more actively?

There is no sufficient interaction between the police and prosecution on one side and other control services on the other side (SAIs, Entity tax administrations, Indirect Taxation Administration, inspectorates, etc.). It is interesting to note that it can take months for the police or prosecution to launch investigation following the reports of the Auditor General which reveal mismanagement of public funds (in some cases, investigations are not launched at all). This is discussed in greater detail in the chapter on SAIs.

Is the consent of the attorney general needed to prosecute ministers? Has this been the case?

The consent of the Chief Prosecutor is not needed to prosecute ministers. Unlike parliamentarians, ministers do not enjoy immunity. In several instances, ministers have been criminally prosecuted. For example, criminal proceedings were initiated against the Minister of Civil Affairs and Communications of the Council of Ministers, Mr. Branko Dokić; however, Mr. Dokić has not resigned and still holds the ministerial office. The Basic Court in Banja Luka confirmed the indictment against Mr. Dokić and Mr. Marko Pavić, who are both former Ministers of Transport and Communications, for abuse of power and mismanagement of KM 198,521 from the budget of RS and KM 707,432 from the budget of the Ministry of Civil Affairs and Communications of BiH³⁰⁴. Today, Mr. Pavić is the Mayor of Prijedor, the second largest town in RS. The chapter on the judiciary provides more information on similar indictments in FBiH, e.g. against the President of the Constitutional Court of BiH as well as a former Minister in the Government of FBiH, Mr. Mladen Ivanković-Lijanović.

However, investigations cannot be conducted completely independently in the context of financial and institutional dependence on the executive, which is particularly true in case of investigations against senior governmental officials. Prosecution, for example, depends on the police, public attorney's office, etc., which are all institutions of the executive, rather than services providing assistance to prosecutor's offices in investigations. What sometimes occurs, is that upon an accomplished investigation the public attorney's office, which is supposed to protect financial and ownership interests of the state, often denies that any damage was caused in cases in which politicians were involved. Although the prosecutor's office proved misappropriation of assets, public attorney's office would claim that the state has not suffered any damage, which would make the court rule in favour of the senior officials³⁰⁵.

Public Contracting System

1. Role(s) of institution/sector as pillar of NIS

Is there one prevalent law that governs procurement? If not, what are the key regulations that govern procurement in the country?

YES – There is one prevalent law that governs public procurement in the whole of BiH and this is the Law on Public Procurement in BiH. The Law applies in both Entities as well as in the Brčko District. The Law was passed by the Parliamentary Assembly of BiH in September 2004. Although it applies to the whole of BiH, in FBiH this Law entered into force on 1 January 2005 and in RS on 1 May 2005.

The administrative division of BiH into two Entities (RS and FBiH) and one district (Brčko) contributed to a confusion in the public procurement sector, where until recently four separate pieces of legislation were in force: the Law on the Procedure for Purchasing Goods and Services and for Awarding Public Works (Official Gazette of RS, No. 20 of 18 May 2001) in RS, the Decision on the Procedure for Purchasing Goods and Services and for Awarding Public Works for the Institutions of BiH (Official Gazette of BiH, 13/03 and 7/04), the Decree on the Procedure for Purchasing Goods and Services and for Awarding Public Works (Official Gazette of FBiH, No. 40 of 14 August 2003, 58/03 and 11/04) in FBiH, which was first adopted in 1998, and the Rulebook on the Procedure for Purchasing Goods and Services and for Awarding Public Works (Official Gazette of the Brčko District, 14/02) in the Brčko District. So, until September 2004 there had been no single public procurement system in BiH. In late 2004, under pressure from the international community and with the aim of fulfilling one of the conditions for conclusion of Stabilisation and Association Agreement, a single State Law on Public Procurement was enacted in BiH, which is now in force in both Entities and in the Brčko District. The Law is based upon principles of the European Union, i.e. implementation of *acquis communautaire* into the legal system of BiH, and is thus aligned with the legislations in other European countries. This Law facilitates establishment of a single public procurement market in BiH, single economic space, and single administration in the field of public procurement and also creates preconditions for accession of BiH to the single European market. The Law entered into force in the Entities on different dates, so the experiences in its implementation are different. In FBiH it entered into force around two years and in RS around a year and a half prior to the publication of this text.

The fact that this Law must be aligned with a number of laws and regulations in other fields (e.g. Law on Obligations, Law on General Administrative Procedure, Criminal Code, etc.) poses an additional problem for the monitoring of its implementation and creation of a single public procurement system. Currently, the Law is still not harmonised with the applicable regulations and this is compounded by the fact that each Entity has its own legislation and each canton in FBiH has independence in passing their own

regulations. Although a number of seminars and trainings have been organised as part of the EU Public Procurement Project (EUPPP), which was in charge of developing and promoting the new law, the skills of the public procurement staff remain at a poor level, alongside a low attendance rate and a lack of basic knowledge and exchange of practical experiences needed for proper implementation of the Law on Public Procurement and other regulations.

Do the above rules for public procurement require open bidding as a general rule?

YES – The Law provides that, unless the conditions for awarding a contract on the basis of other award procedures are fulfilled representing exceptional cases that are specified in the Law, the contracting authority must award the contract on the basis of the open procedure.

What proportion of the total contracting is performed through open bidding?

There are no reliable data on the percentage of the total public procurement performed through open bidding, but it is certainly the most commonly used public procurement procedure.

If open bidding is the general rule, are the exceptions regulated in the law? In practice, are the exceptions abused?

YES – The exceptions are regulated in the law, in terms of the types of award procedures and conditions under which these procedures may be used. The experience has shown that the exceptions are widely abused, as explained in the chapter on SAIs.

If it is not, what rules apply in what cases?

Other types of award procedures are: restricted procedure with pre-qualification; negotiated procedure with publication of a procurement notice; negotiated procedure without publication of a procurement notice; and solution design contest. In addition to that, the Law provides that competitive request-for-quotations procedure and direct agreement can be used as award procedures in certain cases.

Does the law provide rules (weighting evaluation criteria, use of price lists, certified quality standards, awards set by committees, etc.) to ensure objectivity in the contractor selection process? How well do these rules operate in practice?

YES – The Law provides general criteria for evaluation of bids. There are two contract award criteria: the lowest price of a technically compliant bid and the most economically advantageous bid. Under the most economically advantageous bid, the Law lays down certain evaluation sub-criteria: quality, price, technical merit, functional and environmental characteristics, running costs, cost-effectiveness, after-sales service

and technical assistance, delivery date, etc. The use of particular sub-criteria depends on the nature and scope of the matter of the public contract and is subject to the decision of the contracting authority or the Procurement Commission. The extent to which these sub-criteria will be used is not determined by the Law, but by the contracting authority or the Procurement Commission.

There is no single regulation or practical written instruction on how to conduct evaluation in terms of methodology to be used, determination of relations between sub-criteria, and evaluation of bids on the basis of one sub-criterion (weighting). As the contracting authorities remain inadequately trained in the proper implementation of the Law, a lack of knowledge and experience in this aspect of public procurement causes a number of problems in practice. Most common mistakes are as follows:

- the criteria established as qualification criteria for selection of bidders are also established as sub-criteria for evaluation of bids (this is mainly the case with bidders' references);
- sub-criteria are not appropriate for the nature and scope of the public procurement;
- no method for evaluation of bidders is mentioned under sub-criteria, which means that there is no weighting and points are awarded arbitrarily; and
- freedom of choice about what evaluation sub-criteria will be used is exploited in such a way as to establish such sub-criteria that favour one bidder to the detriment of others.

In practice, however, altogether different criteria are used that is illustrated by an example from the energy sector: the FBiH Minister of Energy, Industry and Mining, Mr. Vahid Hećo [member of the Party for BiH, whose leader is Mr. Haris Silajdžić – editor's note], indirectly admitted that he had found himself in the middle of a corruption affair worth KM 600 million: several months ago, without conducting a contracting procedure and without public invitation for bids, Mr. Hećo awarded construction of two large hydroelectric power plants on the Neretva River – Glavatičevo and Ljubača – worth KM 600 million to the Sarajevo-based company "Intrade-energija". Mr. Hećo himself provided evidence that this is a highly dubious business arrangement by publishing a list of 11 foreign companies that have passed a prequalification procedure for construction of another eight hydroelectric and thermal power plants in FBiH.

According to Mr. Hećo, the main qualification criteria for choosing 11 of the total number of 37 interested foreign bidders was the net income in the previous year of at least € 100 million. However, Mr. Hećo awarded construction of two hydroelectric power plants on the River Neretva (Glavatičevo and Ljubača) to a company without references, namely "Intrade-energija", whose total net profit in the previous year amounted to the meagre € 290 and which employs only three members of staff³⁰⁶. Furthermore, politicians take advantage of the legal requirement for collection of at least three bids and collect these bids directly from bidders (selected beforehand), which directly affects the outcome of the bidding procedure, without publishing an open invitation for larger procurements of goods and services, as was required by the previous laws³⁰⁷. In the light of such cases, the Agency will have to improve the existing Law in order to envisage and address such semi-legal rigging of contracting procedures.

Does the law provide criteria regarding when contracts can be awarded, such as would govern a competition being closed without awarding a contract? Are such criteria followed in practice?

YES – Article 12 of the Law sets forth the criteria for termination of a competition without awarding a contract. Once a contract award procedure has been launched by publication of a procurement notice, it may be terminated only in the following instances:

- a) the award procedure is cancelled for one of the following reasons:
 - no bids are submitted before the specified deadline;
 - none of the received bids are compliant;
 - all compliant bids contain prices which substantially exceed the contracting authority's budget;
 - the number of the received compliant bids is less than 3 (three) and does not ensure a genuine competition on the contract concerned; and/or
 - the number of qualified candidates is less than 3 (three) and does not ensure a genuine competition on the envisaged contract.
- b) the award procedure is cancelled for other verifiable reasons beyond the contracting authority's control, unpredictable at the time of launching the award procedure.

These criteria are followed in practice, but experience has shown that there are reasons for termination/cancellation of the already initiated public procurement procedure other than those provided in the Law. This causes problems for the contracting authorities, but this is likely to be solved in future by amending the existing Law.

Is there a local industry protection policy explicit in the contracting rules?

YES – The Law contains provisions aimed at the protection and support of the local industry in the transition period. The Law provides that domestic preferences may be taken into account only to the extent that they are permitted in the implementing bylaws. The Decision on Implementation of the Law on Public Procurement of BiH provides for the possibility of preferential treatment of domestic bids for a transitional period only, namely between 2005 and 2010. According to this Decision, the contracting authority has the discretionary right to use domestic preferences.

However, the Council of Ministers issued the Decision on Obligatory Application of Preferential Domestic Treatment in Public Procurement Procedures for all contracts awarded in 2005 and 2006. This Decision is followed and applied in practice. The current provisions on the obligatory application of preferential domestic treatment give a price preference of up to 15% to domestic bidders. This preference is decreasing by 5% every two years and at this pace will be completely abolished by 2011³⁰⁸.

Does the law provide for the use of standard bidding documents? Are these used in practice?

YES – The Public Procurement Agency of BiH is in charge of developing standard bidding documentation. However, since the establishment of the Agency was delayed, draft standard bidding documents were developed by EUPPP – the project in charge of reform of the public procurement system in BiH. This documentation has still not been extensively used in practice (it was published on the website only a few months ago) and, in fact, it now serves only as an example for the contracting authorities. The Agency is to develop and publish the official version of the Standard Bidding Documentation.

Does the law require clarifications and amendments during the bidding process to be shared among all bidders? Does this take place in practice?

YES – The Law expressly stipulates that clarifications of and amendments to the bidding documentation must be shared among all bidders. Clarifications do not take place very often, but if there is need for them, they are submitted to all bidders. Evasion of this practice is very rare.

Does the law require criteria concerning the modification of awarded/ongoing contracts? Are these criteria followed in practice?

PARTLY – The Law does not lay down criteria concerning the modification of awarded/ongoing contracts. However, the Law does require the bidding documentation to contain the terms and conditions of the proposed contract and, where possible, draft contract so that the (potential) bidders could acquaint themselves, from the beginning of the bidding procedure, with the conditions under which the contracting authority intends to award the contract to the successful bidder. Article 39, Paragraph 3 of the Law stipulates that “when awarding the procurement contract, the price provided by the successful bid, as well as the contract terms and conditions specified in the bidding documents must not be altered”. The price may be altered only if a ‘price variation clause’ based on fixed, objective rules is permitted in the bidding documents and if this is envisaged in the contract.

Is there formal operational independence of the public contracting system?

PARTLY – All reforms implemented in the field of public procurement are aimed at the creation of an independent public procurement system. The independence of the system is supported by the single State Law and its Implementing Regulations and single State institutions of this system (Public Procurement Agency and Procurement Review Authority), which are formally independent. Although the establishment of this system is a long and continuous process, one can conclude that, once it is fully implemented, BiH will obtain a complete pillar of integrity that will act independently and autonomously in practice.

Is the public contracting system independent in practice?

PARTLY – The public procurement system is still being built and the intention is to make it independent in practice.

What kind of tender board is in place?

The Law provides for both mandatory and optional establishment of the Procurement Commission, depending on the type of the bidding procedure. The Law does not make specific reference as to whether the Commission is a permanent or an *ad hoc* authority, but it does specify that the Commission may execute only the tasks or assignments of the contracting authority that are given in writing. In practice, however, Procurement Commissions are established for almost all bidding procedures.

How are tender board members selected? What is the length of term?

The Procurement Commission is established by the contracting authority. The Law lays down the requirements to be fulfilled when establishing the Commission:

- The Commission shall consist of at least 3 members or, in the case of contracts whose estimated value exceeds the international threshold values, of at least 5 members;
- The contracting authority is obliged to appoint from among the members of the Commission a Chairperson of the Commission who shall direct its work and ensure compliance with the provisions of the Law and its Implementing Regulations;
- The contracting authority also appoints a Secretary of the Commission, with no voting rights, who provides administrative assistance to the Commission;
- When appointing the Commission members, the contracting authority must ensure that selected individuals are conversant with the Law and its Implementing Regulations and that at least one Commission member has special expertise in the subject matter of the public procurement concerned; and
- The Law also specifies which individuals cannot be appointed to the Commission.

The contracting authority has the right to invite, on their own or on the initiative of the Commission, experts where specific technical or specialised knowledge is required and is not otherwise available within the contracting authority, but these experts do not have voting rights.

The Law does not contain particular provisions governing the mandate of the Commission members, but the Decision on Implementation of the Law on Public Procurement of BiH provides that “the Commission shall function from the day of adoption of the decision concerning its establishment until the fulfilment of all tasks given by the contracting authority in writing, or until the decision to terminate

the procurement is taken". This means that a new Commission is established for each procurement procedure, but there are no provisions limiting the appointment of the same individuals to all the future Commissions. There are no limitations regarding the repeated appointment of Commission members.

Experience has shown that permanent members are appointed to the Commission in most cases, with experts being appointed on an *ad hoc* basis, depending on the subject matter of the procurement concerned. Most problems regarding appointment of the Commission are encountered by the contracting authorities with few staff, so they usually resort to the appointment of the permanent Commission. Experience has shown that contracting authorities establish Commissions even in cases when the Law does not require them to do so (Chapter III).

Is it mandatory to subject contracting processes to the budget and plans of government? Is this done?

PARTLY – In their annual budgets, the contracting authorities plan funds for public procurements. However, these funds are planned only as budget items covering specific procurements, but no specific procurement plans are included in the budget. These specific procurement plans should ideally contain the following:

- Object of the public procurement;
- Estimated costs of the procurement/funds allocated for the procurement;
- Funds necessary for the conduct of the public procurement procedure (preparation of the bidding documentation, publication of procurement notice, engagement of experts in preparation of the bidding documentation/work of the Procurement Commission/evaluation);
- Procurement procedure/method;
- Timeframe for realisation of the procurement (from the date of notice publication until the award of the contract);
- Staff that will be involved in the conduct of the public procurement procedure.

Due to protracted procedures (observance of minimum time limits and potential repetition of the procedures) and unforeseen running costs of public procurement (publication of procurement notice, award notice and cancellation notice and potential re-publication of the notice), the contracting authorities are becoming increasingly aware of the necessity and importance of public procurement plans, so one can expect that the development of these plans will become standard practice in the foreseeable future.

2. Resources/structure

What is the size of the procurement market (percentage of GDP)?

There are no official and reliable data on the size of the procurement market in BiH. Various reports by international organisation (EC, WB) use estimates and these refer to the period before the single State Law on Public Procurement entered into force. For example, according to the World Bank³⁰⁹, governments at all levels of administration in BiH spend some KM 670 million annually on the procurement of goods, services and capital investments, which is about 15% of total budgeted expenditures and just over 7% of BiH's GDP. By way of comparison, the size of the procurement market in the EU countries ranges, according to some sources, between 10 and 14 percent and, according to the other, between 11 and 15 percent of budgeted expenditures. As the Public Procurement Agency was established only recently, more reliable data on the state of public procurement in BiH are expected to become available in late 2007.

What are relevant economic activities/industries that influence the size of this market (for example, is the economy opened or closed, aid dependent, resource rich, etc.)?

Poor economic situation is the result of the war-time devastation of economic facilities, high unemployment rate, political instability and legal obstacles that stand in the way of a stronger inflow of foreign investment. Development of domestic entrepreneurship and small and medium sized enterprises has been hindered by unavailability of sources of funding and unfavourable business environment caused by the existing legal and administrative barriers. The country has been running a large trade deficit for years. The economy has been indirectly dependent on the foreign aid which was coming to the country through various international projects. The privatisation process is extremely slow and inefficient, so public companies remain the dominant purchasers of goods and services, in close co-operation with the executive branch, which is still their formal owner. Long after the war the economic market was split into two Entity markets, which were in turn fragmented even further into small local markets that were not interconnected. It is in such a context that the Entity governments used to conduct contracting procedures. The laws often contained counterproductive provisions or provisions incompatible with the rules and practices of market economy. At the same time, foreign donations played a prominent role in the first ten post-war years, which had impact on procurements (this was especially felt in micro-economies, such as the Sarajevo Canton).

More recently significant efforts have been made, in particular as a part of the EU stabilisation and association process, to improve the BiH economy. These efforts include:

- starting of industrial production wherever possible;
- stabilisation of the macroeconomic situation;

- inter-Entity harmonisation in terms of establishment of joint institutions and bodies as well as uniformed regulation;
- enactment of new legislation that is conducive to development of entrepreneurship;
- strengthening of the banking sector;
- restructuring of enterprises after privatisation;
- creation of a single market in BiH with free flow of goods, services and capital, and networking with the European market;
- measures for improving the export/import ratio, and the like.

All these would have a direct positive effect on the scope and frequency of public procurement as well as on transparency of procurement procedures.

How does privatisation (actual or planned) affect the procurement market?

The privatisation process, which is still ongoing, should certainly have a positive effect on the procurement market. One of the obvious effects is increased competition, which ensures quality and cost-effectiveness of public procurement. However, corruption remains widespread in BiH and one of the reasons for this is the aspiration of newly-established businesses to ensure their place in the capital market by avoiding fair competition and acting outside public procurement procedures. The very objectives of privatisation make it rather clear what positive impact privatisation can play in the procurement market.

To what extent is procurement centralised/decentralised? Is this arrangement consistent with the administrative design of the country?

Procurement in BiH is fully centralised. This approach is in line with the formal organisational structure of BiH, which is comprised of two Entities (RS and FBiH), the Brčko District, 10 cantons in FBiH, 62 municipalities in Republika Srpska, and 79 municipalities in FBiH. This administrative design of the country has direct influence on the structure of public procurement.

Is there a central procurement agency? What are its main functions, such as regulation, supervision, etc.?

YES – Creation of a single procurement system also entailed establishment of single State institutions, namely Public Procurement Agency (PPA) and Procurement Review Body (PRB). However, establishment of these institutions was delayed, so it is only in mid-2006 that the PPA became operational, while the PRB is still being established. In the transition period, i.e. until such time as the PRB becomes operational, the appellate role is performed by the Entity Ministries of Finance and the

Ministry of Finance and Treasury of BiH. Consequently, since the entry into force of the Law on Public Procurement no adequate monitoring of its implementation could be provided.

Establishment of the single State PPA is still ongoing. The director of PPA has already been appointed and the rest of the staff is being hired. Members of the PPA's Steering Board have also been appointed and the Board holds its meetings on a regular basis.

Basic functions of the PPA are:

- proposing amendments to the Law on Public Procurement and its implementing bylaws;
- publishing procurement manuals and guidelines;
- development and maintenance of standard forms and models;
- increasing awareness among contracting authorities and suppliers of the public procurement legislation;
- providing technical assistance and advice;
- monitoring compliance of the contracting authorities with the Law on Public Procurement;
- collecting, analysing and publishing information about public procurement procedures;
- developing a nation-wide electronic information system for publication of bidding documents;
- initiating and supporting development of electronic procurement;
- publishing training information and manuals; and
- maintaining a register of accredited trainers in public procurement.

If there is a central procurement agency, how is it funded?

PPA is funded from the budget of BiH. The funds planned for the work of PPA in this year are an integral part of the BiH budget for 2006 and their amount was published in the Official Gazette of BiH.

Is there an e-procurement system operating in the country? If yes, what areas does it cover?

NO – E-procurement system has not been established yet. PPA is tasked with initiating and supporting development of electronic procurement.

Is there any evidence of its impact on procurement practices?

N/A

Are procurement responsibilities distributed differently in the cases of privatisation processes?

YES – The privatisation process is carried out in accordance with specific procedures which are regulated in separate legislation. Procurement in the privatisation process is totally independent, with individual legislation at the Entity level. In RS the responsibility for carrying out these procedures rests with the Directorate for Privatisation. The Directorate appoints commissions for each procedure and, with regard to certain issues, these commissions have competences similar to those of the Procurement Commissions established under the Law on Public Procurement. Decisions of the commission are subject to appeal before the Directorate, but the second-instance decision is final. The privatisation methods include sale of ‘vouchers’ (at the beginning of privatisation) and commercial methods such as auction, sale by means of a public offering (fixed tenders and variable tenders), direct selection of the buyer and sale of shares on the stock exchange.

In FBiH the responsibility for privatisation rests with the Agency for Privatisation of BiH, within its scope of remit, and 10 cantonal Agencies for privatisation. The initially accepted method of privatisation was a public offer of shares (by means of citizens’ ‘certificates’), while subsequently a sale by means of a public offering has been increasingly used although it had been originally envisaged as an exceptional method. Privatisation methods in use include sale by means of a tender, direct negotiation, sale of shares, and open international tender.

Hiring of consultants for assessment of value of the companies to be privatised is performed in accordance with the provisions of the Law on Public Procurement, while the bidding procedure is initiated by the Directorate/Agency for Privatisation.

In case that restructuring of a company is carried out by an international organisation or financed from the funds of, for example, the EC as part of a project, the consulting firms are hired in accordance with the EU procedures, or the foreign consulting firms bid together with the local consulting firms as subcontractors, despite basically carrying out most of the work. However, hiring of local consulting firms as subcontractors is usually organised in an informal way.

In the course of bankruptcy proceedings, the trustee in bankruptcy may propose that one, potentially healthy part of the firm be reorganised. This proposal is decided upon by the Creditors’ Committee. If the reorganisation plan is accepted and if specialised knowledge and expertise is necessary for the restructuring of the firm, the consultants should be hired in accordance with the provisions contained in the Law on Public Procedure.

Is parliamentary lobbying for the inclusion/exclusion of projects in plans, programmes and budgets legally regulated? Is it regulated in practice?

NO – Lobbying is not legally regulated, neither is it a legally recognised practice in BiH. At the same time, certain types of political pressure are exerted, primarily on the executive branch.

3. Accountability**If there is a central procurement agency, to whom does it report?**

The Law provides that PPA must submit annual reports to the Council of Ministers of BiH.

Is there a periodic contracting plan made publicly available?

NO – PPA does not act as an institution that carries out individual procurement procedures, as is the case in some European countries, and as such does not develop a periodic contracting plan.

All assessments of the procurement system so far have been conducted for the purpose of various studies or researches (World Bank, EU, etc.) and covered the period before the establishment of the single State public procurement system. There has been no systemic monitoring or monitoring by the Institutions of BiH. Also, the new procurement regulations have come into force only recently and no adequate appraisal of their application can be given at the present time.

Is the use of public hearings mandatory (or a practice) in contracting process? Do they actually take place in practice? If yes, at what stage of the process do they take place? Is there any evidence of their impact?

NO – Public hearings in contracting process are not required by law and they do not take place in practice.

4. Integrity mechanisms**Does the law require staff involved in (different stages of) contracting to have special qualifications, related to their tasks? Are these requirements followed in practice?**

YES – As far as special qualifications are concerned, the Law is explicit only with regard to the qualifications of the Procurement Commission members, requiring the contracting authority to ensure,

when appointing the Commission members, that selected individuals are conversant with the public procurement regulations and that at least one member has a relevant expertise in the subject matter. The Law also provides that the members of PRB are selected from among experts in administrative law and experts in the field of public procurement. The Law does not provide particularities on the staff involved in contracting procedures, or its required qualifications.

Does the law provide for procurement staff rotation? How does this operate in practice?

NO – The Law does not contain such provisions, nor does rotation of procurement staff take place in practice.

Does the procurement law regulate that the staff in charge of offer evaluations must be different from the staff responsible for elaboration of the terms of reference/bidding documents? Does the law regulate that both of the above staffs must also differ from those undertaking any control activities? Are these rules followed in practice?

NO – The Law stipulates that, in preparation of the bidding documentation, the contracting authority must not use the advice of any person who may have any direct or indirect interest in the result of the award procedure if that is likely to affect the genuine competition on the contract concerned. There are no other explicit provisions regulating separation of responsibilities for individual activities in public procurement procedures.

In practice it is very difficult to meet the requirement for incompatibility of duties in contracting procedures. Given the small number of qualified staff in the field of public procurement, it would be unrealistic to expect the contracting authorities to be able to ensure separation of responsibilities for different stages of contracting. So it often happens that the individuals who are involved in preparation of the bidding documentation, especially Terms of Reference or technical specifications, and who are experts in the given field, are also involved in evaluation of bids. The practice of separation of responsibilities, i.e. engagement of experts and qualified individuals in different stages of contracting, has not fully taken root yet. One of the main reasons for that is lack of financial resources, i.e. poor economic situation.

Do the bidding/contracting documents contain special anti-corruption clauses? If yes, how do these operate in practice?

YES – Anti-corruption provisions are contained in Article 27 of the Law on Public Procurement, which stipulates that “the contracting authority shall reject a request to participate in a procurement procedure or a tender if the candidate or bidder who submitted it, has given or is prepared to give a current or a

former employee of the contracting authority a gift in a monetary form or in any non-monetary form whatsoever as an attempt to influence an action or a decision or the course of the public procurement procedure". The contracting authority is required to inform the bidder and the Director of PPA of the rejection of the request or tender, by providing the reasons in writing, as well as to make a note on it in the report on the procurement procedure.

Provisions concerning corruption are also contained in the Decision on Implementation of the Law on Public Procurement of BiH. They specify the requirements for selection of Procurement Commission members and state that the contracting authority may not appoint any individuals who, notably, in the past five years has been found by any court of relevant jurisdiction to have committed a criminal offence involving corrupt practices, money laundering or bribery including those regarding the financial interests of BiH or any other country.

Does the law/regulation require bidders to have codes of conduct in place and the corresponding compliance mechanisms? Are these requirements followed in practice?

NO – Neither the Law on Public Procurement nor other regulations require bidders to have codes of conduct in place. However, there are instances of bidders who show tendency towards adopting their own codes of conduct.

How is integrity upheld in the tender board?

It is noticeable that, in appointing the Procurement Commission members, the contracting authorities comply with all the rules contained in the Law on Public Procurement and the Decision on Implementation of the Law on Public Procurement. In addition to that, the Commission can start working only after each member has signed a declaration of impartiality and a statement of confidentiality with respect to the specific bidders and the bidding procedure.

Does the procurement law regulate conflict of interest situations with regard to preparation of the terms of reference and bidding documents, and that apply to bid/offer evaluators? If yes, are these rules followed in practice?

NO – The Law does not regulate these issues, and the situation in practice was discussed earlier in this document. Besides, due to lack of qualified staff, it often happens that the individual who was involved in preparation of bidding documentation/technical specifications/terms of reference is also involved in evaluation of bids because of his/her specialised knowledge and expertise.

Are there any formal restrictions or criteria for acceptance of gifts by public officials? Are these restrictions/criteria followed in practice?

NO – There are no formal restrictions or criteria for acceptance of gifts by public officials in the Law on Public Procurement. However, provisions regarding this are contained in the Law on Conflict of Interest in Governmental Institutions of BiH, but this Law applies only to elected officials, executive officeholders and advisors in the institutions of government of BiH in exercising their duties. Given the definition of these functions for the purpose of the said Law, it is clear that this Law does not apply to all public officials, i.e. it does not cover all individuals who, in terms of the Law on Public Procurement, have responsibilities for contracting procedures.

Are public employees who participate in procurement processes prevented from contracting afterwards with the individuals/companies that participate in such processes? If yes, is this rule followed?

YES – The Law provides that the contracting authority shall make it a contract condition, that the supplier to whom a public procurement contract is awarded has no right to hire, for the purpose of implementing the public procurement contract, individuals or legal entities that have participated in preparation of the tender documents or were members or invited experts of the Procurement Commission in charge of the respective contract award procedure, for at least 6 months after the conclusion of the contract.

5. Transparency

Are public officials in charge of procurement obliged to make periodic affidavits on their assets and income before and after being in office? Are assets, incomes and lifestyles of public procurement officers monitored in practice?

NO – There is no such obligation, nor are assets, incomes and lifestyles of public procurement officers monitored in practice.

Who is in charge of keeping such records, and are they adequately resourced for this task?

N/A

Are procurement rules laid down in documents publicly accessible?

YES – All procurement rules laid down in documents are publicly accessible on the EUPPP website. The complete public procurement legislation and draft standard bidding documentation can be accessed at www.javnenabavke.ba.

Does the procurement law establish unrestricted dissemination of invitations to tender and terms of reference in all public contracting processes? Are they disseminated without restriction in practice?

PARTLY – Dissemination of invitations to tender is unrestricted only for open procedure. Open procedure is actually an invitation to all suppliers who meet certain qualification criteria and who are interested in a particular procurement to submit their tenders. There are no restrictions in this respect since all bidders who submit their tenders and meet the qualification criteria shall be considered during the contracting procedure. It is for this reason that open procedure is the main procedure and is given a priority. All other procedures restrict the bidders in one way or another, but these procedures are exceptions and can only be conducted in circumstances that are clearly defined in the Law.

Are procurement award decisions made public? Are the justifications included?

YES – Award decisions are notified in writing to all bidders and should contain the reasons for awarding the particular contract or rejecting the particular tender. Contract award notices are published in the prescribed form in the Official Gazette of BiH and on the public procurement website. The contract award notice form contains information on the successful bidder, information on the price of the successful tender and the lowest/highest received tenders as well as the information on subcontracting and the value or proportion of the contract likely to be subcontracted to third parties.

Does the procurement law require the maintenance of registers and statistics on contracts (irrespective of the contracting method)? Are these registers kept? Are they accessible?

NO – The Law does not explicitly require the maintenance of contract registers, but one of the PPA's responsibilities is "to collect, analyse and publish information about public procurement procedures and awarded contracts". At the time of writing this report, PPA was still not able to assume that responsibility. What is prepared, however, in order to empower the Agency for such tasks is the development of appropriate software which will be installed in the Official Gazette of BiH and which PPA will have access to. This software should enable PPA to obtain the necessary statistics data from the Official Gazette's database of all the published notifications and to prepare reports. The plan is to make this software publicly available on the public procurement website, but only to a certain extent (in terms of browsing and disclosure of appropriate statistics).

Are there any relevant contracting process documents that are not accessible to the public?

PARTLY – According to the Law on Public Procurement, confidential information contained in any tender concerning the commercial, financial or technical information or trade secrets or know-how of the bidders must not be disclosed to any person not officially concerned with the procurement process under any circumstances. In addition to that, no information on the examination, clarification and evaluation of bids and the deliberations of the contracting authority or the Procurement Commission may be disclosed to any bidder or any third party until the award decision is notified to the successful bidder.

Therefore, certain procurement documents remain inaccessible to the public, though only for a limited period of time. The purpose of this is to ensure protection and objective conducting of the procedure.

Does the procurement law require the publication of decisions on changes and adjustments of contracts in execution? Are these decisions published? Where?

NO – The Law does not include provisions regarding changes and adjustments of contracts in execution and, consequently, does not require publication of such decisions.

Does the procurement law require the publication of the contract implementation monitoring results? Are these results published? Where?

NO – The Law does not explicitly require monitoring of the execution of awarded contracts and, consequently, there is no obligation to publish monitoring results. What is published, though, are the results of audits conducted by the Entity SAIs.

As regards PPA, it is responsible, within the scope of its remit, for collecting, analysing and publishing information about public procurement procedures and awarded contracts. PPA's responsibilities consequently end once the contract is awarded and PPA does not request information on the execution/implementation of awarded contracts.

In practice, most contracting authorities do not analyse execution of the awarded contract, nor do they have any information in this respect. A small number of contracting authorities include their analyses of the awarded contracts in the reports they regularly submit to relevant institutions (e.g. activity reports, budget execution reports etc.). These reports are published in Official Gazettes at respective levels.

6. Complaints/enforcement mechanisms

Are there provisions for whistleblowing on misconduct in contracting procedures? Have these provisions proved effective?

NO – There are no such provisions in the Law.

Does the law establish which control bodies are responsible for the supervision of activities related to public contracting? Are these bodies an internal or external control? Are these bodies professional and independent in practice?

NO – The Law does not establish which control bodies are responsible for supervision of activities related to public contracting. PPA is not a control authority, but rather an advisory body that supervises implementation of the Law on Public Procurement. Yet, according to the previously defined responsibilities, external control is performed by SAIs. These institutions are professional and independent in practice.

Audits performed by these institutions are different to the previous controls conducted in the course of public contracting procedures and represent controls of already finished procurement procedures. These controls can also serve, to an extent, as mechanisms for adjustment or correction of the future public procurements. The existing regulations require that internal controls, i.e. general internal audit authorities, must be set up. However, they have not been established in all the institutions yet, and where they have, they play no significant role in terms of public procurement control. So, internal audits cannot be considered to have a major role in public procurement procedures.

Do special control mechanisms govern contracts awarded under exceptional procedures?

NO – There are no special control mechanisms governing contracts awarded under exceptional procedures. The contracting authorities are obliged to inform PPA of all contracts awarded in such procedures. However, PPA's role is not supervisory, but advisory.

Is there a procedure to request review of procurement decisions? Is the entity or office in charge of the review independent? Has this procedure been used in practice?

YES – The Law prescribes a review of procurement decisions. Complaints are filed in the first instance with the contracting authority that issued the procurement decision. The review procedure in the second instance is operated by PRB, which is an independent administrative body responsible for reviewing all the procurement decisions in BiH. As the establishment of PRB is still ongoing, this procedure has yet to

be used in practice. From the entry into force of the Law to April 2006, audits were conducted by the Ministry of Finance and Treasury of BiH, Ministry of Finance of FBiH and Ministry of Finance of RS. In April 2006 the second instance authority was formally transferred to PRB, although PRB will not become fully operational until the necessary appointments are made by the BiH Parliament. So, in legalese, there is currently a *vacatio legis* situation (time delay between the promulgation of a law and its implementation) because PRB is receiving complaints regarding the first instance decisions of the contracting authorities, but is not able to act upon them. In the meantime, the bidders who filed complaints are waiting for them to be processed, although it remains uncertain when the complaint procedures might be finished.

Can an unfavourable decision be reviewed in a court of law? Is this done in practice?

YES – If a bidder is dissatisfied with the award decision, they can institute appropriate proceedings before a court of law. According to the new Law, the proceedings are instituted before the Court of BiH for all bidding procedures in BiH. As PRB is still being established, conditions are created for institution of proceedings before a court of relevant jurisdiction. During the period when the previous procurement legislation was in force, very few court proceedings were instituted with regard to public procurement procedures. This was also discussed in the 2004 BiH National Integrity Study.

Are companies proved to have bribed in a procurement process excluded from future procurement processes? Is a list of such companies made publicly available?

PARTLY – If a bidder is found to have been involved in corruption, it will be disqualified from the current procurement procedure in accordance with Article 27 of the Law on Public Procurement. The Law does not provide for exclusion of such bidders from future procurement procedures. No institution is authorised or responsible for maintaining a blacklist of such bidders and, consequently, no such list exists.

Are there administrative sanctions (e.g. prohibition to hold public office) for criminal offences against the public administration in connection with contracting? Have these sanctions been enforced?

PARTLY – The Law on Public Procurement does not explicitly enumerate criminal offences against the public administration in connection with contracting or sanctions against perpetrators of these offences. However, the Law provides that, where PRB finds that an officer of the contracting authority has committed a deliberate and intentional breach of the Law, it may either submit offence or criminal charge to the relevant court or impose penalties in the form of fines amounting up to KM 4,000. This provision was not included in the previous procurement regulations and currently no information is available on whether any charges have been brought before the relevant courts since the new Law on Public Procurement came into force.

Are actions detrimental to public resources in public contracting qualified as criminal offences? Are there actual cases of prosecution?

PARTLY – This issue must be discussed from the point of view of Entity laws, although neither Criminal Code (RS and FBiH) explicitly defines any criminal offences committed in the course of public procurement procedures or in connection with public procurement. Generally, both Codes contain groups of criminal offences that could, *inter alia*, include criminal offences committed in the course of public procurement procedures or in connection with public procurement (Criminal Code of FBiH: criminal offences against economy and criminal offences against official and other responsible duties; Criminal Code of RS: criminal offences against economy and criminal offences against official duty). It remains unclear which offences of those that have been criminally investigated by the prosecution are in connection with public procurement. This is discussed in more detail in the section dealing with judiciary.

Does the law consider civil or social control mechanisms to monitor the control processes of public contracting? What happens in practice?

PARTLY – It is not known if there are laws in the said fields governing control of public procurement processes. Certain degree of control by civil society is ensured by the fact that public procurement procedures are transparent to the maximum extent and the relevant information is publicly accessible through the public procurement website. Similar control is exercised by SAIs at the level of Entities and BiH. There are no cumulative data, but only individual reports on audits conducted in individual institutions, organisations and enterprises.

How successfully has corruption been targeted by the contracting system, as an internal problem? An external problem?

The public procurement system is established, among other things, with an aim to eliminate corruption in this field. Many researches identify BiH as a highly corrupt country, and public procurement is only one of the sectors in which corruption is rampant .

According to the TI BiH's 2004 Corruption Perception Study for BiH, governmental institutions at all levels in BiH procure around KM 852 worth of goods, services and works annually. Assuming that around 10% of that amount is lost in various illegal arrangements (e.g. misappropriation through conflict of interest), this totals about KM 85 million, which exceeds the amount of BiH's yearly debt servicing to the World Bank. Establishment of the public procurement system will reduce corruption to a certain extent, but it will not be able to completely eradicate it unless decisive and comprehensive anti-corruption measures are undertaken in all other sectors.

Corruption in public procurement can happen in various stages of the bidding procedure, but it is very difficult to prove corruption. The Law on Public Procurement provides that the bidder who has given or is prepared to give a bribe as an attempt to influence an action or a decision or the course of the public procurement procedure must be reported. However, the Law does not provide for sanctions against the official person of the contracting authority who solicits a bribe in order to ‘manipulate’ the contracting procedure in such a way as to serve the interests of a particular bidder.

However, it still happens that tenders are often adjusted or cancelled in the interest of particular bidders, usually through partisan influence, i.e. through the money provided by political parties. Political parties often use the public procurement sector to settle accounts with each other.

Audit reports are not a very reliable source of information on corruption in public procurement as there are many ways to ‘rig’ the contracting procedures and their results. Some of modes of ‘rigging’ a tender may go beyond the contracting authority’s knowledge or influence. For example, the bidders competing in a contracting procedure can secretly agree among themselves on their bids. The successful bidder, upon signing the contract with the contracting authority, hires the other bidders’ staff or compensates them for the favour, namely for allowing them to offer a lower price. In this geographic region such practice is especially common in the contracting of construction works (the so-called ‘construction mafia’).

Most audit reports concerning public procurement get boiled down to the following finding: “The relevant provisions of the Law on Public Procurement were not fully complied with”. Most common sources of information on corruption in public procurement are the media. However, in some cases the media act as ‘racketeers’ who blackmail particular bidders by threatening to disclose the results of a poorly conducted public procurement contract or a rigged contracting procedure, or even to fabricate a scandal in a regularly conducted contracting procedure with the aim of exerting pressure on bidders.

Unfortunately, relevant prosecutor’s offices often do not consider information on possible cases of corruption in public procurement disclosed in the media as sufficient for launching an investigation.

7. Relationship to other pillars

To what extent is the public contracting system a key part of this country’s NIS?

Establishment of a functioning public contracting system is a lengthy process requiring a lot of efforts involvement of various institutions, mobilisation of resources (qualified staff and funds) and a synchronised action in the whole country. Given the amount of effort invested so far in putting this

system in place, it is obvious that this sector is taken rather seriously and considered to be highly important. The public contracting system will eventually establish itself as one of the key NIS pillars.

Given the fact that the deadline for beginning of the operations of PPA and PRB was extended on several occasions by amending the Law on Public Procurement, which originally stipulated that the operations must begin within three months of the entry into force of this Law (10 November 2004); that it was not until 1 June 2006 that PPA became fully operational; and that the establishment of PRB is still ongoing, it would be far too imprecise at this stage to estimate long it will take to have a system in place.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

This system formally interacts with almost all other integrity pillars – least often with political parties and the election commission, and most often with the legislature, government anti-corruption agencies, judiciary and supreme audit institutions as well as public administration at all levels, business community, civil service, media and civil society. The current transition phase of the public procurement sector is somewhat absurd as it remains subjected to political parties and their daily funding.

Does the law on public contracting include political control mechanisms (via congress/parliament) to monitor public contracting?

PARTLY – Since PPA submits its activity reports to the Council of Ministers and the Law on Public Procurement was passed by the BiH Parliament, it is expected that the situation in the public procurement sector will be on the agenda of both institutions and that they will act as its political control mechanisms.

Ombudsmen

1. Role(s) of institution/sector as pillar of NIS

Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration) in the country?

YES – At the State level, the Office of the Human Rights Ombudsmen of BiH (OHRO) was set up in accordance with Annex 6 of the General Framework Agreement for Peace in BiH (Dayton Peace Agreement). This Annex, entitled “Agreement on Human Rights”, provides for establishment of the Commission on Human Rights, which consists of two parts: OHRO in first *quasi* instance, and the Human Rights Chamber in second *quasi* instance³¹⁰. The jurisdiction and powers of these two bodies resembled to a great extent the relation between the former Commission on Human Rights³¹¹ and the European Court of Human Rights (Strasbourg, France). The new Law on the Human Rights Ombudsmen of BiH³¹² replaced Annex 6 of the Dayton Peace Agreement, which governed the position, jurisdiction and powers of the Ombudsmen office since its birth in 1996. The first Ombudsperson was Ms. Gret Haller (Switzerland), who was appointed by the Chair of the Organisation for Security and Cooperation in Europe (OSCE). The head office is in Sarajevo (due to move to Banja Luka, according to the amended Law), where the institution became operational in March 1996. The branch office in Banja Luka was established in July the same year, and a branch office in the Brčko District was established on 15 December 2000. The three incumbent Ombudsmen of BiH, following the ethnic representation of three constituent peoples in BiH, are Mr. Vitomir Popović PhD, Mr. Mariofil Ljubić and Mr. Safet Pašić.

The Office of the Ombudsmen of FBiH was established pursuant to the 1994 Washington Agreement and Constitution of FBiH. This institution was given a legal basis for its operation when the Law on Ombudsmen of FBiH³¹³ came into force. In addition to the head office in Sarajevo, there are 7 branch offices in each canton of FBiH³¹⁴. The incumbent Ombudspersons of FBiH are Ms. Vera Jovanović, Mr. Esad Muhibić and Ms. Branka Raguž.

The Ombudsmen of RS was established a few years later in accordance with the Law on Ombudsmen of RS³¹⁵. The Law on Changes and Amendments to the Law on Ombudsmen of RS³¹⁶ provided for some significant modifications to the original Law and changed the name of the institution into the Ombudsmen of RS – Human Rights Protector. The head office is in Banja Luka and there are four field offices: Bijeljina, Doboj, Foča and Prijedor. The Ombudsperson – Human Rights Protector of RS is Ms. Nada Grahovac, and Deputy Ombudsmen are Mr. Milan Šbarić and Mr. Enes Hašić.

The Law on Changes and Amendments to the Law on the Human Rights Ombudsmen of BiH³¹⁷ provides for a merger of these three structurally very complicated institutions into a single Human Rights

Ombudsmen of BiH. The final merger of the institutions will be accomplished during a transitional period which concludes on 31 December 2006, when the Office of the Human Rights Ombudsmen (OHRO) of BiH will become the only Ombudsmen institution in BiH. Personnel, means of work and equipment of the Entity Ombudsmen will be taken over by OHRO. During the transitional period the Entity Ombudsmen offices must reduce the number of their personnel by 30% and field offices by 50%, making sure that the rationalisation does not threaten the achieved level of human rights and liberties³¹⁸.

Is there formal independence of the ombudsman? Is the ombudsman independent in practice?

YES – The Ombudspersons are formally independent of any governmental influence. An Ombudsperson is under no orders and may not be given instructions by any authority. Each Ombudsperson acts independently, on the basis of the institution's own criteria³¹⁹. An Ombudsperson may not be prosecuted, subjected to investigation, arrested, detained or tried for the opinions expressed or for the decisions taken in the exercise of powers associated with his/her duties. In all other circumstances, an Ombudsperson may not be arrested or detained, save in case of *flagrante delicto* relating to an offence punishable with a term of imprisonment greater than five years. Decisions to prosecute, to detain or to arrest an Ombudsperson charged with a criminal offence shall be taken by the relevant parliament only after this parliament has lifted the Ombudsperson's immunity.

However, serious objections may be raised in relation to the actual level of independence of the Ombudspersons, given the manner of planning and approving the institution's annual budget. This is discussed in more detail in other places in this text.

Are appointments required to be based on merit? Is this the case?

PARTLY – According to Article 10 of the former Law on Ombudsmen of RS “any citizen of RS of an age enjoying full civil and political rights, who has a demonstrated experience in the field of human rights and is of recognised prestige and high moral stature, and possesses university degree may be elected as an Ombudsperson”. At first glance, this provision entitles every citizen of RS who meets the criteria specified in the said Article, regardless of his/her ethnic origin, to deposit his/her candidacy. However, it is incompatible with Article 8, Paragraph 1, of the said Law, which stipulates that the Ombudsmen institution consists of three persons: one Serb, one Croat, and one Bosniak. This means that only members of these three peoples may be elected as Ombudspersons. It is hard to believe that, by means of such a provision, RS managed to demonstrate to the general public to what extent it appreciates and makes sure that the members of constituent peoples in BiH³²⁰ enjoy exclusivity in this area.

The Law on Changes and Amendments to the Law on Ombudsmen of RS provides for changes to Article 10, which stipulates that “any person holding a university degree in law who has passed the qualifying examination for judges, and who has a demonstrated experience in the field of judicature...”

may be elected as an Ombudsperson or Deputy Ombudsperson. The term ‘field of judicature’ is generally accepted to imply that the person has worked as a judge, prosecutor, lawyer or attorney. Ms. Nada Grahovac, the incumbent Ombudswoman of RS – Human Rights Protector, does not meet these criteria as she has no effective experience in the field of judicature. She was elected as an Ombudsperson in accordance with the old Law, before it was amended.

Article 8, Paragraph 1, of the said Law was also amended, so the Ombudsmen institution now consists of one Ombudsperson and two Deputy Ombudspersons, who are elected from among the constituent nations. The position of Ombudsperson rotates every 16 months. Notwithstanding the existing contradiction with regard to the ethnic origin of the persons who may be elected as an Ombudsperson and the ethnic composition of the Ombudsmen institution, the reduction in the number of ombudspersons – from three ombudspersons to one ombudsperson and two deputies – is justified and is in the interest of rationalisation. This is also in line with the commitments that BiH undertook to honour when it became a member of the Council of Europe³²¹.

Article 9 of the Law on Ombudsmen of FBiH stipulates that the Ombudsmen Institution of FBiH consists of three Ombudspersons: one Bosniak, one Croat, and one Ombudsperson representing ‘other’ ethnic groups. The Ombudspersons are appointed and removed from office by the House of Representatives and the House of Peoples of the FBiH Parliament, following proposal by the relevant authority of these two parliamentary chambers. They are elected by a two-third majority of all members of this body³²². The Ombudsperson serves a four-year term of office and may be re-elected only once.

The very phrase contained in Article 9 of the Law: “one Ombudsperson representing others” is in contravention of the Decision of the Constitutional Court of BiH on Constituent Peoples, No. U-5/98, and Amendments to the Constitution of FBiH, which were imposed by the High Representative. This provision was found to be unconstitutional since all three peoples are constituent in the whole of BiH.

Article 12 of the Law on Ombudsmen of FBiH stipulates that any citizen of BiH of an age enjoying full civil and political rights who has a demonstrated experience in the field of human rights and is of recognised and high moral stature may be elected as an Ombudsperson. However, there is a risk of a deliberate misinterpretation of this provision in the context of Article 9 of the same Law, providing that a Bosniak and a Croat must be appointed as Ombudspersons of BiH, while a Serb may or may not be appointed. With regard to the composition of the institution, this Law is equally deficient as the corresponding Law in RS in that it does not give any chance to members of ethnic minorities (i.e. a representative of a non-constituent nationality) to be appointed as an Ombudsperson.

However, in terms of the criteria that a candidate for the Ombudsperson post must meet, the Law in FBiH is justifiably more flexible as it does not require university degree, nor must it be a degree in law, as required by the RS Law.

Composition, appointment and term of office of the Ombudspersons in BiH were provided for in Articles 8-12 of the former Law. Now, the institution comprises of three persons representing the constituent nations “which does not preclude the possibility of appointing an Ombudsperson from among other ethnic groups”³²³. The Ombudspersons are appointed by the House of Representatives of BiH and the House of Peoples of BiH by a two-thirds majority of each House, following a joint proposal by the Presidency of BiH. Any citizen of BiH of age enjoying full civil and political rights who has a demonstrated experience in the field of human rights and is of recognised and high moral stature may be elected as an Ombudsperson³²⁴. The Ombudspersons are appointed for a period of five years and may be re-elected³²⁵.

Such insufficient provisions governing appointment have opened the way to violations of basic principles of open and public advertisement of the vacant Ombudsperson position. At the same time, failure to define a clear, transparent and open procedure for proposing candidates by the BiH Presidency has created a situation in which it is possible to abuse powers and propose “partisan” candidates.

Article 11 of the Law defines the criteria that a potential candidate must meet, and Article 17 stipulates that the position of an Ombudsperson is incompatible with: membership or with a leadership position in a political party, trade union, association, foundation, or religious organisation, or with employment by any of these; with performance of duties of a judge; and with any activity in an occupation or profession, in commerce or in employment. However, exactly the opposite happened in late 2003, when the position of the Ombudsmen of BiH became vacant, following expiration of the term of office of Mr. Frank Orton, who succeeded Ms. Haller. Unbeknown to anyone, in a secret procedure, without any objective criteria and without public advertisement, the Presidency of BiH proposed the three incumbent Ombudsmen, who are known to have been members of political parties and to have held offices in the legislature and the executive³²⁶.

However, recent amendments to the Law on the Human Rights Ombudsmen of BiH represent an improvement³²⁷ to the appointment procedure in that they charge the Parliamentary Assembly of BiH with establishing an *ad hoc* commission that will advertise for the positions and decide on the list of candidates. The list of candidates is sent to the Parliamentary Assembly of BiH for the election of three Ombudspersons. Both Houses of the Parliamentary Assembly (the House of Representatives and the House of Peoples) appoint and remove the Ombudspersons by a majority of votes in accordance with the Rules of Procedure of each House. The rotation on the positions of Ombudsperson will take place in alphabetical order, which is aimed at preventing the supremacy of the Ombudsperson appointed from one constituent people over the Ombudspersons appointed from the other two constituent peoples or from the category of ‘others’.

Another significant improvement is a prolongation of the term of office to six years, which aims to prevent possible illegal influence of the assemblage of MPs who elected the Ombudspersons. This

amendment was not included in the Entity Laws, but the relevant provisions contained in these Laws lost their practical significance once the changes and amendments to the State Law entered into force.

However, the amended law gave an unjustified advantage in the appointment procedure to the incumbent Ombudsmen of BiH (including the Ombudspersons of the Entities). The amended Article 42, Paragraph 2, of the Law provides that the first Ombudspersons may be appointed from among the Ombudspersons who are in office during the transitional period.

It is difficult to accept the explanation that the incumbent Ombudspersons were re-elected because they were familiar with the work of the Ombudsman institution. If we accepted this rationale, there may never be a need to appoint new Ombudspersons – it would suffice to stipulate that the Ombudsperson is elected for life and their term of office ends once they meet conditions for retirement. Open advertisement for the positions has also become meaningless. It remains to be seen whether the Parliamentary Assembly of BiH will take advantage of this provision, thus openly demonstrating that the incumbent Ombudsmen are politically appointed persons, or fully comply with the generally accepted principles of fair selection and give equal chance to all candidates.

Is the appointee protected from removal without relevant justification, in law? In practice?

YES – Each three Laws currently in effect in BiH clearly define reasons for termination of an Ombudsperson's appointment. These are: their resignation; expiry of their term of office; their manifested inability to perform their duties; failure to give up an incompatible position; their conviction and final sentencing for an intentional offence punishable with a term of imprisonment greater than five years. The FBiH Law even provides for the possibility of removal from office³²⁸.

Although there have been no cases of termination of an Ombudsperson's mandate for reasons other than resignation or expiry of term of office, problems might arise in practice in connection with the provisions governing removal of an Ombudsperson from office and the manifested inability to perform their duties. The latter criterion may be based on the obvious facts, e.g. health condition, but may also be of subjective nature. For example, the National Assembly of RS adopts the Ombudsmen' Annual Report by a simple majority. If the report is not adopted, the National Assembly may call the Ombudsperson to account.

As the Law on BiH OHRO does not contain any such provisions and given the fact that as of 1 January 2007 there is only one Ombudsman institution in BiH, it would be advisable to refrain from including in the future legislation any provisions that provide for penalties against the Ombudsperson if their annual reports are not adopted by the parliament. The Ombudsmen' Annual Report should be regarded as a detailed information to the parliament about the lack of co-operation and violation of human rights and

liberties on the part of a certain authority, on the basis of which the parliament is expected to order the authority concerned to comply with the recommendations, without delay.

Who is the ombudsman's constituency?

Ombudsmen institutions were established in accordance with the Law OHRO BiH, the Law on Ombudsmen – Human Rights Protector of RS and the Law on Ombudsmen of FBiH.

2. Resources/structure

What is the budget/staffing of the Ombudsmen?

All three Ombudsmen institutions have the obligation to determine their organisational structure and staffing. Pursuant to the Laws that remain in effect, there are 7 Ombudspersons in BiH: 3 Ombudspersons of BiH, 3 Ombudspersons of FBiH and 1 Ombudsperson – Human Rights Protector in RS. Professional staff is generally comprised of Deputy Ombudsmen, advisors and lawyers. The staff is expected to be substantially reduced following the entry into force of the amendments to the Law on OHRO of BiH providing for the merger of these three institutions into a single one and reduction of the staff by 30% and offices by 50%.

However, experience has shown that citizens in particular regions in the country do not approach the Ombudsmen institutions to an adequate degree (Una-Sana Canton, Goražde region, and Posavina Canton in FBiH, and Prijedor-Novi Grad-Kozarska Dubica in RS). On the other hand, there is a rather large concentration of offices in a relatively small area (for example, Sarajevo: head offices of BiH and FBiH Ombudsmen; branch offices of the FBiH Ombudsmen in Sarajevo and Zenica). Consequently, the major challenge lying ahead of the Ombudsmen is reorganisation of field offices in terms of rationalisation, direct contact with citizens, and reduction of costs for both the institution and citizens.

Reduction of staff is not entirely in line with the role of the Ombudsmen as monitor of human rights and liberties of citizens in BiH. The existing network of Entity Ombudsmen offices is insufficient and unevenly distributed. If the reduction of staff takes place as envisaged by the amended law, BiH and its citizens will be at a loss. It would therefore be advisable to compare the financial effects of the proposed reduction of staff and field offices with the possibility of filing submissions directly to the Ombudsmen in a quick and simple manner. Once there is no immediacy and simplicity in communication with the Ombudsmen, the institution loses its meaning, and so does the country in an indirect way. In other words, the proposed reduction will inevitably have an adverse effect on the monitoring of human rights and liberties. Such a legal provision can also be a disguise for the government's intention to limit the Ombudsmen's influence.

What is the budgetary process that governs the Ombudsmen?

As separate independent bodies, the State and Entity Ombudsmen are funded from the budget of the joint State institutions and Entities respectively. Pursuant to the relevant budget regulations, the Ombudsmen submits budget proposal to the Ministry of Finance every year. Budget proposal serves as a basis for determining the Ombudsmen' budget.

The Law on Ombudsmen of FBiH contains only basic provisions regarding budget³²⁹. The RS³³⁰ and BiH³³¹ Laws are more specific in this regard as they provide that, in determining the institution's budget, the primary concern must be to ensure "full, independent and efficient performance of tasks, their nature, their extent and other conditions specified in relevant laws". This leads to the conclusion that the Ombudsmen' actual financial needs are taken account of.

However, experience has shown that the Ombudsmen have almost no say in determination of their budget. When the Ministry of Finance receives the proposed budget containing the required written justification of specific budget items, the Ministry's departments analyse it without the Ombudsmen' knowledge and determine the amount they find sufficient and adequate for this institution's operation, whereupon they include it in the proposed Budget which is to be finally determined by the relevant parliament. However, these departments are not competent for such estimates due to their lack of familiarity with the methodology of Ombudsmen' work and their unwillingness to request further information from the Ombudsmen. It is usually too late for corrections when the Ombudsmen find out whether their proposed budget was approved in full or a significantly tighter one was allocated. Even if there is time for any reaction, experience has shown that it yields no results.

The consequence of such conduct on the part of the Ministry of Finance is that the Ombudsmen' annual budgets are just enough to cover the running costs of the head office, leaving no funds for field offices. So, for instance, the RS Ombudsmen' field office in Prijedor employs only administrative staff, while Ombudsmen functions are performed by the advisors from the head office in the form of the 'office hours'. Due to the similar financial problems, the FBiH Ombudsmen was forced to reduce its field offices to seven.

In such circumstances, the Ombudsmen are forced to seek other sources of funding, such as foreign donations. However, this is not always possible as the "Ombudsmen, by its very nature, is an Entity/State authority, so the Entity/State should ensure adequate funding for its operation"³³².

Does the Ombudsmen have access to off-the-books funds?

YES – There are no provisions prohibiting the Ombudsmen from receiving donations for specific projects or needs, neither are there rules governing possible instances of the conflict of interest,

depending on the source of funding (donor). So, it is on the Ombudsmen to decide whether a particular source of funding might cause impartiality and to further defend their legally guaranteed independence.

Pursuant to Article 39 of the Law on Ombudsmen of RS, the provisions of this Law concerning budget appropriation, appointment of staff within budgetary limits and reports to the RS National Assembly on budgetary expenditure, do not apply with regard to the contributions by international organisations to the institution's functional costs. Practical meaning of this provision is that the Ombudsmen is not obliged to show the donations or the off-the-budget source of funding in the annual report. The same provision is also contained in the Law on Ombudsmen of FBiH³³³, while the BiH Law (including its amendments) does not contain particular provisions with regard to the obligation to submit financial reports showing the expenditure of the institution's budget during the period covered. However, knowing that OHRO BiH is funded from the budget of the BiH joint institutions, and given the existing financial regulations, this institution is obliged to submit annual financial report. Hence, there is no reason why OHRO should not include in its report all sources of funding – budget and donations. This procedure ensures transparent funding and allows for assessment of the institution's independence in raising funds for its operation.

3. Accountability

What kind of laws/rules govern oversight of the Ombudsmen? Are these laws/rules effective?

There are practically no rules governing such oversight. The expected merger of the Ombudsmen institutions will repeal the provision of the RS Law on Ombudsmen which provides for liability procedure against the Ombudsmen in case their report is not adopted by the parliament. Establishment of a control procedure that might result in a removal from office would imply that the Ombudsmen is subordinated to the parliament, which is inappropriate and contrary to the principles of absolute independence of the Ombudsmen. However, lack of rules governing oversight of the Ombudspersons, in case they really fail to carry out their duties in accordance with the law and principles of protection of human rights and liberties, should by no means imply that they should be 'untouchable'.

To whom must the Ombudsmen report, in law? Does this accountability for actions take place in practice?

After each calendar year, the Ombudspersons produce their annual reports and submit them to the parliaments/assemblies that elected them. The Entity Ombudsmen have submitted their last annual reports for 2005 to their parliaments. According to the data available at the time of writing this report, the Ombudsmen of BiH have not done so yet.

Is the public required to be consulted in the work of the Ombudsmen? Does this consultation take place in practice?

NO – The existing Laws on Ombudsmen do not contain any provisions requiring the public to be consulted in the work of the Ombudsmen.

4. Integrity mechanisms**Are there rules on conflict of interest for the Ombudsmen' office? Are they effective?**

NO – There are no rules on conflict of interest for the Ombudsmen' office. However, during the Ms. Gret Haller's term in office as the first Human Rights Ombudsmen of BiH, there was an informal rule in effect stipulating that no employee, regardless of his/her position in the Ombudsmen' office, could be politically active or perform any functions in a political party, association, foundation or similar organisation. No cases have been recorded of employees engaging in any activity that constitutes a conflict of interest. The Ombudsmen institutions may freely staff their offices³³⁴. However, the new Law provides that the staff is selected through an open competition procedure, defined under the Law. This procedure is defined in more detail in the Rulebook on Internal Organisation and Systematisation of Jobs in the BiH Ombudsmen³³⁵.

Are there rules on gifts and hospitality? Are they effective?

NO – The relevant Laws do not contain rules on gifts and hospitality or post-employment restrictions. Therefore it might be necessary to establish certain rules that would govern these issues. These might take a form of a separate Code of Ethics, or else be incorporated in the existing Rules of Procedure, Rulebook on Internal Organisation and Systematisation of Jobs, or another similar regulation, whichever the institution finds more appropriate. Regardless of the form that these rules will take, they might be modelled after the rules for judges defined in the Law on HJPC of BiH and the Code of Ethics for judges and prosecutors³³⁶. The rules should apply to the Ombudspersons and all employees, regardless of the type of work they do. The establishment of such rules would further safeguard the institution's integrity and independence and help prevent any corruption or abuse of position.

Are there post employment restrictions? Are these restrictions adhered to?

NO – There are no such restrictions.

5. Transparency

Are recommendation/reports of the Ombudsmen required to be published, in law? Are they? How are they published?

NO – Given the effect of the Ombudspersons' decisions, it is perfectly logical that at least the annual reports are published in the Official Gazettes of the Entities and the State. This would help inform the general public of the Ombudspersons' work and accomplishments. The public would also get a better understanding of the nature and the legal effect of the Ombudspersons' decisions. Also, it would be useful for the Ombudsmen to achieve some kind of agreement with the authorities to publish the annual reports, or at least some parts, in daily newspapers. If this is not feasible, it is necessary to plan adequate funds in the Ombudsmen' annual budget for such publications. Currently, it is up to the media to decide whether they will publish in their news that the Ombudspersons submitted their annual reports to the parliaments and that the reports were discussed at parliamentary sessions.

A very small percentage of computer-literate citizens have access to the annual reports posted on the Ombudsmen' websites, which are not regularly updated anyhow. Even where there is access to the Internet, this might not help much as the BiH Ombudsmen' website³³⁷ has been "under construction" for several months now. A source from this institution said that the 2005 annual report by the Ombudsmen of BiH was not available because it had not been prepared yet, which is a breach of duty³³⁸. It follows that the general public is not informed of the results of the OHRO's activities in 2005, so this institution's assessment of the state of human rights and fundamental liberties remains unknown to the public.

Although the State Ombudsmen was established 10 years ago, the FBiH Ombudsmen 11 years ago and the RS Ombudsmen 6 years ago, the real capabilities of these institutions and the effect of their decisions remain unknown. The Ombudspersons' decisions, although not subject to appeal or control by any authority, do not have the force of a verdict or a final decision of an executive authority. This effect is quite logical. If the Ombudsmen' decision had the effect of a final ruling, similar to that of a court or executive authority, this would mean that the Ombudsmen might take over the jurisdiction of the court and/or executive authority, which would be a violation of the Constitution and the corrective role of the Ombudsmen institution would be lost.

Not knowing the scope and effect of Ombudspersons' decisions, citizens appeal to them believing that their decisions can instantly solve the problem and that they have a binding force on the authority that the appeal has been filed against. Once they find out that this is not the case and that the Ombudsmen' recommendations do not have a binding force, citizens become disappointed and question the purpose of the Ombudsmen institution.

6. Complaints/enforcement mechanisms

Is there any legal provision for public whistleblowing on government misconduct, as part of the Ombudsmen' mandate? Have these provisions been used?

When the Ombudsperson decides not to pursue a complaint, he/she is required to inform in writing that the complaint is not admissible, explaining the grounds and referring the complainant to the most appropriate means of taking action, if any exist, leaving it to the complainant to use those which they consider most suitable.

Should the Ombudsperson decide to pursue a complaint, he/she launches an investigation by sending a letter to the authority or administrative service alleged to have committed the violation in question. The letter, which has a character of the decision launching the investigation, contains the material elements of the case and the deadline within which the responsible party is required to act as requested by the Ombudsperson. The Ombudsperson may access any file or administrative document or any document relating to the activity or service under investigation, including those that are confidential in nature. Very useful means of solving the problem in question is a personal contact with the official concerned. When the case under investigation concerns the conduct of persons employed in the government service and is connected with the duties they perform, the Ombudsperson must inform the person concerned and his/her superior or the authority to which he/she is attached. The information provided by an official during an investigation through personal evidence is confidential.

Where, in the course of an investigation, an Ombudsperson finds that the complainant's rights were violated, they issue a suggestion identifying the violation and proposing measures likely to remedy the complainant's situation and indicate a time period within which the authority concerned is required to comply with the suggestion. Should the authority concerned fail to comply with the suggestion, the Ombudsperson may draw attention of the responsible Minister to the course of the case and the suggestions made. Should the suggestion not be followed, the matter shall be included in the annual report. Depending on the nature of the committed violation, number of violations and attitude of the authority concerned, the Ombudsperson may publish a Special Report mentioning the names of the authorities or officials refusing to comply with the suggestion indicating the reasons for non-compliance which, in the Ombudsperson's opinion, are not in accordance with the principle of respect of human rights and freedoms. So, the Ombudsperson's suggestions in individual cases are applied *inter partes*, while special reports are applied as *erga omnes*.

All government bodies, not only the authority concerned, are obliged to co-operate with the Ombudsperson. A hostile attitude and any impediments to the Ombudsperson's investigation may be subject of a special report and shall be mentioned in the appropriate part of the annual report. Should the

Ombudsperson obtain no satisfaction in his/her actions, i.e. if the authority of official concerned fails to act in accordance with the Ombudsperson's suggestion, the Ombudsperson issues a recommendation. The recommendation is a formal document containing the material elements of the case, relevant regulations, actions taken in the course of the investigation, case analysis and proposed measures that are likely to remedy the complainant's problem. The Ombudsperson always indicates a deadline within which the authority concerned is required to comply with the recommendation and notify the Ombudspersons of the compliance thereof. If the recommendation is not followed or if it is followed in an inadequate way, it will be considered that the recommendation was not complied with and the matter will be included in the Annual Report. The Annual Report by the Ombudswoman of RS indicates that 77.3% of recommendations were complied with, and the Annual Report by the Ombudspersons of FBiH indicates that recommendations were complied with in some 65% of the cases.

While corrective function represents exercise of the powers provided for in the Ombudsmen Laws, the third function – initiator of proceedings and *amicus curiae*, is provided for in the procedural laws. So, according to the Law on Administrative Proceedings of BiH³³⁹, the Ombudsmen of BiH is entitled to act as a party in administrative proceedings, when he/she finds, in the exercise of powers associated with their duties, that there are sufficient grounds for initiating the proceedings. The Law on Administrative Proceedings of FBiH³⁴⁰ entitles the Ombudspersons of FBiH to attend administrative proceedings for the purpose of performing their functions. However, the Law on General Administrative Proceedings of RS³⁴¹, does not entitle the Ombudsmen of RS to the same, which still does not prevent him/her from attending administrative proceedings and performing their duties pursuant to the Ombudsmen Law. On the other hand, pursuant to the provisions of the Entity civil and procedural legislation governing procedural costs³⁴², Ombudspersons are given the status of a party to the proceedings. It is not specified if this is so for the purpose of protecting their own legal interest or for the purpose of initiating appropriate proceedings whenever they find that such action is necessary for the performance of their duties, which the Ombudsmen of BiH and Ombudspersons of FBiH are expressly entitled to. Given the flexibility of rules governing the Ombudspersons' participation in administrative or civil proceedings, there is no prohibition against courts and administrative bodies summoning the Ombudspersons as *amicus curiae* when need be. If this was the case, the Ombudsperson's presence and suggestions could help expedite a solution to the problem in such proceedings. However, no cases have been recorded of an Ombudsperson intervening in any proceedings as *amicus curiae*.

Even though the Ombudspersons' decisions or special reports do not have weight of a court decision, they are still considered enforceable documents and whoever they apply to must comply with them. Notwithstanding a high percentage of successfully solved cases in terms of compliance with the Ombudsmen recommendations, the very fact that they have issued a recommendation indicates that the authorities are not ready to co-operate with the Ombudspersons in a timely manner in order to solve the problem before the recommendation is issued. However, when an official fails to comply with a recommendation, no further sanctions are imposed against him/her. Therefore, it would be advisable to

amend the relevant law by including a provision that would prevent such an official from performing the same function or by providing for mandatory demotion or other type of sanctions.

A very important element in the reports of all three Ombudsmen institutions is the number of complaints received, of recommendations issued and of special reports produced.

In 2005, the Ombudsmen of RS – Human Rights Protector received 5,844 complaints, of which 1,978 were in connection with slowness of proceedings before the courts, 557 with labour rights, 363 with pension and disability insurance rights, and 541 with property rights. The remainder referred to other areas. The institution issued 22 recommendations, 18 of which were presented in the annual report. Of those, 11 referred to appointment procedures (2 complaints were not complied with, and 2 complaints were still pending), 3 referred to right to access information (all were complied with); 2 to urban planning (one was complied with and one was not); 1 to property rights (complied with) and 1 referred to the procedural rights in administrative proceedings (complied with).

A total of 8 special reports were produced, 1 in each of the following areas: smuggling of stolen vehicles, education measures and criminal sanctions against minors, application of the Law on Local Self-Government, environment, implementation of the Law on Civil Protection, urban planning (in connection with removal of architectural barriers preventing free movement of persons with disabilities), collection of contributions for pension and disability insurance, and implementation of the Law on Primary School and the Law on Secondary School. The summary of the special reports indicates that the relevant authorities did not comply with the recommendations contained in these reports.

The Annual Report by the FBiH Ombudsmen has a notably different structure. It does not give overall statistics for the entire institution, but the number of received complaints and those acted upon (because they were found to offer sufficient grounds for investigation) are given separately for each field office. The state of human rights was assessed on the basis of observance and monitoring of several areas: implementation of the Law on Ministerial, Governmental and Other Appointments; conduct of the administration; return of refugees and displaced persons; assessment of the judiciary; state of social rights; children's rights; right to access information; and protection of human rights and media freedoms.

Overall, in 2005 the Ombudsmen of FBiH received a total of 9,969 complaints, of which 5,061 were admitted and acted upon. Of those, 2,034 were about the performance of judicial bodies. Tabular (statistics) indicators of field offices mainly refer to violations of citizens' rights in the course of proceedings before judicial and administrative bodies. However, given the highly complicated governance structure in FBiH, it was necessary for the Ombudsmen to present their Annual Report separately. Information regarding the number and type of recommendations and special reports, presented in great detail, is regularly updated on this Institution's website³⁴³. It is because of the huge number of these

documents, which also serves as an indicator of the extent of the FBiH Ombudsmen' activity, that they were not included in the Annual Report. If they had been incorporated, the Report would be enormously long and the parliament might not have analysed it in detail. Maybe the most important contribution by Ombudspersons is protection of human rights in the case of frozen foreign currency savings dating before the war, which the executive started to solve in 2006 through laws and compensation methods.

In annual reports by both Entity Ombudsmen institutions, corruption is not treated as a separate category. The only exception to this is the section of the FBiH Ombudsmen' Annual Report which presents the work of the field office in Bihać (page 52), where corruption is mentioned as a possible cause of the increase in economic crime in the Una-Sana Canton.

The Annual Report by the Human Rights Ombudsmen of BiH, if there is one at all, was not available at the time of writing this report.

Who may register complaints and about what?

Any individual or legal entity claiming a legitimate interest may complain to the Ombudsmen without any restriction. The complaint may refer to any alleged or obvious breach of applicable laws which constitutes a violation of human rights and freedoms. Nationality, citizenship, residence, gender, minority, ethnicity, religion, legal incapacity, imprisonment of any kind, and, in general terms, a special relationship with, or dependence on, a government body may not restrict the right to lodge a complaint with the Institution. Complaining to the Institution may not entail any criminal, disciplinary or other sanction or any disadvantage or discrimination for the complainant. All the work of the institution is free of charge to the person concerned and does not require an assistance of counsel or a lawyer.

There is reasonable suspicion that the centralisation of Ombudspersons will ultimately result in a more complicated procedure for accessing Ombudspersons and filing complaints. Experts estimate that this reform will only suit the individuals in the Ombudsmen institution, not the citizens, and is thus contrary to the conclusions of the Venice Commission³⁴⁴. Experts expect that the Ombudspersons will reduce the extent of their work and thus lose the confidence and expectations of citizens with regard to protection of their rights³⁴⁵.

Can petitioners complain anonymously? If yes, has this been respected, in practice?

YES – The complaint is submitted in a simple form. It suffices to mention the name of the institution the complaint is lodged against and the grounds for lodging the complaint. Individuals who are held in detention, in imprisonment or in custody may also complain to the Ombudsmen. Any correspondence addressed to an Ombudsman or to the institution from places where such individuals are held in detention, in imprisonment or in custody may not be the subject of any kind of censorship, nor may such

correspondence be opened. The Law requires the complaints to be signed by the person concerned. However, Article 21, Paragraph 2, of the Law on the Human Rights Ombudsmen of BiH provides that “an Ombudsman may refuse to pursue anonymous complaints”, which means that an anonymous complaint that offers sufficient grounds for belief that human rights and liberties were violated may be pursued by an Ombudsman. Furthermore, the Ombudsmen may use such an anonymous complaint as a basis for acting *ex officio*. There is no information available if any anonymous complaint has served as a basis for the launching of an investigation.

Has an ombudsman been removed without relevant justification in the last five years?

NO – No Ombudsperson has been removed since the three Ombudsmen institutions were established. The duties of previous Ombudspersons were terminated for the reasons of expiry of their term of office or their resignation.

How successfully has corruption been targeted by the Ombudsmen?

The Law on Conflict of Interest and the Law on Ministerial, Council of Ministers and other Appointments provide that any member of public may lodge a complaint to the Ombudsmen against any appointment. Complaint must be submitted to the appointing authority, which is obliged to forward this complaint together with all documents and records relating to the appointment to the Human Rights Ombudsmen of BiH. The Ombudsmen then acts on the complaint in accordance with the Institution’s own rules, and if the appointment is found to be in breach of the relevant law, the Ombudsmen prepares conclusions and recommendations on the complaint.

Given such large powers of the Ombudsmen, it is surprising that a comparatively small number of complaints have been lodged with regard to alleged conflicts of interest and illegal appointments. The Entity Ombudspersons’ annual reports contain information on the complaints related to appointments³⁴⁶. However, the small number of such complaints does not indicate that the Law is strictly adhered to, but rather that citizens are not fully aware of their rights. Nonetheless, most of the recommendations made with regard to these complaints were complied with. Unfortunately, no information is available on the actions of the BiH Ombudsmen in this or any other regard.

Is there any evidence of the effectiveness of the reports or decisions made by the Ombudsmen?

YES – The only evidence is the Ombudsmen’ Annual Report, which contains area specific reports, their summaries and the percentage of compliance with the Ombudsmen’ recommendations.

7. Relationship to other pillars

To what extent is this institution/sector a key part of this country's NIS?

Because of its vast powers, flexibility of its action, the authorities' obligation to provide it with unconditional assistance in its investigations and inspections, and possibility of imposing sanctions against those who fail to provide such assistance, the Ombudsmen institution represents a cohesive factor of the National Integrity System. For that reason, the Ombudsmen needs to be engaged in oversight of each integrity pillar to a greater degree.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

So far, the most frequent Ombudsmen' interventions have been in connection with slowness of proceedings before the courts and before various levels of administrative authorities. This is also indicated by the statistics presented in the Entity Ombudsmen' Annual Reports.

The Entity Ombudsmen are aware of the problems in the judiciary. Judicial reform should not limit itself to appointment of judges and prosecutors, but should also entail technical and technological equipment of the courts so that the cases before them might be tried properly. Also important is the issue of court administration, which falls within the competence of the Ombudsmen.

The Ombudsmen' competence in administrative matters is of crucial importance. The Entity Ombudsmen' Annual Reports contain recommendations to administrative authorities at all levels. Most of the recommendations relate to the ignorance on the part of the authorities of basic organisational regulations (the authority to act), procedural regulations (procedural errors resulting in blatant violations of citizens' rights and liberties), and substantive law. Such omissions on the part of public authorities take place at all levels equally: from the municipal to the Entity level.

The Laws on Administrative Proceedings (at the levels of BiH and Entities) are violated on a daily basis out of ignorance or on purpose. It is therefore necessary for the Ombudsmen to work closely with the relevant Civil Service Agencies, as main implementers of the public administration reform, if the performance of the public authorities is to improve. The Ombudspersons are also encouraged to establish co-operation with the Entity Centres for Education of Judges and Prosecutors.

To what extent are there review mechanisms to assess whether other organisations/sectors have implemented the Ombudsmen' recommendations? Have these recommendations been implemented, in practice?

The transparency of the Ombudsmen' work is manifested when the Annual Report is reviewed by the relevant parliament. The parliament is authorised to adopt a conclusion whereby implementation of the Ombudsmen' recommendation is ordered.

Upon consideration of the Ombudsmen' Annual Report in 2004, the National Assembly of RS adopted conclusions whereby certain administrative bodies were ordered to carry out the recommendations that they had refused to act upon. It is not known, however, if all these authorities acted in accordance with that order.

Anti-corruption agencies

1. Role(s) of institution/sector as pillar of NIS

Are there dedicated, government anti-corruption agencies (ACAs), or is the anti-corruption task divided up among multiple agencies/organisations? If the latter holds, what are these?

NO – There are no dedicated, government anti-corruption agencies (ACAs), instead the anti-corruption tasks are divided among the existing police agencies, ministries and prosecution.

Within the State Investigation and Protection Agency (SIPA), in the Criminal Investigation Division there is the Department for prevention and detection of financial crime and for anti-corruption. In regional SIPA offices, these tasks are performed by teams for prevention and detection of corruption.

Within the Ministry of the Interior of RS (MI RS) and the Ministry of the Interior of FBiH (MI FBiH), in the Crime Prevention Administration there is the Department for Fight against Organised Crime, while within public security centres/cantonal MIs there are departments responsible for investigating corruption. The Crime Unit of the Brčko District Police also has a department responsible for fighting organised crime and curbing corruption. Competence for curbing corruption often overlaps with the work of the Departments for Fighting Economic Crime in Entity MIs. These departments are discussed in more detail in the chapter on law enforcement agencies.

In the Prosecutor's Office of BiH, corruption falls within the remit of the special department for fighting organised crime. Similar departments exist in the Entity and district prosecutor's offices. Since 1999, the legislature has established SAIs and tasked them with monitoring of public spending at all levels. Their responsibilities are explained in the relevant chapter. If they find any evidence that public funds are misused or spent for purposes other than specified, SAIs are obliged to submit their reports to the relevant prosecutor's offices.

Do they cover public and private sectors?

YES – The abovementioned institutions, that is, their departments responsible for curbing corruption, cover both public and private sector.

Do they have a national and/or local remit?

YES – The remit of SIPA, Prosecution of BiH, and Court of BiH extends to the whole of BiH, while the remit of the Entity MIs remains limited only to the territories of the respective Entities. The law provides for modes of co-operation between these two ministries.

The Law on Prevention of Organised Crime and Serious Economic Crimes³⁴⁷ is *lex specialis* in relation to the existing legislation in RS (in case there are any inconsistencies between this Law and any other law in RS, this Law shall be applied). According to the original idea, the Law should apply to organised and economic crime and criminal offences punishable by at least 5 years' imprisonment. This Law would apply in cases that do not fall within the remit of the Court of BiH and the Prosecution of BiH.

The Law provides for establishment of a special department for curbing organised and serious economic crimes (Special Prosecution), which would report to the Prosecution of RS. According to this Law, the Special Prosecution includes: the Chief Special Prosecutor, Deputy Chief Special Prosecutor, six special prosecutors, 12 assistant prosecutors, 13 prosecutorial investigators, and an appropriate number of expert advisors and technical staff.

In addition to the Special Prosecution, the Law also provides for establishment of a special department for organised and serious economic crimes (Special Department) within the District Court in Banja Luka. The remit of this department extends to the whole territory of RS in all other cases when the Chief Special Prosecutor issues a decision on the transfer of responsibilities. The Law provides that the said bodies are financed from the RS budget. The reason for establishment of these institutions is the coverage of the entire RS, which is especially important for smaller communities, where the existing prosecutors may be closely connected with suspects. Special prosecutors are given additional funds for investigation, through other public institutions. However, the question remains if these institutional solutions could have been achieved through the 'ordinary' prosecution, which remains insufficiently regulated to enable quality investigation.

After challenging the appointment of Mr. Milan Tegeltija and other special prosecutors (who were appointed on 5 May 2006), HJPC in June 2006 adopts changes to the Law³⁴⁸, mainly in respect of the appointment of special prosecutors. The original idea was that the Chief Special Prosecutor is appointed by the Chief Prosecutor of RS (Mr. Amor Bukić) and HJPC is only notified of the appointment, but the amended Law stipulates that the appointment remains exclusively within the remit of HJPC. The whole process of appointing the Chief Special Prosecutor and other prosecutors was repeated, this time within the remit of HJPC, and on 13 September 2006 Mr. Miodrag Bajić was appointed to the position of Chief Special Prosecutor and assumed office, together with other prosecutors, on 2 October 2006.

There is no similar special prosecution in F BiH or at the lower levels.

Is there formal independence of the ACA? Is it independent in practice?

PARTLY – They are independent to the same extent as the institutions which have specialised departments for combating corruption and organised crime. Due to the problems in co-operation between crime police and prosecution described in the chapter on law enforcement agencies, one should consider amending the law in such a way as to place these police officers under the direct control of prosecution and to temporarily assign staff from other executive agencies for the purposes of investigation, which would *de facto* form a backbone of anti-corruption agencies without creating *ad hoc* institutions.

Are appointments required by law to be based on merit? Are appointments based on merit in practice?

NO – Positions in the law enforcement agencies (police and prosecution) at the Entity level are filled in accordance with the rules described in the chapter on law enforcement agencies. These rules leave ample room for suspicion as to whether or not the appointments are actually based on merit, references and professional experience. Similar problems exist in the judiciary, which is also discussed in the chapter dealing with the judiciary.

At the State level, situation is somewhat more transparent, although the ‘ethnic quotas’ gives preference to the ethnic origin, rather than merit. In SIPA, the Council of Ministers appoints and removes the director, deputy director, assistant director of the Crime Investigation Department and assistant director of the Internal Control Department in accordance with the conditions and the procedures as outlined in the Law on Police Officers of BiH³⁴⁹, which are, as a rule, subject to ethnic quotas agreed on by the representatives of political parties. Employees of SIPA are hired on the basis of public competition and professional references. Formal decisions on their appointment and termination of service are issued by the director, who also appraises their work and decides on promotions³⁵⁰.

Are the appointees protected by law from removal without relevant justification? In practice?

NO – Unlike prosecutors (except for chief prosecutors), who are appointed for life, which was explained in detail in the chapter on law enforcement agencies, directors of police agencies or police directors in the Entity MIs, although appointed in accordance with a special procedure and through a public competition, inevitably come under pressure that is especially exerted when the government structure is changed.

However, persons heading the departments for curbing organised crime and corruption in all police agencies, are completely unprotected by law. They are appointed and removed from office by police directors or ministers, and, formally, this is the agencies’ internal issue. More transparent appointment through public competition and stable position would surely increase the efficiency of these departments

within agencies, which represents a solution that can be taken into consideration when establishing institutional mechanisms for curbing corruption.

Does the ACA manage its own budget line in formal terms? in practice?

NO – Anti-corruption units do not have their own budget lines. Their work is financed from the budgets of the institutions within which they operate.

What are the main responsibilities of the anti-corruption agency (or relevant organisations): investigation; prevention; education and awareness; prosecution, or other?

The main responsibilities of anti-corruption units within police agencies are to conduct investigation where there is a reasonable doubt that crime and corruption may have taken place. Criminal investigation is then taken over by the relevant prosecutor's office. Although these institutions are formally required to work on education programmes and raising public awareness, which are important aspects of the anti-corruption combat, this rarely happens in practice. Where prevention is concerned, this is more often dealt with by the international institutions in BiH charged with monitoring of the local agencies (EUPM, EUFOR, OHR or UN agencies). In addition to these, a small number of domestic NGOs organise preventative campaigns. With exception of TI BiH, rare are the publicly visible NGOs working on education and raising public awareness about anti-corruption combat. This is discussed in more detail in the chapter dealing with civil society.

Within law enforcement agencies and anti-corruption agencies, there is no organised, comprehensive action aimed at curbing corruption. It took a very long time to adopt an anti-corruption strategy, and now that it has been adopted, it is not implemented in practice. Consequently, there are no synchronised actions comprised of education, prevention and a co-ordinated action at all levels – from local police departments to SIPA teams and departments in prosecution. Although they admit that corruption is a serious problem in society, it is only in 2006 that the public authorities in BiH started developing the national Anti-Corruption Strategy.

The Strategy provides for a continuous strengthening of State institutions for financial investigations and confiscation of illegal revenues. Experts of the Council of Ministers consider corruption as one of the most acute economic problems in BiH³⁵¹. That is why the Strategy recommends that BiH should, by the end of the year, establish a special national anti-corruption institution. The Strategy states that “it is necessary to set up a special central State authority responsible for implementation of the national programme for curbing corruption in BiH. This institution will be tasked with co-ordinating anti-corruption activities, defining the sectors that are particularly susceptible to corruption, and developing a uniform model for monitoring statistics data in this field”³⁵². The Strategy provides for a number of

measures to be implemented between 2006 and 2009 in the area of fight against organised crime and corruption.

What is the balance of proactivity (monitoring and preventative interventions) versus reactivity (responding to complaints) in the work load?

Anti-corruption units, in both police agencies and prosecution, mostly act reactively, based on the reports by SAIs, tax inspectorates or other agencies as well as based on the complaints received through the Crime-Stoppers hotline or reports/complaints received by police or prosecution in any other way. Monitoring and preventative interventions are ensured to a certain degree through SAIs' activities, which is discussed in greater detail in the chapter on SAIs.

2. Resources/structure

What is the budget/staffing of the ACA or relevant agencies?

Budgets of the law enforcement agencies are elaborated in the relevant chapter. When analysing the budget allocations, it is important to note that police departments and prosecutor's offices maintain very limited resources for operations and criminal investigations, which certainly affects their efficiency and level of performance in curbing organised crime and corruption. Also, personal income of the police employees varies widely.

On average, the police in RS have salaries that are 40-50% lower than those of their colleagues in FBiH. The police in both Entities are paid less than those working in SBS, SIPA and the Brčko District Police. On the other hand, BiH is a country with a huge police apparatus comprised of, if we take into account all the police structures, around 15,000 police officers and a massive number of administrative staff³⁵³.

The police reform in BiH will significantly decrease the number of police officers and, consequently, reduce the operating expenses of the police structures in BiH. It is difficult to predict the number of police officers who will be made redundant. Some estimates presented during the discussions about the police reform or in the media indicate that as many as 5,000 redundancies might be made throughout MIs and police departments³⁵⁴.

Positions in the Entity and cantonal MIs were filled in the wartime, very often with staff of disputable education background and qualifications, without passing a qualifying exam for civil service and without a previous experience in the police force. Despite the checks ran by IPTF during the certification of police officers in BiH, verification of diplomas carried out by the internal control inspectorates, and dismissal of

the persons with a criminal record or dubious qualifications, the wartime and post-war burden remains in the Entity MIs. Low salaries in the Entity interior ministries, especially in the Crime Police Administration, led many police officers to transfer to SBS or SIPA, which has further weakened the departments responsible for curbing organised crime and corruption.

The Entity MIs today have a special education administration. Education is regulated by the Law, but the advance training of personnel and recruitment of young, highly qualified staff is still a very slow process due to the low market attractiveness of these positions. Furthermore, the Entity MIs are faced with the problem of motivation as the police reform has been taking months with yet an uncertain outcome and still indefinite number of redundancies. What remains a major obstacle to engaging more effectively in eradication of corruption is the lack of political will and co-ordination, rather than qualifications of the police personnel.

What is the budgetary process that governs the ACA?

This issue is discussed at greater length in the chapter on law enforcement agencies and in other places in this chapter. Unfortunately, the budget does not provide for rewards for special investigative or anti-corruption activities undertaken by the existing law enforcement structures. By way of illustration, the police officers who participated in two highly demanding police operations in the Banja Luka region, namely “Ekskalibur” and “Falsifikat” [*“Excalibur” and “Counterfeit”*]³⁵⁵, ended up without any reward for the extraordinary effort and risk they were exposed to.

Does the ACA have access to off-the-books funds?

NO – Such funds, with the exception of international donations, do not exist. Even the international donations are channelled through the budgets of the Entities or the joint institutions of BiH. This is discussed at length in the chapter on law enforcement agencies.

3. Accountability

What kind of laws/rules govern oversight of the ACA? Are these laws/rules effective?

In addition to the laws governing the structure, management and powers of law enforcement agencies, which have been discussed earlier in this publication, the key laws governing the work of all anti-corruption departments are the Criminal Procedure Code and the Criminal Code, which are discussed in more detail in other chapters of this publication (law enforcement agencies, judiciary).

To whom must the ACA report, in law? Does this accountability for its actions take place in practice?

Anti-corruption units of the law enforcement agencies operate within the system of internal and external subordination, which is rather complex (as described in the relevant chapter of this book). Heads of anti-corruption units in the police are obliged, before initiating investigation, to submit all the information they collected about a criminal offence to the relevant prosecutor's office, which then approves and coordinates the investigation.

Prosecutors are both formally and in practice independent in conducting and directing investigations as well as in deciding on whether the case is substantiated or unsubstantiated. Pursuant to the Criminal Procedure Code, the work of each prosecutor and the Chief Prosecutor is subject to control by the court. In the course of investigation, control is exercised by the judge who is appointed as a preliminary hearing judge, to whom the prosecutor must elaborate the justification of the investigative actions undertaken and from whom approval must be obtained prior to undertaking special investigative actions.

In addition to that, before initiating trial, the appointed court council may uphold, dismiss or return the indictment for reconsideration. Formally, no other State authority is entitled to interfere with the work of the prosecution. Any complaints filed by parties to the procedure, citizens or institutions are decided by HJPC. This way, prosecution and courts control the legality of work of all police units.

Is the public required to be consulted in the work of ACA? Does this consultation take place in practice?

Except indirectly, through parliamentary committees and commissions, or by means of complaints and submissions, or through the media, the public has no other legal mechanisms of influencing the operations of ACAs. While the uniformed police are involved in actions such as "Police in Local Community", usually as a part of the EUPM initiatives, the work of the crime police is still not accessible to the public. Through short press releases, the police informs the public of actions and investigations undertaken and the type of criminal offences that have taken place, but also present statistics data at periodically held press conferences. Prosecutors are even less visible in the media – it is only after other institutions accuse them of inefficiency³⁵⁶ that prosecution attempts to publicly 'justify' the small number and slow processing of indictments. Apart from that, there are no other forms of interaction or institutionalised consultation with the public.

4. Integrity mechanisms

Does the organisation have an internal code of conduct?

YES – Anti-corruption units do not have their own internal codes of conduct. Prosecutors are bound by the Ethical Code which defines rules of conduct for prosecutors, which is explained in more detail in the relevant chapter. Political neutrality is binding for the authorised persons in the police as well as for all civil servants in ministries. In police structures, these issues are regulated by the rulebooks.

Are there rules on conflict of interest? Are they effective?

PARTLY – Rules on conflict of interest for all elected officials, executive officeholders and advisors are regulated by the Law on Conflict of Interest in Governmental Institutions in BiH³⁵⁷. However, weak oversight mechanisms and lack of permanent monitoring leave ample room for manipulation, as explained in other chapters of this book.

Are there rules on gifts and hospitality? Are they effective?

PARTLY – Except for the control mechanisms provided for in the Law on Conflict of Interest, there are no other special rules on gifts and hospitality.

Are there post employment restrictions? Are these restrictions adhered to?

NO – There are no post employment restrictions. The answer to this question is the same as in the chapter on law enforcement agencies.

5. Transparency

Are anti-corruption agency reports required to be published? Are they published? How are they published?

Anti-corruption units follow different practices in publishing their activity reports. Police agencies usually present statistics overviews of the investigations conducted or criminal offences detected at their monthly press conferences. Most police units within MIs provide bulletins of events in the form of press releases. Quarterly, semi-annual and annual reports are submitted to the relevant parliaments and are accessible to the public. Also, most MIs update their statistics data about crime on their websites on a quarterly basis. Both Entity MIs have their instructions and rulebooks on co-operation with the media and they formally adhere to them. This task is performed by PR departments or spokespersons. In addition, it is possible to

download from their websites a form requesting information in accordance with the Law on Freedom of Access to Information.

Prosecutors have still not fully developed their mechanisms for making information accessible to the public. Most prosecutor's offices lack PR departments or spokespersons, and the media representatives report to finding it difficult to access this information. Some courts have high quality websites with daily updated data. They publish data on indictments, verdicts, and other items of information, but this practice is not systematically followed at all levels and in all courts. On its website HJPC publishes the disciplinary measures imposed on judges and prosecutors, but only in the form of periodic reports.

How accessible is the work of this agency to the public?

The system of communicating with the public highlights the roles of ministers, police directors and spokespersons, rather than the lower ranking personnel. In communicating with citizens, the police rarely engage in preventative actions, education, elaboration of threats, invitation for co-operation, notification of security risks, or notification of the altered laws and regulations.

6. Complaints/enforcement mechanisms

What kind of provisions are there for whistleblowing on government (or other) misconduct, as part of the anti-corruption agency mandate? Are these provisions used?

There are whistleblowing provisions and they are the same as in any other public administration body. These provisions relate to corruption, abuse of office, etc. However, these provisions are rarely or never used in practice by anti-corruption agencies and no individual cases of whistleblowing are known to the public.

Can people complain to the agency without fear of recrimination?

Anti-corruption agencies invite citizens through the media to report cases of corruption, offering them a protection of identity (Crime-Stoppers, TI BiH's hotline for reporting corruption, Indirect Taxation Administration's hotline for reporting tax or customs evasion, etc.). Furthermore, pursuant to the Criminal Code, no citizen will be held criminally liable if he/she reports giving of bribe or a gift before the criminal offence takes place. However, lack of confidence in government institutions is the main reason for a very low number of reported cases of corruption. By contrast, TI BiH, as an NGO, has received over 8,500 reports of corruption through their anti-corruption hotline 0800 55555. The main reason for such a vast disproportion is a relatively high public confidence in the institutions operating

outside the government that do possess and present their knowledge and information on the extent of corruption and its concrete manifestations³⁵⁸.

What kind of whistleblower protection is in place? For whom?

There are no adequate legal mechanisms for protection of citizens who report cases of corruption. The citizens are therefore allowed to report corruption anonymously through the aforementioned hotlines. Witness protection programmes are described in the chapter on judiciary.

Is there an internal complaints mechanism within the agency?

Within SIPA there is an Internal Control Department which is responsible for conducting internal investigations based on complaints related to the misconduct of SIPA employees as well as in the cases of use of an excessive force or firearms, corruption, and abuse of power by police officers.

Mechanisms of internal control and internal complaints mechanisms in HJPC are discussed in more detail in the chapter on judiciary, and their annual reports summarise the disciplinary and other measures imposed on judges and prosecutors. Other law enforcement agencies do not publish the results of their internal investigations into possible corruption or abuse of power on the part of their staff or disciplinary measures imposed, except in cases when a criminal prosecution is initiated.

How successfully has corruption been targeted and punished by this institution?

Answer to this question would be rather complex and would practically summarise the findings of this publication due to the lack of specialised anti-corruption agencies. The proposed national Strategy of the Council of Ministers must adequately address this issue. Otherwise, the results would boil down to the sum of the activities of all integrity pillars described in this publication, which end up being one word – insufficient.

7. Relationship to other pillars

To what extent is this institution/sector a key part of this country's NIS?

In its proposed Anti-Corruption Strategy, the Council of Ministers has still not given a final answer to the question whether there are plans to establish a new agency which will be exclusively devoted to conducting investigation into corruption. Establishment of a special State authority that is mentioned in the statement issued by the Council of Ministers indicates a model that has already been tested in BiH in the implementation of an action plan for human trafficking prevention, when an Office of the State Co-

ordinator was established along with the so-called “stop teams” within police departments for fighting human trafficking. The co-ordination authority, ideally within the Ministry of Security of BiH, responsible for co-ordination of efforts of a strengthened police and prosecution structure would certainly represent a significant step forward. However, the question remains if such a concept would produce the desired results, especially in view of the fact that the police reform is still ongoing and co-ordination of the existing police structures is too complex. Establishment of a new agency should be accompanied by the formation of specialised anti-corruption departments within prosecutor’s offices. Key aspects in curbing corruption include raising public awareness in the importance of eradicating corruption and restoring public confidence in law enforcement institutions.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

As there are no specialised ACAs, it is difficult to divide institutions into those that deal with the anti-corruption combat and others that are less engaged, though being formally linked to the former. The institution that has gained credibility is SAI, with which other ACAs should engage more actively. NGOs can also play significant role as partners, especially in raising public awareness. Hotlines for reporting cases of corruption represent a model that needs to be built upon. It is vital that this task is awarded a necessary political dimension through certain parliamentary bodies and that government demonstrates their readiness to tackle corruption. Finally, judiciary must try cases of corruption and the international community should continue to provide technical assistance, especially in terms of good international practices, incl. establishment of ACA as well as eradication of corruption in general. High-quality co-ordination and co-operation between institutions at different levels is a much better solution for curbing corruption than *ad hoc* thematic institutions with selective tasks.

Media

1. Role(s) of institution/sector as pillar of NIS

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

YES – Freedom of speech and of the press is guaranteed by the Constitution, the European Convention on Human Rights as well as the Law on Communications³⁵⁹. In addition to that, the Broadcasting Code of Conduct of the Communications Regulatory Agency (CRA)³⁶⁰ guarantees to the electronic media freedom of access to information, freedom of expression and freedom from interference with their editorial policy and work, in accordance with Article 19 of the Universal Declaration on Human Rights. These freedoms are also guaranteed by the Laws on Public Information and Laws on Media in the cantons of FBiH, as well as in the Law on Public Information of RS, and the Law on Protection from Defamation.

Is there a freedom of information law? Access to information law?

YES – A highly progressive Law on Freedom of Access to Information³⁶¹ is in force in BiH. The Law provides that information in the control of public authorities is a valuable public resource and that the public access to such information promotes greater transparency and accountability of public authorities, for which reason they have an obligation to make this information available. Therefore, every person has a right to access information³⁶². Freedom of access to information may be denied only where disclosure would reasonably be expected to cause substantial harm to the legitimate aims of the state (e.g. with regard to foreign policy, defence interests, protection of public safety, monetary policy, crime prevention), where request for access to information involves confidential commercial interests of a third party and where the information involves the personal privacy interests of a third person. However, even such information may be disclosed where to do so is justified in the public interest³⁶³.

Are these laws made use of by the news media or others?

PARTLY – Generally, citizens mostly remain unfamiliar with the Law or its potential, while its application procedures can sometimes be too demanding for journalists, who require a prompt response from public authorities. For these reasons use of this Law remains rather limited, although there has been a notable increase in the number of requests for access to information controlled by public institutions and organisations.

Although the Law on Freedom of Access to Information is a highly advanced legislation, its practical implementation faces serious obstacles. Namely, a large number of public institutions still lack the capacity, human or technical, to respond in compliance with the Law to requests for information³⁶⁴.

A research carried out by Mediacenter Sarajevo in 2005 and 2006 reveals that around 42% of public institutions responded to the requests for access to information within the legally defined time period and with no repeated requests, while as many as 58% of them ignored these requests or were not able to respond to them. In a repeated cycle requests were sent again in the form of reminders and the number of responses increased to 68.7%, while over 30% of the repeated requests remained unanswered³⁶⁵. Other organisations' activities yielded similar results³⁶⁶.

Most citizens are not familiar a law like this exists at all. An OSCE-sponsored survey conducted in 2004 on a sample of 1,550 respondents showed that 63.6% of citizens had never even heard of the Law on Freedom of Access to Information³⁶⁷.

To what extent are media freedom/access to information laws affected by other laws, such as those relating to national security?

PARTLY – Article 25 of the Law stipulates that “legislation passed subsequent to this Law that is not specifically aimed at amending this Law shall in no way restrict the rights and obligations established herein”. However, the Ombudsmen of FBiH emphasised in their special report that “the legislature [...] has acted in contravention of the Law in case of some of the laws that were passed subsequent to the Law on Freedom of Access to Information”³⁶⁸. The report makes a specific reference to the Law on Criminal Proceedings of FBiH and the Law on Tax Administration of FBiH, although there are other laws as well that are found to be in breach of the said provision: “Both these laws [...] are in contravention of the fundamental principle underlying the Law on Freedom of Access to Information, which requires that information in control of the public authorities should be available to the public”³⁶⁹.

Is there formal independence of the media? Is the media independent in practice? To what extent is there censorship of the media?

YES – The press, unlike the electronic media, is not subject to regulations in terms of editorial policy and contents, while regulation of the electronic media falls within the remit of the Communications Regulatory Agency (CRA), which was established under the Law on Communications [...] to regulate the overall communications sector, including the broadcasting networks³⁷⁰. So the independence of CRA contributes significantly to the independence of the electronic media. Mechanisms guaranteeing the independence of CRA are incorporated in the Law on Communications and the Law on Financing of Institutions of BiH³⁷¹, which stipulate that the Council of Ministers, the individual Ministers or any other person may not in any way interfere with the decision-making of the Agency in individual cases³⁷². In

addition to that, Pursuant to Article 40 of the Law on Communications, officials in executive and legislative institutions at all levels of government, members of political parties, as well as persons with any financial relation to the telecommunication operators or electronic media, may not be nominated for the position of General Director or a member of the Agency's Council³⁷³. CRA Council members are removed from office by the BiH Parliament, and the Council of Ministers may remove the General Director. These decisions are taken only in precisely defined cases: illness, conviction of a crime punishable by imprisonment, conflict of interest, resignation, failure to fulfil duties prescribed by law, and violation of the CRA Code of Ethics³⁷⁴.

In addition to that, the independence of public broadcasters³⁷⁵ within the Public Broadcasting System in BiH is guaranteed by the Law on the Public Broadcasting System of BiH³⁷⁶. Article 4 of this Law provides that public broadcasters are independent in their work and that they enjoy editorial independence and institutional autonomy.

The foundation of the overall independence of the public broadcasters is certainly their financial independence. However, the public broadcasters face enormous difficulties in the collection of the compulsory monthly RTV subscription fee, which places them in a particularly difficult financial situation³⁷⁷. Additionally, the collection system that is currently in place has not proven itself effective and it has often been a tool for pressuring the public broadcasters³⁷⁸. Moreover, political and religious leaders of different groups have, on several occasions, called for boycotts of the RTV fee when they disagreed with the public broadcasters' editorial policy³⁷⁹.

According to Mr. Jasmin Duraković, Director of the Federalna RTV (Public Radio and TV Broadcaster of FBiH), "the principal reason for such a low level of collection of the fee is the attitude of the government towards public broadcasters, because they have done nothing to implement the legal obligation of collection of the fee. Even the most senior officials in this country invite the citizens not to pay the subscription, just because they have no influence over the public broadcasters' editorial policy"³⁸⁰.

Despite the mainly positive situation in the country in terms of freedom of the media³⁸¹, the media and journalists working in them are also exposed to pressures from the owners of the media outlets. There is, in fact, no collective agreement at the level of the State or the Entities, between the journalist associations and the media companies. Furthermore, in view of the generally very bad economic situation and a high unemployment rate, owners of media outlets have considerable possibilities of exerting unhindered pressure on the journalists.

Although there have been no cases of direct and systemic government censorship of the media, self-censorship is practiced fairly often, as journalists are afraid of losing their job, editors and owners are afraid of losing advertising revenues, and there are often concerns for physical security³⁸². A recent

roundtable on this subject concluded that the media often choose to manipulate the public if this is in the interest of the powerful oligarchs, who will in turn provide them with a financial stability³⁸³. Taboo topics or opinions exist as well, most often in connection with the inter-ethnic issues in the country creating an atmosphere in which certain issues are not allowed to be discussed in public. It is because of unnatural political correctness that the most significant media outlets promote, that they became disliked among most ethnically-conscious citizens. The same is true for the national public broadcaster BHTV. In order to maintain inter-ethnic relations, some media outlets do not publish information that suggests inter-ethnic intolerance or information that glorifies business, sports or cultural successes of one ethnic group or Entity in BiH³⁸⁴.

To what extent is there a tradition of investigative journalism in the media?

PARTLY – In BiH there is a comparatively small number of media that publishes investigative stories and a correspondingly small number of investigative journalists. The most significant media that manage to ensure some degree of investigative journalism, despite the market pressure and a lack of financial and human resources, are weekly magazines *Dani (Days)* and *Slobodna Bosna (Free Bosnia)* from Sarajevo, daily newspaper *Nezavisne Novine (Independent)* from Banja Luka, and TV show “60 Minuta” (60 Minutes) aired on FTV [Public TV Broadcaster of FBiH].

Journalists who investigate economic or war crime often receive threats and come under verbal attacks. Physical assaults occur far less frequently, though³⁸⁵. All this contributes to a very low level of investigative journalism in the BiH media. Ms. Dunja Mijatović of CRA noted that a major problem with the media in BiH is their subordinate position and lack of critical, investigative and courageous journalism³⁸⁶. In the context of a highly corrupt state and close links of different structures, incl. media management and corrupt elites, it may not always be in the journalists’ personal interest to engage in a professional journalist investigation of corruption.

To date, two journalists were given investigative journalist integrity award which was established by Transparency International BiH in 2004: Mr. Bakir Hadžiomerović, primarily for his TV talk show “60 Minutes” which is aired every Monday on FTV (public TV broadcaster of FBiH), and Ms. Biljana Bokić of RTRS (public TV broadcaster of RS) for her investigative reporting from the Eastern Herzegovina which helped reveal municipal corruption in this region. The number of nominated journalists has been very low over the last three years. One of the reasons for that is a rare thematic specialisation among journalists. 2006 Award was granted to Mediacycenter-Sarajevo that has been creating conditions for upgrading work of the investigative journalists in the country, which is the first instance of giving the award to an institution.

Do the media carry articles on corruption? How is scandal covered? Are both political and corporate scandal covered?

YES – The media in BiH regularly and extensively carry articles on corruption and political and corporate scandals. However, a general perception among experts is that the quality of journalism in BiH is not at a satisfactory level. Sensation-mongering ‘yellow’ journalism becomes increasingly dominant, while serious investigative journalism is virtually non-existent. The imperative of commercialisation of the media became the driving force of a rapid expansion of sensationalism and tabloid press, to the detriment of proper journalism³⁸⁷. Unfortunately, political elites are much more interested in the view of the international actors, such as OHR, than in the opinion of the media and domestic public.

To what extent have news media organisations or journalist associations committed themselves in any extraordinary way to an agenda of integrity, transparency and good governance? What is the evidence for this?

PARTLY – Apart from carrying regular articles on corruption and political and corporate scandals, the media and journalist associations have not committed themselves to any specialised initiative for integrity, transparency and good governance.

2. Resources/structure**What are the key media and media oversight bodies in the country (please provide a list)?**

Nowadays, there is a plethora of media outlets in BiH, particularly compared to a relatively small population of some four million³⁸⁸. Namely, according to the information from the CRA public register of media³⁸⁹, in 2006 there were 188 licensed RTV channels, including three radio channels and three TV channels by public broadcasters: BHRT, RTF BiH and RTRS. Of the total number of channels, 42 are television, and 146 are radio stations. Of the existing TV stations, in addition to the three public broadcasters, it is worth naming large commercial TV stations such as TV Pink BiH, OBN, ATV and NTV Hayat as well as a joint TV network Mreža+ (Network+), which is aired on several privately-owned TV stations. Of the huge number of radio stations, those that seized over 3% of the BiH market at the beginning of 2005 include: Radio BN, Radio BIG, Radio Stari Grad, Radio BH1, Radio Kalman, Radio Valentino, Radio Mir, Radio BM and Radio Nes³⁹⁰.

The printed media market is also overwhelming, with eight daily newspapers and almost 50 weekly and biweekly publications, published on a regular basis³⁹¹. According to the report on self-sustainability of the media sector in BiH, published in 2005 by IREX³⁹², the following represents circulation of newspapers in BiH (from weekly to daily): Dnevni Avaz 40.2%, Večernje Novosti (from Serbia) 11.9%, Oslobođenje

9.8%, Večernji List (from Croatia) 9.3%, Blic (from Serbia) 8.0%, Glas Srpske 7.8%, Nezavisne Novine 7.7%. The same report cites the following data on circulation of magazines: Glorija (from Croatia) 16.1%, Azra 12.3%, Express 9.2%, Slobodna Bosna 9.1%, Dani 8.1%. However, no independent information exists as to the number of sold copies of individual print media and the data should be viewed cautiously.

The key media oversight and regulatory authority is CRS, and the key self-regulation body for journalist ethics and professionalism in the press is the Press Council of BiH. The Press Council provides the public with tools for responding to unprofessional reporting of the print media. As a self-regulatory authority, the Press Council has no power to impose sanctions against the media found in breach of the Press Code of Conduct, but can only act as an advisor and mediator between the complainant and the press, referring the complainant to use journalistic correction tools: right to a response, publication of démenti, a re-published report with the corrected statements, a possibility for rebuttal in a restated interview and an editorial apology. In addition to that, the Council protects the press from pressure and interference with the editorial policy, dismissing complaints that are not based on a breach of the Press Code, but on the complainant's personal perception of the editor's alleged mistake.

What is the size of the media sector (percentage of GDP)?

A large number of media is not the indicator of an economically strong and dynamic media sector. Their revenues are limited due to a particularly low value of the total advertising market in BiH. According to some estimates, the net value of TV advertising in 2002 amounted to approximately 11 million Euro, of which some 50% or 5.5 million went to FTV, while the other 42 TV stations shared the remaining 5.5 million Euro³⁹³. A similar data is presented by Henderson et al. for 2002³⁹⁴: the total net revenue from advertising in BiH amounted to 36 million KM and is divided as follows: TV 23 million, billboards 10 million, press 2 million, and radio 1 million KM³⁹⁵. The IREX's estimates indicate that the net value of TV advertising in 2005 amounted to approximately 25 million Euro³⁹⁶. Judging from the book values and gray money flows, the media market is becoming a very lucrative business.

Therefore, according to the official indicators, the advertising market is somewhat limited, threatening the survival of such a vast commercial and public broadcasting sectors. Compared with the neighbouring countries, BiH is clearly at the very bottom of the list in this segment, indicating that the media operate in a particularly difficult financial situation³⁹⁷.

Are journalist salaries competitive with other similar professions?

NO – As a result of the difficult financial situation, journalist salaries are not competitive with other similar professions and in addition are not regular. The most alarming situation is in the public broadcasting sector that ran a debt of some ten million KM in unpaid salaries and unpaid benefits for their employees as of end 2005³⁹⁸. The situation in smaller RTV stations is not any better, as is indicated

in the research conducted in 2003 by the Independent Union of Professional Journalists in BiH, which reveals that in BiH, 57.8% journalists work in media outlets with no employment contracts, whereas some 50% do not receive regular salaries and have no health insurance³⁹⁹.

Is there a spread/diversity of media ownership?

YES – The CRA’s Rule on Media Concentration and Cross-Ownership (Rule 21/2003) has been in force since April 2004. This Rule defines the criteria for preventing concentration in the media market. Pursuant to this Rule, one individual or one legal entity cannot own two or more radio or two or more TV stations, which cover the same population range. The Rule also prevents cross-ownership of electronic and print media by stipulating that an individual or a legal entity that owns print media can own one broadcast media (either television or radio) at the same time. The Rule also provides for radio-television cross-ownership limitation, stipulating that an individual or a legal entity can own one radio and one TV outlet for the same target group.

In addition to this CRA’s Rule, market concentration and competition is governed by the Law on Competition in BiH⁴⁰⁰. However, even though there are formal and legal prerequisites for prevention of media concentration, a serious problem in the implementation of these laws and rules is a non-transparent ownership of companies in general. Namely, there is no central register of print media, nor a central register of commercial companies. Moreover, the existing registers are in a printed rather than electronic format, which makes them difficult to search through. This situation is a serious threat to transparency of media ownership.

According to the available information in relation to the ownership of key media, and according to the CRA’s estimates, at the moment BiH has no cases of serious media concentration which may represent a threat to fair and open market competition⁴⁰¹.

How much media ownership is public/private?

A problem of great importance for independence of radio and TV stations from the ruling structures is the fact that in addition to the public broadcasters (BHRT, RTF BiH and RTRS), there are also 15 TV stations and 63 radio stations in public/state ownership, at municipal and cantonal levels across BiH, largely dependent on municipal and cantonal government budget financing. Although privatisation of these broadcasters was supposed to commence in 2002, no major progress is recorded⁴⁰². At the same time, all major print media are in private ownership, except for *Glas Srpske* daily (*The Voice of Srpska*) which is owned by the Government of RS.

Is there political control/ownership of the media?

YES – The fact that one third of the TV stations and almost half of the radio stations depend on local and regional government budget financing certainly indicates that there is ample room for political control over the media, although the direct connection may be difficult to identify. Even more difficult to identify are direct political influences on the print media, although their reporting clarifies which political option they endorse.

Furthermore, comparison of the state-owned companies that dominantly advertise themselves in a particular media with the partisan structure of these companies' steering boards identifies the political option that strives to gain control over the media by means of such indirect funding. This is a common practice in a number of privately-owned print and electronic media. Donor funding of the media is still present, though showing a continuously declining trend. Donor funding is used by foreign countries or foundations to air their views on the constitutional organisation of the country and the current political issues. However, in terms of institutions, virtually no international donor project has achieved self-sustainability or success in the media arena in BiH, including the expensive experiments with OBN, BHTV, etc.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

YES – The Law on Communications⁴⁰³ establishes the CRA as a functionally independent, non-profit agency regulating the RTV sector, public telecommunication networks and licensing, and defining basic conditions of operation of joint and international communications structures. CRA is responsible for planning, co-ordination, allocation and assignment of the spectrum of radio frequencies⁴⁰⁴. The licensing of RTV broadcasters takes place in a transparent, independent and competitive procedure.

There are no legal obstacles for journalists to perform their professional duties; journalists are not required to register and they are not issued work licences. On the contrary, all the relevant laws maintain that journalists and media are free to perform their professional duties.

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

YES – The public broadcasters, especially those within the Public Broadcasting System of BiH, regularly cover the views of government critics, opposition politicians and the NGO sector. In addition to that, Article 26, Paragraph 7, of the Law on Public Broadcasting System of BiH entitles the public broadcasters to broadcast sessions or excerpts from sessions of the parliament, i.e. to inform the public on parliamentary activities in a suitable manner, in accordance with their editorial guidelines. This enables regular coverage of different views, including the views of the opposition parties.

What rules cover political advertising in the news media? Are the rules followed?

YES – The CRA’s Broadcasting Code of Conduct⁴⁰⁵ and the CRA Rule No. 01/1999 – Definitions and Obligations of Public Broadcasters specify that political advertising in the electronic media is regulated by the provisions of the Election Law BiH as well as by other legal acts issued by the Election Commission. There are no similar rules and laws governing political advertising in the print media. In accordance with this, Article 6, Paragraph 1, of the Rulebook on Media Presentation of Political Parties in Election Period⁴⁰⁶ provides that paid political advertising in the electronic media is allowed only during the election campaign, i.e. in the period of 30 days prior to the Election Day. These CRS’s rules are strictly observed in practice.

Do all parties/candidates receive a minimum of free coverage or an amount proportional to their size in the legislature? Is this the case in practice?

YES – The Rulebook on Media Presentation of Political Parties in Election Period, which was passed by the Election Commission on 3 May 2006 pursuant to Article 16, Paragraph 18, of the Election Law⁴⁰⁷, governs covering of the election activities and guarantees an equal access to media for all political actors participating in the election campaign, including transparent price lists and clear procedures for scheduling the introduction of political subjects in the programmes of the electronic media. According to Article 5, Paragraph 6, of this Rulebook, “each public electronic media must ensure a direct address of all the political subjects registered in the election unit covered by the signal of the relevant media outlet”. CRA is responsible for implementation of the Rulebook on Media Presentation of Political Parties in Election Period.

The CRA report on the coverage of the 2004 local elections points to a lack of professional reporting, inadequate coverage and a considerable number of violations of the applicable Rules and Regulations. Still, of the total number of radio and TV stations, 66% fulfilled their obligations prescribed by CRA⁴⁰⁸.

Unlike the electronic media, there are no rules that would govern the coverage of the election period by the print media, so the operations of the print media are governed through self-regulation, professional and ethic codes, and actions of the Press Council. The situation in the print media is therefore worse than in the electronic media. In the 2002 general election, the print media focused their attention on scandals and affairs, lacking an essential debate on the election programmes of the parties and candidates. Large parties and prominent candidates dominated their reports, to the detriment of smaller parties⁴⁰⁹ and a number of print media outlets displayed a clear political preference, thus demonstrating support for certain political options⁴¹⁰.

During the election campaign for the local elections held on 4 October 2004, journalists and the media were exposed to serious threats and strong verbal assaults from political and religious leaders⁴¹¹. Despite

that, the Helsinki Committee held that the election campaign was mainly conducted in a democratic atmosphere, with no major incidents, and the media generally provided a fair coverage of the elections⁴¹². The 2006 general elections have been characterised by similar practices and no major incidents were observed in the media that would result in sanctions against a media outlet.

3. Accountability

What kind of laws/rules govern oversight of the media? Are these laws/rules effective? What kind of accountability exists for the media?

An almost identical Law on Protection from Defamation⁴¹³ is in force in both Entities. This Law decriminalises defamation taking it out of the criminal legislation and placing it into the civil law, and any trials related to it are moved from criminal to a civil procedure. Due to that, for the past several years, BiH journalists have been the only ones in Southeast Europe who cannot face the threat of serving sentences or paying enormous fines for insult or defamation.

However, although this Law encourages free press and freedom of expression, it also calls for a responsible media and responsible journalists. Journalists will be held accountable and bear the consequence of defamation only if they “deliberately or out of recklessness, present or convey expression of an untrue fact”⁴¹⁴.

The Law is designed in such a way as to encourage the pursuer to first approach the media outlet which acted against his/her dignity and seek protection that way, and to approach the court only if he/she does not receive an appropriate satisfaction from the media. Moreover, pursuant to this Law, government bodies and institutions cannot act as pursuers, although members of government, public officials, and other persons holding public functions may initiate action as private individuals⁴¹⁵.

In the first phase, during the first two years after the Law entered into force, the number of defamation charges has grown rapidly: “Almost 350 charges were filed with cantonal and municipal courts in both Entities of BiH in the period of these two and a half years, which is three times as many as in the prior two or three years”⁴¹⁶. In most cases, charges were against publishers, editors-in-chief, and journalists⁴¹⁷ and were usually filed by politicians or public officials, but also by journalists and media outlets themselves, suing other journalists and media for defamation. Fortunately for journalists and the media, if the courts ruled in favour of the pursuer in cases of very expensive claims for damages, damages not exceeding one or two percent of the requested amount were awarded, which is in the spirit of the Law on Protection from Defamation that requires the court to ensure that “the amount awarded for damages may not lead to serious financial difficulties or bankruptcy of the defendant” i.e. the media outlet being sued. This helps to ensure that the court ruling against a media outlet does not threaten the survival of

this outlet in the media market. However, due to the high costs of court proceedings for both the pursuer and the defendant, it is basically not economic to launch the court proceedings, and the number of such cases lately has dropped considerably⁴¹⁸.

While the Law on Protection from Defamation applies to all media, the electronic media are, in addition, responsible for their work to the CRA, which strictly implements the Law on Communication, its own Broadcasting Codes of Conduct and a number of its own RTV Rules Broadcasting⁴¹⁹. In most cases, CRA's decisions are upheld in practice and the established mechanisms as well as the legal framework regulating the electronic media remain relatively efficient.

4. Integrity mechanisms

Are there codes of conduct for journalists? Are there professional organisations governing media ethics?

YES – Ethical and professional journalist standards are established in the Press Code,⁴²⁰ which is a self-regulatory instrument, while the key self-regulation authority is an independent non-governmental organisation – the Press Council⁴²¹, established jointly by all the associations of journalists in BiH. In addition to that, journalist ethics and professionalism are regulated by the CRA's rules and codes of conduct.

Due to the strong position held by CRA, reporting is generally compliant with the basic ethics and professional standards such as those related to privacy protection, protection of children and minors, and a clear separation of advertising from other content. However, the situation in the print media is worse. Namely, according to the 2004 report by the Press Council, daily newspapers were often in breach of the Press Code of Conduct⁴²². The same report by the Press Council also points to serious violations of privacy and manipulations with children in the newspapers, which is almost a daily occurrence⁴²³. Recent research on ways of media reporting about minors breaking laws, conducted by Mediacenter Sarajevo and commissioned by Save the Children UK, revealed that “the media construct a simplified picture of minors breaking laws, presenting them in a very negative light. [...] In most cases, the media do not act in the best interest of minors”⁴²⁴.

A number of reports on representation of women in the media reveals that men dominate the media programmes in BiH. According to these reports, men spoke in 85% of the news and current affairs programmes, whereas women in only 15% of the cases⁴²⁵. The situation was equally bad in late 2004, when the monitoring results showed that “men hold clear primacy in all areas of life: politics, economy, judiciary, police and partisan life”⁴²⁶. A recent analysis of print media in BiH, conducted by the

association of BiH journalists⁴²⁷, showed that women were completely marginalised by print media in BiH⁴²⁸.

At the same time, there are growing rumours about the racketeering of enterprises and prominent individuals by media outlets. Media outlets offer “protection from negative reporting”, which the companies and prominent public individuals have to pay to the owner of an influential media outlet. The companies that refused to pay such a racket soon appeared on the front pages, completely smeared and slurred. This would change and turn into a ‘positive propaganda’ only after the targeted company or individual paid for the so-called ‘media protection’. The companies that accepted paying racket to the media outlets are eulogised and completely freed of investigative journalism that might pose a risk to their illegal business operations. Some companies that legally also decide to pay such a form of ‘protection’ so as to avoid their reputation being blemished in the media. The public does not discuss these cases, and CRA and the police have never undertaken any investigative actions, so all remains based on rumours and speculations⁴²⁹.

Are there rules on conflict of interest for journalists? Are they effective? Are there rules on gifts and hospitality? Are they effective?

NO – There are no generally adopted rules on conflict of interest for journalists, nor are there rules on gifts and hospitality. It is possible that certain media outlets have their own rules governing this issue, but there are no such provisions in the relevant laws and rules and in the Press Code of Conduct.

5. Transparency

Are media able to withhold disclosure of sources, by law? Does this take place in practice?

YES – The Law on Protection from Defamation provides that a journalist or editor who has obtained information from a confidential source has the right to withhold the identity of that source. This right is further upheld in the Law on the Media of the Sarajevo Canton.

Are there cases of the government prosecuting media for withholding sources?

NO – Thus far there have been no cases of a government prosecuting media for withholding sources. Moreover, under the Law on Protection from Defamation, government and governmental offices cannot bring libel charges against the media.

Are in-kind donations/reduced rates by media organisations to political interests required to be disclosed? Are they disclosed?

PARTLY – Pursuant to the CRA’s rules, in particular Section II E, Article 4, of the CRA’s Rule “Definitions and Obligations of Public Broadcasters”⁴³⁰, which deals with paid advertising, pricelists of advertising services must be available to the public. This establishes a legal mechanism that guarantees media transparency, especially in terms of paid advertising. However, it is very difficult to implement these provisions in practice and there is no information on the actual level of implementation of these provisions. There are no similar provisions in place for the print media. The Rulebook on Media Presentation of Political Parties in Election Period clearly states that “prices of political advertisements must be the same for all political subjects, and price lists must be submitted to CRA for review 15 days prior to the election period”⁴³¹.

6. Complaints/enforcement mechanisms**Have journalists investigating cases of corruption been physically harmed in the last five years?**

YES – Journalists in BiH are rare victims of crime or physical assaults. However, if such offences do occur, the police and the judiciary usually fail to respond adequately. For that reason, journalists simply do not report attacks, as they do not believe that the police or the judiciary would provide them with adequate assistance and protection⁴³². Journalist helpline, which operates as a part of the BiH Journalists’ Association, received 62 complaints from 2004 to mid 2005, related to death threats and physical assaults⁴³³. The Helsinki Committee in BiH emphasises that there is still pressure on the media and physical assaults on journalists, and cites the examples of verbal assaults on *Nezavisne Novine* daily, *Slobodna Bosna* weekly, RTRS, FTV, a physical assault on a journalists of Radio Big, Banja Luka, and a cameraman employed with RTRS⁴³⁴.

Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption? Who has used them recently?

NO – Although the number of defamation charges has rapidly grown during the first two years following the entry into force of the Law on Protection from Defamation, and they were mostly brought by prominent individuals, i.e. politicians⁴³⁵, the courts did not award damages that would have threatened the survival of the media outlets sued. Therefore, this Law cannot be said to have restricted the reporting on corruption and scandals related to prominent politicians and other public individuals.

7. Relationship to other pillars

To what extent is the media a key part of this country's NIS?

Due to their very nature and the fact that they are closely integrated with all aspects of life and all levels of state organisation, the media are an extremely important part of BiH's National Integrity System.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

By their very nature, the media mostly cover the work of the legislative and the executive branch of power, but are also beginning to increasingly cover the work of SAIs, Ombudsmen, NGOs, etc. because of the wide public interest in their reports. Media outlets are beginning to train individual members of their staff specifically for coverage of events in the business sector and economic transition. However, the media also actively cover the work of all other integrity pillars, especially during the election period, when media focus is on political parties, the election commission, etc. Due to their major role in BiH, international organisations and institutions, especially OHR, are also frequent topics in the media reporting.

Civil society

1. Role(s) of institution/sector as pillar of NIS

What rules/laws govern the formation of civil society organisations (CSOs)?

The formation and registration of CSOs is formally regulated at two levels: Entity and State, which means that there are three Laws on Associations and Foundations (two at the Entity level and one at the State level)⁴³⁶. The Laws are almost identical and differ only in provisions related to the conferring of public benefit status to CSOs. The Laws were enacted as far back as 2001 in co-operation with the International Centre for Non-Profit Laws. The only change was ever made to the provisions contained in the State-level Law that defines the authority with which the CSOs register: the Ministry of Justice instead of the court of relevant jurisdiction⁴³⁷.

The legislation in BiH is generally conducive to formation and work of CSOs and is viewed as very progressive by a number of international and national legal experts⁴³⁸. However, this legal framework is incomplete as there is still no fiscal legislation that would allow non-taxable donations by individuals and/or companies, which could improve the prospects for self-sustainability of CSOs. In addition to that, the engagement of volunteers in CSOs⁴³⁹ is still not regulated by law (recognition of the length of volunteer service for work in CSOs), which discourages development of volunteerism as an important form of support to CSOs. All these point to the conclusion that the existing legal framework allows a comparatively simple formation of a CSO, yet fails to provide support to their further work.

Is there formal independence for civil society organisations? Are civil society organisations independent in practice?

YES – According to the applicable Laws on Associations and Foundations, CSOs have their assemblies and management boards and, as such, are independent from external factors.

Despite their formal independence, some CSOs are evidently influenced by political parties and donors. The cause of this is a lack of managerial capacities and insufficient respect or understanding of the significance and the role of the NGO sector among key managers in CSOs, which leaves these organisations vulnerable to individuals and/or groups who try to make such CSOs serve their political agendas. In addition to that, a lack of operational resources (which can be the result of poor capacities of CSOs themselves) may make CSOs shift their primary focus towards serving their donor needs⁴⁴⁰.

On the other hand, certain CSOs are funded from local sources – primarily by ministries and/or from municipal budgets. Access to public funds is legally regulated to a certain extent (e.g. there are procedures for allocation of funds as well as criteria for evaluation of CSOs' projects), but remains heavily based on CSOs' personal connections with decision-makers. Where there are clearly defined public procedures for allocation of funds, external influence on CSOs⁴⁴¹ is not very strong. However, in case of non-transparent access to public funds this influence plays a critical role in securing funding.

However, most CSOs do demonstrate independence in management and decision-making in the field of identification and advocacy of citizens' interests as well as observance of their missions. CSOs' reports that analyse the government performance from the citizens' point of view or assess the effects of the existing policies on citizens' lives, while offering recommendations for possible improvements to these policies, give evidence that these organisations are independent in practice and, at the same time, help to further strengthen their independence. The very existence of independent critical reports⁴⁴² on the government operations helps to enhance the CSOs' public image (which is still insufficiently developed) and strengthens their role as partners to and not subjects of the governments in BiH.

How extensive and active are civil society organisations (CSOs)?

The NGO sector in BiH is characterised by varying levels of development. Most NGOs operate locally – at the grassroots level – by delivering various services to citizens, though with a limited capacity for participation in policy dialogue, while a number of them are undergoing transition to professional think tanks. As the very nature of the NGO sector requires the ever changing role of CSOs, the aforementioned can be seen as both weakness/challenge and a progress indicator. It is the diversity of CSOs' activities, ideas and expectations, as well as efforts aimed at their implementation or realisation, which facilitates progress. The current situation can therefore be seen as providing fertile ground for further development, rather than indicating strength of the NGO sector in BiH. However, the existence of preconditions for further development does not suggest that the next step will necessarily take place, and the whole NGO sector continues to face the challenge of overcoming the existing limiting factors (underdeveloped management skills, lack of know-how, insufficiently developed public image) and making a crucial step forward in the development of civil society.

The total population of NGOs operating in BiH has been estimated at 4,600⁴⁴³. On average, NGOs spend 57% of their time providing services, 27% on advocacy and 16% on other activities⁴⁴⁴, which suggests that the NGO sector is nominally active. However, majority of work is reactive – responding to the government's failure to deliver services to citizens, in particular social services. Critical analyses of the government performance, advocacy of greater accountability, and improvement of laws in terms of limiting the benefits of specific interest groups are not present to a satisfactory degree. Inadequate level of awareness among CSOs and limited human, financial and technical resources have been major causes of such a situation.

Is the education system required to address integrity issues and corruption/bribery, in public awareness campaigns or in schools? Does this take place?

NO – The education system in BiH does not address integrity issues and corruption/bribery at any education level – primary, secondary or tertiary⁴⁴⁵. The school and university curricula do not provide for any extracurricular activities (e.g. lectures by NGOs) on these topics.

What is more, in 2005 local official institutions did not launch any public campaigns aimed at educating the general public about how corruption and bribery can be curbed or eliminated. Some external initiatives were launched (by international agencies and/or organisations)⁴⁴⁶ initially supported and gradually taken over and implemented by the authorities in BiH.

2. Resources/structure**To what extent are there CSOs in the country concerned with governance, accountability, transparency or anti-corruption (please provide a list)?**

A significant number of CSOs are concerned with governance and anti-corruption, which is important for maintaining the public's focus on these issues. However, only a limited number of CSOs⁴⁴⁷ have made specific and articulate efforts to offer solutions to these issues and to exert pressure on the authorities to improve governance, legislation and practices through demonstration of accountability in their work.

One remarkable example of their success is an amendment to the Constitution of FBiH which allowed citizens to directly elect their municipality mayors (which had not been possible before), which came as the result of a campaign led by the Centres for Civic Initiatives. This has significantly improved the accountability of mayors to the people who elected them as well as the overall transparency of local governments.

Transparency International BiH is the most important anti-corruption CSO in BiH and has been actively combating corruption and increasing accountability of all government institutions ever since its establishment in 2001. TI BiH is the leading NGO in this field, often acting as a hub for other CSOs and integrity pillars in the country. However, except TI BiH, there is no other NGO that is primarily concerned with governance, accountability, transparency or anti-corruption, so the CSOs' capacities remain insufficient.

Are there business groups campaigning against corruption (professional organisations, sector groups)? Other business-led lobbies (ethical/CSR/SRI business groupings) (please provide a list)?

PARTLY – Based on the collected information⁴⁴⁸, none of the business groups in the country has a proactive role in combating corruption. More specifically, they do not lead public campaigns or other advocacy activities aimed at curbing corruption that affects the business sector. Most activities in their sector are aimed at bilateral communication with the authorities and rely on the government to find solution for corruption.

The “Bulldozer Initiative” – launched and led by OHR in 2005 was aimed at removing obstacles to business in BiH (which also supposed an elimination of corruption), has completely disappeared from the public scene. There is an obvious correlation between the public visibility of this Initiative and the OHR’s involvement in it, because the public interest in the initiative has visibly faded ever since the local agencies⁴⁴⁹ took over the management of the Bulldozer Initiative from OHR. An absence of concrete and visible results⁴⁵⁰ has also led to the waning of public interest in the said initiative.

There are only sporadic public calls by business groups for creation of an environment that would be conducive to doing business, accompanied by analyses of obstacles (pointing to corruption as one of the most serious problems), but they can hardly be considered an organised and continuous effort to curb corruption. More on this in the chapter on business sector.

Are there trade unions engaged in anti-corruption activities?

PARTLY – There are three major trade union organisations in BiH: the Trade Union of Republika Srpska (www.savezsindikatars.org), the Trade Union of BiH (www.sssbih.ba), and the Confederation of Trade Unions in BiH (www.sindikاتبih.ba), which nominally co-ordinates the activities of the Entity trade unions at the State level.

Each of these three organisations addresses corruption in their talks with the government about the status of labour, calling for more effective anti-corruption measures. However, none of them takes concrete measures in terms of corruption education or advocacy. Moreover, the interviewed representatives of these three organisations do not think that the trade unions should address corruption issues and believe that the public authorities and government agencies in BiH should be addressing these issues. According to them, trade unions’ role is merely to exert pressure on governments to enact and implement anti-corruption laws. The trade union organisations in BiH obviously expect governments to be the sole actors in the anti-corruption combat, failing to recognise the need for their own engagement.

What is the budget/staffing of these key governance/anti-corruption CSOs?

Poor human resource management is one of the most serious problems besetting the majority of NGOs in BiH, including those that are concerned with corruption. The labour market in BiH, where there is a high demand for young and qualified workforce, quickly integrates the experts of the NGO sector into the business (primarily banking) sector. Such a trend can have a long-term adverse effect on the development and self-sustainability of the civil sector.

Although it is desirable that experienced individuals who are conversant with the civil sector should get employed in the business sector, thus unlocking the potential for support to the work of NGOs, the drain of key individuals from the NGO sector is currently very high and represents a threat to the survival of a significant number of NGOs. Due to the decreased donor funding, NGOs are growing less and less capable of keeping qualified staff, which is a general cause of the decrease in the quality of personnel working in NGOs. The awareness about volunteerism as a possible alternative is still poorly developed among individuals in BiH.

On the other hand, the funds available for NGOs are becoming increasingly limited. Local philanthropy is poorly developed and the existing fiscal legislation is not supportive of the NGO sector and does not allow for availability of significant resources to domestic NGOs. International funds are shrinking and funding applications are becoming ever more sophisticated, so local NGOs find it increasingly difficult to access the remaining funds. Generally, the NGO funding prospects are rather poor and pose a serious threat to the survival and functioning of the civil sector, unless significant changes take place primarily in terms of the development of local philanthropy (changes to the relevant laws that would allow tax-exempt donations, awareness raising activities, etc.) and creation of a broader partnership with public and private sectors.

Who funds these CSOs?

The willingness of the local authorities to support the work of the key CSOs concerned with governance and anti-corruption is virtually non-existent. Despite having a direct interest, the business sector does not represent a significant source of funding for CSOs due to restrictive fiscal legislation and a low level of awareness among CSOs of the importance of their own involvement in the development of anti-corruption policies.

Almost 90% of the resources necessary for the funding of these CSOs are received from outside BiH – from foreign governments and public and private foundations from Europe and USA⁴⁵¹.

3. Accountability

What kind of laws/rules govern oversight of CSOs? Are these laws/rules effective?

The statutes of CSOs provide for an obligatory internal oversight of their work and define the monitoring methods to be used by relevant bodies within CSOs. This normally includes annual or more frequent reports by the executive management with regard to the performance and activities of the steering boards, assemblies and other management bodies of these organisations. These procedures represent an obligatory part of the statute of each CSO.

Internal oversight of CSOs does not fulfil its purpose in practice as CSOs' steering boards or assemblies lack capacities and the necessary level of awareness to effectively supervise executive personnel. Steering boards or assemblies usually fail to ensure the smooth running of CSOs because their members-volunteers are committed but lack the necessary know-how. This hampers the internal oversight of CSOs and can also have an adverse effect on their public image. The need for strengthening the role and capacities of CSOs' management bodies (steering boards, assemblies) requires a special attention of CSOs as well as their donors, who should acknowledge this deficiency and earmark a part of their funds for this purpose.

In certain cases there are defined methods for external supervision of CSOs by governments. The CSOs having a 'public benefit status'⁴⁵² are legally required to submit activity reports to the Government and disclose the donations they have received. Failure to submit these reports can cause the status of the CSO to be revised. However, the experience has shown that this obligation is only a formality with which CSOs only formally comply, while the quality of these reports was never analysed in depth. The Law also allows the Government to close CSOs that have not been active for two years⁴⁵³, but this provision has never been practiced.

To what extent are CSOs, trade unions, or business groups accountable to their constituencies? How are they required to demonstrate this?

In accordance with their organisational structures, CSOs/trade unions and business associations demonstrate their accountability to their constituencies through internal reporting and decision-making in management bodies (steering board, supervisory board and assembly). The key mechanisms for demonstration of this accountability are the management reports to various boards, where adoption of these reports is considered to represent an approval of their operations.

In practice, however, these processes are merely formal in nature⁴⁵⁴, while elitism and alienation of the CSO leadership from their constituencies represents a common occurrence. In such circumstances, leaders of the trade union organisations are increasingly acting on behalf of small interest groups or in

their own interest rather than on behalf of their constituencies, which leads to the dissatisfaction among the membership and fragmentation of the existing trade union organisations.

Do most CSOs have members?

PARTLY – Somewhat less than a half (or around 45%) of the existing 4,600 CSOs have members. Two different types of CSOs with different levels of membership can be identified. Smaller and cultural organisations have a significant number of members, while larger CSOs dealing with higher level policies have fewer members⁴⁵⁵.

4. Integrity mechanisms

Are there rules on conflict of interest for CSOs? Are they effective?

PARTLY – The Law on Associations and Foundations⁴⁵⁶ stipulates that the statute of a CSO should include a provision regulating cases of possible sale of the CSO's assets to some of the CSO's members, which is considered a conflict of interest. Except for that, there are no other provisions in the said Law regulating this issue.

As for the self-regulating internal standards of work for the CSO sector, an initiative has recently been launched to adopt the Code of Conduct (and other relevant documents) for CSOs in BiH⁴⁵⁷ which would, *inter alia*, address the issue of conflict of interest. Development of these documents is still underway.

Are there rules on gifts and hospitality for CSOs? Are they effective?

NO – There are no such rules for CSOs.

5. Transparency

How transparent are CSOs? What are they required to publish? Do they do this?

According to the Law on Associations and Foundations of BiH, all registered CSOs and other legal entities are required to submit annual reports containing their balance sheets. These are actually financial reports showing the business operation of a CSO or another legal entity during a particular fiscal year. Failure to comply with this provision can result in sanctions, so the registered CSOs tend to submit their financial reports on time.

However, this mechanism does not essentially contribute to the transparency of CSOs because the information they provide are accessible only to the tax authorities and bureaus of statistics but not to the general public, which would be necessary if full transparency of CSOs was to be ensured.

There are CSOs that endeavour to improve their transparency on their own initiative by making their financial and activity reports publicly available, although the Law does not require them to do so. So, one may conclude that a lot of CSOs in BiH are making efforts to improve their transparency, but, overall, CSOs are not as transparent as one would ideally expect if they are to win public trust and mobilise public support for their work.

6. Complaints/enforcement mechanisms

Have there been prosecutions of any of CSOs on corruption charges?

NO – As CSOs, by their very nature, do not make profit or any other kind of material gain, which is in the core of all corruption activities, it is very difficult to imagine the circumstances under which an NGO could be prosecuted on corruption charges.

There have been cases of spending of funds for purposes other than specified (a small number of foundations in BiH, especially Islamic ones, directed the existing funds into activities other than those specified in their statutes), but this constitutes a criminal offence of embezzlement of funds, rather than corruption. In addition to that, a lack of open and competitive recruitment procedures in a number of NGOs is noted. Some NGO members are reported to have hired members of their own families to work for their NGOs, which constitutes nepotism.

Sporadic and isolated cases as these are not an indication of general corrupt practice in the NGO sector. No prosecution of a CSO on corruption charges has been launched so far. This is further corroborated by the findings of the TI BiH's Corruption Perception Study which reveal that the NGO sector is publicly perceived as the least corrupt sector in BiH.

Have members of CSOs been threatened or harmed for advocacy against corruption?

PARTLY – There have been cases of intimidation in the form of pressuring and shaming the CSOs which have levelled public accusations of corruption of certain officials and authorities. Well-known are the cases of the disputed return of the traded real estate – an association of citizens with a disputed property status⁴⁵⁸ has accused some court and government officials of corruption. The accused threatened in the local media to bring an action against the association. Finally the matter ended before the court that still assesses the case and its conclusion is nowhere in sight.

Some government officials commented on CSOs' reports on the state of corruption in BiH in a way that can be considered as public pressure because they accused CSOs of threatening the development of the country. An assistant minister in the State government accused TI BiH of "working against the national interests and imposing changes"⁴⁵⁹, which may be viewed as an attempt to exert influence and pressure on the independent work of this CSO.

It is also important to note that a certain level of official denial of the findings of CSOs' reports on the accountability of authorities in BiH⁴⁶⁰ is also present, based on an alleged lack of competence or poor methodology on the part of CSOs. All these can be taken as a form of pressure on the independent work of the CSO sector, but at the same time point to a need for constant development of CSOs' expertise so that the collected evidence and findings could not be subject to doubts and speculation of the government.

Overall, there are cases of public pressure being exerted on CSOs that analyse corruption. Such cases, though sporadic, must be taken seriously and addressed appropriately.

7. Relationship to other pillars

To what extent is civil society a key part of this country's NIS?

Because of its aims and a traditionally strong bond with citizens, civil society plays an important cohesive role in this country's NIS, creating synergies between different NIS pillars and serving as a link between various sectors of society and citizens' needs, the fulfilment of which is their primary purpose.

It is therefore crucial that civil society is included and involved in the establishment of NIS if it is to win additional independence from political influences that other integrity pillars have to endure to a greater or lesser degree.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

Among NIS pillars, civil society most interacts with the media, regional and local governments, the legislature and international organisations. As part of their effort to increase the visibility of their activities and extend their influence on a greater number of citizens, NGOs⁴⁶¹, as an integral part of civil society, maintain close co-operation with the media. At the same time, the BiH media are increasingly recognising civil society as an important source of information and are providing greater coverage of its activities.

NGOs have been continuously improving their co-operation with public authorities in BiH. Most NGOs emphasise that the co-operation and relationship with the authorities is much better than it used to be⁴⁶² - especially with municipal, cantonal and Entity governments. However, there is clearly a need for further improvement in this co-operation as policy-makers often fail to take account of important issues and priorities identified by the civil sector and give priority to political compromises. A recent example of this is the ignorance of public opinion that a municipal government showed in case of construction of several hydroelectric power plants on the Vrbas River by approving concession contracts with private companies amid strong NGO campaign against such a decision which had an overwhelming public support⁴⁶³.

Besides their role as donors to CSOs in BiH the international agencies and organisations also act as partners in implementation of various activities. This includes co-operation in planning and implementation of projects and exchange of information. However, it is frequently the case that NGOs are too dependent on the international organisations, which is perceived to be a limiting factor precluding the development and sustainability of the civil sector in BiH⁴⁶⁴. Co-operation of NGOs with the said pillars has formal as well as informal characteristics and takes the form of an exchange of opinions and information that is important for decision-making processes in the country.

Do public authorities generally co-operate with civil society groups?

PARTLY – It might not be appropriate to make generalised assessment of co-operation between the public authorities and the civil society groups as different levels of administration co-operate in various forms with NGOs. Therefore, a separate analysis is required.

Local authorities co-operate with NGOs much more closely than only two or three years before. Faced with public demands for addressing problems in the local communities (which are often beyond their scope of remit) and beset by limited human, financial and technical resources, local authorities are increasingly recognising CSOs as allies and partners in satisfying public needs⁴⁶⁵. More examples of such partnerships are given in the section dealing with election commission and its interaction with other integrity pillars.

On the other hand, higher levels of administration are only beginning to demonstrate a firmer intention to co-operate with CSOs. Although this co-operation is currently far from an expected and satisfactory level, some encouraging signs of progress in this respect do emerge⁴⁶⁶.

Are there civil society actors monitoring the government's performance in areas of service delivery, etc?

Currently NGOs monitor (or at least nominally) the government's performance in the area of service delivery⁴⁶⁷ and their monitoring results in appropriate reports. Although monitoring activities are not

conducted on a regular basis, but rather as a part of the existing NGO projects, they provide invaluable independent information for assessing the impact of public policies and actions and are often very interesting and useful to the media as well as to other NGOs.

The abovementioned monitoring activities conducted by NGOs are faced with challenges in terms of quality of assessment and availability of resources (sample size, available personnel, etc.), which can have a potentially adverse effect on the quality of information obtained through analyses. Furthermore, NGOs are often too occupied with the delivery of social services and building of their own capacities to respond effectively to the challenges of independent and professional monitoring of the government's performance in the area of public service delivery. To a certain degree, NGOs have a role as monitors of and 'commentators' of the public authorities' performance as they receive a substantial feedback on the quality of public services directly from citizens. But, the process should be regarded holistically, which means that the quality of the delivered services (supposing there is a sizeable sample of beneficiaries) must be viewed in the context of budget tracking and against the identified priorities of the public authorities. Such an approach calls for significantly more developed capacities of NGOs, which is currently a major problem for NGOs what with the 'drain' of professional staff and limited resources to fund the development of these capacities. Overall, the engagement of civil society in this area can be regarded as having a great potential, rather than being a well developed and common practice.

Do citizen's groups regularly make submissions to the legislature on proposed legislation?

Consultation on adoption of the new laws or implementation of the existing ones represents an important demonstration of how democratic and mature a particular society is. The laws in BiH allow the public to be involved in decision and policy-making processes and this entitlement is mainly exercised by NGOs in accordance with the scope and focus of their work⁴⁶⁸. This means that there are sporadic instances of CSOs' participation in the development of laws and policies, which largely depends on their specific goals and areas of interest.

In presenting draft decisions, laws and policies through a direct contact with citizens or other interactive methods, NGOs have displayed their great strength. One of the examples of this is a high visibility of citizens and NGOs in consultations⁴⁶⁹ aimed to develop an important Poverty Reduction Strategy Paper (PRSP BiH). Good understanding of NGOs and citizens as well as a comparatively high level of public trust that NGOs have secured through the years (unlike e.g. political parties) enable the NGO sector to act as a catalyst for a broader participation of public in policy-making processes.

On the other hand, once the public comments on certain draft documents have been submitted, NGOs do not make their voice effectively heard in the processes of deliberation on and adoption of these comments by the government. An inadequate awareness among NGOs about the importance of a proactive approach to advocacy and lack of transparency of public authorities are just some of the

reasons for the failure. It often happens that citizens' comments are not adopted by the government, primarily because of their incompatibility with the political agenda of the political parties, which creates an opinion in the public that very little influence can be exerted in this way. It raises a question if NGOs should participate in such consultations, as they often seem to represent a mere formality. It would be rather important to engage independent CSOs in the monitoring phase of implementing various policies, initiatives, projects or more generally reforms of the public sector, particularly of the executive, which would strengthen the working synergies and the public would obtain presentable progress reports and accounts of the public finances.

Finally, it is also doubtful whether or not the public authorities are really willing to include the public in the policy-making processes. If there is pressure by the international community (as in the development of PRSP), public authorities are more accommodating. There are also paradox situations when the international community exerts pressure on the politicians in BiH to make changes to the Constitution of BiH without public consultations. For example, the attempt by several political parties in early 2006 to change the Constitution in a very short time and without consultation with the public is almost without precedent in the democratic world.

NGOs can achieve more in the area of advocacy in terms of establishing clear, open and mandatory procedures that will once and for all resolve, in a transparent, accountable and sustainable way, the authorities' obligation to take account of the civil society's submissions on proposed legislation as well as of the criteria for decision-making. It is necessary for NGOs to advocate improvements to the legislation and practice in order to identify the minimum of topics on which the authorities will be obliged to organise public consultations, define the manner in which these consultations will be conducted and develop protocols for a public authorities' response to the citizens' submissions. In addition to the aforementioned, there are other obstacles that need to be addressed⁴⁷⁰ if participation of the public in decision-making processes in BiH is to improve substantially.

Business Sector

1. Role(s) of institution/sector as pillar of NIS

To what extent are there laws governing individual companies (formation, continuing operations, insolvency, winding up)? Are these laws effective?

Important characteristics, status, foundation, business operations and termination of an enterprise or business entity are regulated in the relevant laws at the Entity level. In RS these are: the Law on Enterprises⁴⁷¹, the Law on Registration of Business Entities⁴⁷², the Law on Bankruptcy Proceedings⁴⁷³ and the Law on Liquidation Proceedings⁴⁷⁴. In FBiH these are: the Law on Business Companies⁴⁷⁵, the Law on Bankruptcy Proceedings⁴⁷⁶ and the Law on Liquidation Proceedings⁴⁷⁷.

The RS Law on Enterprises and the FBiH Law on Business Companies differ in their official titles and some minor issues, but they basically regulate this field in much the same way. Both laws provide for the following basic forms of business companies: a company of persons, which is founded as a partnership (the FBiH Law terms this form of business company “unlimited joint and several liability company”) or limited partnership, and a capital company (or corporation), which is founded as a joint stock company or a limited liability company. The most common type of company in both Entities is the limited liability company [*d.o.o. - društvo sa ograničenom odgovornošću*], mostly owned by one individual or founded as a form of partnership established by means of a contract between two or more individuals who enter into partnership with an aim of performing a particular business activity. Partnership companies and limited partnership companies are very rare forms of business entities. The most common reason for this is that the founders of such business entities (partners and general partners) are liable for the obligations of such entities not only with the company’s property, but also with their own entire property.

However, most significant business activities take place in joint stock companies, and therefore the focus is currently on upgrading these pieces of legislation with an aim of improving corporate governance and corporate culture in general.

In 2003 both Entities adopted the new Laws on Bankruptcy Proceedings as a necessary prerequisite for the transition of BiH to a market economy, with the aim of ensuring an efficient and due settlement with creditors, transfer of assets to productive use and of attracting investors by offering them an efficient way out of failed business moves. At the time these Laws entered into force the key professional infrastructure was still missing (bankruptcy judges, bankruptcy trustees, accountants and financial analysts trained in bankruptcy proceedings, or economic departments in sixteen first-instance courts, including the Brčko District). Encouraging progress has been achieved despite all the problems besetting this field. Average duration of bankruptcy proceedings has been reduced from five to two years as a result of the

new Laws. Creditors charge claims on the same or even better percentage terms than in other countries with a similar level of economic development. Certain companies that were insolvent managed to reorganise themselves, restore their business activities and even offer new jobs. The most remarkable improvements, as identified in a recent relevant survey⁴⁷⁸, are the possibility of reorganisation and an increased level of settlements with creditors (including employees). Most respondents indicated that there was a need to improve certain legal provisions, in particular those relating to the duration of proceedings, organisation procedure and settlement with creditors. 94% of the respondents believe that the Law should regulate the conflict between the bankruptcy law and other laws, where bankruptcy law must be treated as *lex specialis*. Despite positive steps, the fact remains that bankruptcy proceedings take far too long and the performance of bankruptcy trustees is not at a satisfactory level. There are no qualified professional structures offering solutions for insolvent companies (e.g. teams for the restructuring and rehabilitation of companies), and the public is becoming increasingly concerned with the so-called 'bankruptcy mafia' that takes advantage of the deficient legislative and institutional framework.

Which aspects of the law cover private sector corruption? Are these regulations applicable under the civil and/or penal code? Are they effective in practice?

Article 12 of the UN Convention against Corruption (UNCAC) covers private sector corruption. This provision is new and the domestic legislation is still not aligned with it. First of all, this provision relates to the need for development of codes of conduct for correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for promotion of use of good commercial practices among businesses and in the contractual relations of businesses with the state. The Chambers of Commerce have their own codes of ethics, i.e. rules of conduct and practices. The RS Chamber of Commerce (RSCC) adopted its Code of Business Ethics⁴⁷⁹ establishing the principles and rules of business ethics that are binding for business entities – members of the Chamber, employees, and members of bodies and persons working under contract for a business entity. The basic principles and rules of this Code are: avoidance of conflicts between personal interests and those of the business entity, observance of regulations on incompatibility of functions, compliance with the standards of business ethics, contribution to further promotion of ethics in business relations, etc. Some rules of good corporate governance are also incorporated in the Laws on enterprises/business companies. The Convention requires that conflicts of interest should be prevented by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure. The corresponding provisions of the Law on Conflict of Interest in Governmental Institutions of BiH are incomplete and even such provisions are inadequately applied in practice.

Under a criminal offence of accepting bribes, the Criminal Code of BiH⁴⁸⁰ recognises the so-called intended acceptance of bribes, unintended acceptance of bribes and subsequent acceptance of bribes, while under criminal offence of giving bribes, the Code recognises the intended giving of bribes and unintended giving of bribes.

Civil liability is governed in substantive regulations (e.g. Law on Contractual and Other Relations), while criminal liability of legal entities, as a general institution, was introduced to the criminal legislation of BiH in 2003⁴⁸¹. The following sanctions may be imposed against a legal entity: fine, confiscation of assets and termination of the legal entity.

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

NO – According to the applicable criminal legislation in BiH, only an official or responsible person in the institutions of BiH, including also a foreign official person, may be punished for bribery, while no such sanctions exist for bribery in the business sector. According to the applicable criminal codes in BiH, the criminal offence of embezzlement can be committed only by an official or responsible person⁴⁸². The Criminal Codes of BiH and FBiH only recognise embezzlement in office, while the Criminal Code of RS only defines embezzlement. In the case of BiH and FBiH, it is clear that this criminal offence can be committed only by an official or responsible person and as such may not exist in the business sector. On the other hand, the Criminal Code of RS includes embezzlement in office as a separate offence and states that embezzlement can be committed “while working in a state authority or legal entity”. Although the commentary to the Criminal Code of RS does not contain any additional clarification with regard to embezzlement, it follows, based on the abovementioned definition, that embezzlement can be committed in the business sector as the Criminal Code states that embezzlement may be committed in a ‘legal entity’, which can be privately owned too.

What kind of banking regulations are in place? Are there anti-money laundering rules? Is money laundering effectively contained in practice?

The banking regulations in RS and FBiH are: the Law on Banks of RS⁴⁸³, the Law on Banking Agency of RS⁴⁸⁴, the Law on Banks of FBiH⁴⁸⁵, the Law on Banking Agency of FBiH⁴⁸⁶, and the Law on Deposit Insurance in the Banks of BiH⁴⁸⁷.

Banks can be founded only as joint stock companies. The governing bodies of the bank are the Assembly, the Supervisory Board, the Management and the Audit Board. The Assembly makes decisions on all transactions in the extent that exceeds one third of the bookkeeping value of property of the bank. The Supervisory Board issues the statute and other important internal regulations, appoints management of the bank, supervises the work of the management and business operation of the bank, convenes meetings of the Assembly, submits proposed decisions to the Assembly and reports to the Assembly on business

operation of the bank, approves issuance of new stocks, and ensures that appropriate internal and external audits are performed. The management of the bank consists of a Director and an Executive Director. The Audit Board is responsible for overseeing the conduct of internal and external audits.

BiH made the first step towards institutionalisation and criminalisation of money laundering when it signed the Convention on Combating International Money Laundering on 1 September 1993. The laws regulating prevention of money laundering were enacted with a significant delay: the Law on Prevention of Money Laundering of FBiH was passed in 2000, the Law on Prevention of Money Laundering of RS was passed in 2001, and the Law on Prevention of Money Laundering of the Brčko District was adopted in 2003.

By enacting the Law on Prevention of Money Laundering⁴⁸⁸ at the State level, BiH has fulfilled one of the requirements expected of the international community. In parallel with implementation of this Law, the Financial Intelligence Department (FID) was established within the State Investigation and Protection Agency (SIPA). FID receives, collects, investigates and analyses information and data and forwards them to the BiH Prosecution as spelled out in the Law. In accordance with this Law, banks and other relevant entities submit to FID the information on effected transactions. The result of all these efforts is that BiH joined the Egmont Group (an international specialised authority consisting of intelligence departments of member states) in June 2005.

The Law on Prevention of Money Laundering defines measures and responsibilities for detection, prevention and investigation of money laundering and financing of terrorist activities and prescribes measures and responsibilities in international co-operation in prevention of money laundering and financing of terrorist activities. In practice, however, no instrument or effective institution has been established yet to prevent or curb money laundering, so the Court of BiH has encountered various forms of money laundering in several cases of corruption it has dealt with, while prosecution find money laundering to be the most difficult criminal offence to detect. Tax administrations (Entity tax administrations and the Indirect Taxation Administration of BiH), the media and the general public all agree that money laundering is widespread and that the existing mechanisms for combating it are insufficient.

Have facilitation payments been eliminated from business practice? Are facilitation payments illegal? Is this enforced?

Direct illegal transfers in terms of bribery committed by the business community still exist, which is elaborated in more detail in the section dealing with public contracting, where these transfers are most common (whether the business sector pays bribes to the civil service, or enterprises with different ownership structures pay bribes to one another). However, what is particularly worrying in the countries

with high level of corruption that are undergoing transition are the government's incentives to the economy through legal and illegal budget subsidises.

Financial incentives are largest in agriculture and exist in both Entities. In RS they come within the exclusive competence of the Government of RS, while in FBiH they operate at the Entity and cantonal levels. In 2006 RS allocated KM 41 million for subsidising development of agriculture, and in BiH these subsidies amount to KM 28 million, but only at the Entity level. The incentives in cantons vary widely because cantonal governments adopt their budgets and decide on the amount of incentives depending on the level of agricultural production in the canton and the total budget of the canton.

Much more problematic are allocations to enterprises as they are not made in a planned manner and because such subsidies are often funded from budget reserves, which are not earmarked for a specific purpose, as well as from the budget surplus, if there is any, which is also a non-transparent and inefficient fiscal incentive that is ultimately funded by taxpayers.

Firstly, taxpayers endure uneconomic costs of an enterprise business operation, that is, its illiquidity. By paying taxes, they also pay subsidies that are subsequently used for covering the loss making. Furthermore, salaries of the employees in public enterprises are also funded from the tax money. Direct damage to all citizens, in particular to the potential suppliers, who operate commercially, also reflects in the expenditure of budget (fiscal) funds on irrational and non-transparent procurement. In addition to that, unfinished privatisation process represents an opportunity cost that everyone pays in the form of lost revenues because citizens are deprived of the revenues from privatisation/sale of state-owned capital. This prevents inflow of fresh capital into enterprises and creation of new jobs, and this in turn results in an underdeveloped business sector, lack of foreign investment, and weak entrepreneurship.

On the other hand, politicians who delay privatisation of the profitable monopoly 'cash-cows' (in particular the so-called 'strategic' companies) such as telecoms, breweries, tobacco factories, etc. record large inflows to their personal budgets. Politicians can appoint partisan people to crucial managerial positions in the enterprises. The ruling elites spend most of their time laundering money by depleting company's assets and increasing liabilities, that is, by creating debts. The managers recruited from the ruling parties thus enrich themselves. After a change of power, the new ruling parties waste no time removing entire managements in state-owned enterprises, for very much that reason. The salaries of managers and politicians in management and supervisory boards come from the same public source. Procurement, purchases, etc. that the enterprises conduct within the circle of individuals and firms of the same political affiliation, are used for channelling public funds into the budgets of political parties too. Debt subsidies that are granted each fiscal year to cover the losses made by such enterprises are yet another excellent opportunity for further malversations and unlimited irresponsible spending. Most of these enterprises pay 'voluntary financial contribution' to the ruling parties, whether willingly or because they are obliged, and never present these payments in their balance sheets but fake the books in order to

justify these costs with fictitious expenditure. And, finally, the selected elites enjoy the privilege of being exempt from paying taxes on all such illegal transfers.

Even more permanent and costly are the structural consequences or side effects of such behaviour. They usually manifest themselves in the form of administrative obstacles (which, however, do not apply to selected, state-owned companies) that are further impeding regular business operation. Delayed privatisation and lack of transparency are certain to tarnish the country's image and redirect the capital flow into other, more successful transition countries. In the meantime, citizens only watch corruption become ever more rampant and the power being concentrated in the hands of a few politicians. Quasi social policy is nothing more than a cock and bull story intended to deceive the public, while a plunder of the state-owned property may, in the meantime, freely take place behind the scene. The country suffers from a macroeconomic stagnation, widespread poverty and a decrease in the standard of living. These can be compensated only by an increased foreign borrowing, which is certainly a net result of the unsustainable tax policy through the public spending. The foreign debt has been rescheduled for periods of several decades and will be serviced by several generations to come. On the other hand, what remains is a weak and powerless business sector that resorts to tax evasion in order to survive in an unfair market competition with the state-owned sector.

As a result of that, the country is becoming entangled in a vicious circle which the citizens have to pay sevenfold, while the illegal profit of politicians is increased sevenfold. And, of course, in such a situation politicians attempt to delay privatisation and maintain control over the state-owned capital for as long as possible. Politicians themselves often lean in favour of revision of privatisation conducted so far because this means repeated nationalisation and control of the already sold companies and a possible new income from the repeated sale. In doing so, nobody seems to be taking account of the effect that a re-confiscation and unlimited control of the already privatised property would have on the country's image. The message that would be sent out is far more harmful than the most devastating sell-off of a company. Revision of privatisation is possible only in the most extreme cases of embezzlement, and even then the buyer is expected only to pay an adequate compensation, and not to 'return' the property to the state⁴⁸⁹.

Are there any (new) draft laws being considered to address the issues raised by high-profile corporate failings or similar scandals?

NO.

What kind of competition and anti-trust laws govern the business sector?

The Law on Competition of BiH⁴⁹⁰ was enacted with the aim of ensuring economic competition and preventing and curbing unfair competition. This Law lays down the principles for competitive business operation and establishes relevant authorities for protection of market competition. The Competition

Council at the level of BiH and the Offices for Competition and Consumer Protection in FBiH and RS are the key authorities in charge of protecting market competition. The Competition Council's seat is in Sarajevo and it also has offices in Banja Luka and Mostar. These offices conduct investigations in connection with concentrations in the banking sector or at the request of enterprises.

Is there formal independence for business to operate in the country? Is the business sector independent in practice?

YES – The business sector is independent in practice, but is yet limited by a number of regulations, formalities and procedures that delay the process of registering companies and doing business that increase its running costs. The RS Government has launched a “Regulatory Guillotine” project which is aimed at scrapping hundreds of unnecessary and inefficient regulations and formalities (permits and procedures) that have proved to be a tedious and expensive burden for businesses in RS. The “Regulatory Guillotine” is an efficient and modern legislative mechanism for quick and effective establishment of a predictable and comprehensible legal framework of a country. The aim of the “Guillotine” is to preserve only those regulations that are really necessary and the quality of which might be improved for and by the business community. No similar procedures have been planned or initiated in FBiH or at the State level. Similar campaign (though imposed) was launched by OHR in 2004 – the “Bulldozer Initiative”, but it was largely unsuccessful because it was not supported by its natural constituency, namely the business sector, and resulted in but a few decisions that were intended to serve the interests of a business lobby gathered around the then High Representative Mr. Paddy Ashdown⁴⁹¹.

What is the extent of privatisation activities?

According to the RS Directorate for Privatisation, by September 2006, 57 of 82 strategic enterprises were privatised, 476 of 641 enterprises with an estimated value of over KM 300,000 were sold, 145 of 277 enterprises valued below KM 300,000 were sold, 177 enterprises were sold through the stock exchange and only one company was sold in a takeover procedure. The sale of state-owned capital from 1999 to mid 2006 generated a total income of KM 234,396,918. A part of this income in the amount of KM 181,902,356 effectively subsidised for pre-war frozen foreign currency deposits, while KM 52,494,000 was accumulated in fresh cash investment⁴⁹².

According to the latest available data of the FBiH Privatisation Agency, the privatisation process was faced with a number of obstacles which were not properly addressed. In 2004 a total of KM 212,218,432.37 worth of state-owned capital was privatised in 29 enterprises, five of which were under the responsibility of the FBiH Privatisation Agency. Privatisation produced the following effects in 2004: KM 60,698,635.43 in cash income, KM 107,651,636.00 in agreed investment and 5,278 employees in privatised enterprises.

To what extent are newly privatised businesses free from government control in law? In practice?

As regards the privatisation of strategic enterprises, the RS Directorate for Privatisation oversees the operation of these enterprises for three years after the privatisation contract was signed because the buyer's obligations are defined in the contract on sale of the strategic enterprise.

As regards the privatisation of non-strategic enterprises, public authorities do not oversee their work after privatisation. However, the RS Government has recently enacted the Law on Revision of Privatisation of the State-Owned Capital in Enterprises and Banks⁴⁹³, adopted the relevant bylaws and set up a Commission for review of this process. The Commission is already examining the circumstances surrounding privatisation of certain enterprises. No similar revision of the privatisation process has been announced in FBiH. The Commission was freshly established at the time of writing of this publication, so it is still too early to estimate to what extent its work will be politically motivated.

How are the capital markets structured? What are the rules on liquidity? Transaction volumes and cost?

There are three market segments on the Banja Luka and the Sarajevo Stock Exchanges: free stock market, privatisation-investment funds (PIFs) and quotation on stock exchange. The new Law on Securities Market⁴⁹⁴ has introduced a compulsory quotation at a stock exchange for the joint stock companies with more than 100 stockholders, a stock capital of at least KM 10 million and a total annual income of at least KM 10 million. There are no special conditions for inclusion of securities into the free stock market. In this segment over a thousand of joint stock companies were included. These companies are required to submit an application for inclusion of stocks into the official stock market (quotation on stock exchange) within 90 days from the day they fulfil the required conditions.

In 2002 the total annual turnover on the Banja Luka Stock Exchange was only KM 6,989,170, while in the first nine months of 2006 trading volume amounted to as much as KM 239,923,392 and has been steadily rising every week and every month, especially in the second half of 2006, due to the increased confidence of the investors and a solid legal framework⁴⁹⁵. At the same time, trading volume at the Sarajevo Stock Exchange reached KM 366,235,517 in the first nine months of 2006 and has also been marked by a significant rise towards the end of 2006.

To what extent is the general public vested in the stock market? How active are shareholders in the country's companies? Other stakeholders?

Poll surveys indicate that an increasing number of citizens understand the notion of capital market and invest in securities. The Law on Enterprises defines most rights and obligations related to corporate governance. The Standards of Corporate Governance for Joint Stock Companies adopted by the

Securities Commission⁴⁹⁶, determines the standards on the basis of principles of corporate governance endorsed by the Organisation for Economic Co-operation and Development (OECD). Strengthening of corporate governance in joint stock companies is identified as a top priority in the coming years. However, even such an underdeveloped securities market may demonstrate an increased investors' interest and degree of stock exchange activities, because, unlike many other forms of doing business, the financial market is comparatively well-organised, transparent and rather attractive, while its profits remain tax deductible. There are, however, differences between the two Entity markets, which was discussed in more detail in the previous question. It is interesting to note the initiative of the Central Register of Securities in RS, which publishes at its website (www.blberza.com) the lists of largest stockholders in all the listed companies, which is a strong transparency incentive to trading.

Are there any significant voluntary anti-corruption initiatives related to the business sector?

PARTLY – Although there is an increasing number of activities pointing to the need for combating corruption, and despite the increased public awareness about the need for the business sector to fight corruption, there have been no significant anti-corruption initiatives, except for those by Transparency International BiH. TI has provided a substantial support during the negotiations on the UN Convention against Corruption and has remained active in promoting its signing, ratification and implementation in a large number of countries. TI is also a partner in creating mechanisms for a successful monitoring of implementation of the Convention as well as the UN's Global Compact Initiative (in BiH implemented jointly by TI and UNDP), which is aimed at curbing corruption in the business sector and mobilising businesspeople to engage more actively in the anti-corruption activities in the country. Global Compact is still in an early phase of activities and is expected to expand and gain momentum in 2007.

Corruption issues are also discussed at a number of scientific symposia on corruption in public contracting in BiH. Such discussions are especially encouraged by the Public Procurement Agency (discussed in more detail in the chapter about public contracting).

2. Resources/structure

To what extent is the economy dominated by one industry or a very limited number of major companies? What are these sectors/companies?

Gross domestic product per capita in RS in 2005 was KM 3,519. According to the 2006 RS Economic Policy, GDP growth in the period 2000-2004 was mainly due to manufacturing services, which made up almost two thirds of the total growth, because of which the share of these activities in the overall economy (gross value added) increased from 24.6% in 2000 to 37.0% in 2004. Trade alone made one third of the overall growth (index 2004/00 – 329.0%) and increased its share in the total gross value

added from 7.7% in 2000 to 16.6% in 2004, and so proved to be the most propulsive branch of economic activities. In this five-year period the above-average results in the growth of gross value added were also achieved by the following sectors: ore and stone mining (index 245.8%), hotels and restaurants (246.2%), traffic and telecommunications (181.0%) and financial services (168.7%). The lowest growth index was seen in agriculture, construction, processing industry and education.

According to the FBiH Bureau of Statistics, gross domestic product per capita in 2005 was KM 3,550. The following sectors have the largest share in the GDP structure: processing industry (11.13%), trade and servicing of motor vehicles, motorcycles and consumer goods (11.03%) and trade in real estate, renting and business services (10.10%).

What kind of relationship is there between business leaders and politicians?

There is no information about the relationship between business leaders and politicians, extent and type of this relationship or the damage caused by it, except in the legal cases tried by the BiH justice. A recent case of a relationship between a politician and a businessman⁴⁹⁷ is given below.

Indictment X-K-05/02: ČOVIĆ DRAGAN AND OTHERS states that the defendant Dragan Čović, while in office as the Minister of Finance of FBiH, solicited and received a gift or other benefit or accepted a promise of a gift or a benefit in the form of bribe from Ivanković-Lijanović brothers and their company “Mesna industrija Lijanovići d.o.o” [Meat Industry Lijanovići – limited liability company] and “Lijanovići d.o.o” [Lijanovići – limited liability company] (one of whom is a former minister in the FBiH Government and a successful businessman). The defendant Dragan Čović received the said gifts for illegal performance of official duties, i.e. issuance of illegal instructions with regard to introduction of special taxes and levies on export of goods, by which he made it possible for “Mesna industrija Lijanovići d.o.o” and “Lijanovići d.o.o” to make unlawful material gain and get advantage in business operation. None of the defendants has been imprisoned and they are still perform their political and business functions. There are many similar cases, but in most cases indictments have not been brought yet.

What is the percentage of private sector vs. state-owned enterprise in the economy?

According to the annual balance sheets for year 2005 received by APIF (Agency for Mediation, Information and Financial Services of RS), the total number of business entities in RS is 8,829. Of the total number of 1,113 state-owned enterprises, 677 (or 60%) were fully privatised. It follows that 436 state-owned enterprises remain, which is 5% of the total number in RS. Although this may suggest that the private sector is dominant, one should note that the state-owned companies include such large public enterprises as Elektroprivreda RS [Electric Power Industry of RS], Telekom [Telecom], Pošte RS [RS Post Office], Željeznice RS [RS Railways], etc.

According to the annual balance sheets for 2005 received by AFIP (Agency for Mediation, Financial and Business Services of FBiH), the total number of business entities in FBiH is 19,171. Of that number, 121 companies remain in the portfolio of the FBiH Privatisation Agency in addition to all public companies, which are much more numerous in FBiH because they operate at the cantonal level.

What is the ownership structure of the business sector? How widely spread is it, to what extent is it controlled by the state, oligarchs, etc.?

See above.

To what extent does state capture feature in business-government relations?

More detail on this topic was provided in the above question on facilitation payments. On the other hand, clear conflict of interest as defined in the Law on Conflict of Interest can be traced only through the implementation of this Law, which is discussed in more detail in the chapter dealing with the institution that is in charge of its monitoring, namely the Election Commission.

The existing connections between political parties and the business sector are best illustrated by the following example: through its close relationship with the influential political party of the war-time Prime Minister of FBiH Haris Silajdžić, “Bosnalijek”, the long-standing pharmaceutical monopolist in FBiH, has been successfully preventing legal regulation and creation of healthy competition in the pharmaceutical sector in line with the SAA recommendations. Black market, fragmentation of the market, unregulated production, suspicious quality of medicines, high prices, stifled competition, and other consequences arising from the lack of appropriate regulations create a scene that is suitable only to those who want at all costs to keep the pharmaceutical industry in the hands of powerful economic and political lobbies⁴⁹⁸.

Is there state ownership of key industries?

The state owns strategic companies, public companies and a number of companies the state-owned capital of which has not been sold yet. In view of this, the state still plays a dominant role in the economy and is in a position to delay privatisation in order to maintain this role and make it possible for individuals and political parties, which appoint managerial staff in the state-owned companies, to make illegal gains.

To what extent is the business sector organised into (sectoral or professional) lobbies? Is there a chamber of commerce and/or industry associations?

The Parliamentary Assembly of BiH adopted the Law on Associations and Foundations of BiH⁴⁹⁹, which constitutes a primary regulation for foundation, registration and work of associations (including business associations) that want to operate at the territory of the entire BiH. In addition to this Law, certain

business associations are governed by other relevant regulations. According to positive legal regulations, the legal status of Chambers in BiH is regulated in the Laws on Chambers of Commerce⁵⁰⁰. These Laws are modelled after the principles underpinning the work of chambers in continental Europe in terms of their tasks, responsibilities and organisation. However, since 1 January 2004, following the establishment of the 'Bulldozer Commission', imposed by OHR, these chambers operate a voluntary membership basis.

Over the years, the chamber system has passed through different periods of organisation, but their agenda, which was based on good international practices in the field, focused on the following basic functions:

- Representing the interests of their own members and the economy before the executive;
- Creating a business-friendly environment;
- Providing appropriate services to their own members, in accordance with the powers and programmatic orientation of the chambers of commerce.

The applicable legislative and statutory regulations define a Chamber of commerce as an independent, nongovernmental, non-partisan, professional and public legal association of business entities (individuals and legal entities) and business associations as partners of the appropriate executive authorities. The following can be members of the Chamber: enterprises, banks, insurance companies and other financial organisations, business and other associations and societies, farmers' co-operatives, scientific-research and educational institutions, unions, interest associations, foundations and other entities whose operation is important for the economy, based on their interest in becoming a member of the Chamber in accordance with the Chamber's Statute.

The chamber system in BiH consists of an umbrella Foreign Trade Chamber of BiH and Entity Chambers: Chamber of Commerce of RS and Chamber of Commerce of FBiH. The chamber of commerce system in RS consists of five regional Chambers (Banja Luka, Doboje, Bijeljina, Istočno Sarajevo and Trebinje), while the chamber system in FBiH operates through 10 cantonal chambers of commerce.

However, many open questions remain with regard to the operations of the Chambers of Commerce in BiH because, according to the interpretation of the Council of Ministers of BiH and Parliamentary Assembly of BiH, the Foreign Trade Chamber of BiH operates on the basis of compulsory membership, which gives it a monopoly edge over the other Chambers in BiH. On the other hand, there is a lot of overlapping of competences among Chambers at different levels, which confuses their membership. In view of the significance of Chambers of Commerce and other economic associations and their role in promoting and fostering the development of market and competition in addition to their familiarity with the principles underpinning market economy and free competition, there is a need to properly define the key issues related to associations in BiH as they can significantly contribute and provide support to reform processes.

It is also important to note that in the Entities run their Economic-Social Councils comprised of the representatives of employers, trade unions and governments. Employers are represented through the Union of Employers' Associations encompassing sector employers' associations and the Association of Employers. Their most important activity is the signing of the General Collective Agreement and specific sector collective agreements. At the level of BiH there is the Association of Employers of BiH whose members are individual Employers' Associations from both Entities.

3. Accountability

What kind of laws/rules govern oversight of the business sector? Are these laws/rules effective?

BiH has accepted a market orientation based on the principles of free entrepreneurship and is actively engaged in global economic integrations. At the same time, BiH is aligning its standards with the European Union, World Trade Organisation and other important institutions in the field of international trade and co-operation.

There are around forty laws governing the economic field, as well as a large number of bylaws. Unfortunately, this ranks BiH among less business-friendly countries due to its burdensome legal framework resulting in non-transparent and complex investment environment. This was discussed in more details above.

Is there a registrar of all companies? Who oversees/audits such a registrar?

In 2004 BiH undertook a reform of the process for registration of business entities with the aim to speed up and simplify the registration procedure. In 2005 the harmonised Laws on Registration of Business Entities were adopted in both Entities, and the Framework Law had been adopted earlier at the level of BiH. At the time of writing this publication, pilot registration centres have just started their operations in accordance with the new Laws. The purpose of the new legislation is to establish a speedy procedure for entry of business entities into the Registry of Business Entities and to create a uniform system of identification of all business entities in BiH. The process of business registration is still within the remit of the courts. The registration procedure is much faster as the Law provides that the relevant registration court must issue decision on registration within five days from the day of a duly submitted application⁵⁰¹. The Law also stipulates that the court must immediately send the registration application of the business entity to the relevant tax authority, which then must issue a unique registration ID number within three days⁵⁰². Further, the relevant court is obliged to send the court decision on registration of the business entity to the following authorities: tax administration, municipality, statistics institute, chamber of commerce, customs authorities, and the relevant regulatory authorities, which means that the court would have to perform all these tasks *ex officio*⁵⁰³. However, due to the fact that the electronic registry has

not been put in place yet, these provisions are not implemented in practice and the registration procedure is conducted in the same manner as before.

The new Laws also provide that the State, Entity and District Brčko authorities must have access to data entered into the Main Registry Book via telecommunication network or electronically and all registration courts are obliged to facilitate access to the Main Registry Book data to all interested parties. There remains a question of whether the best solutions were chosen and whether it was wise to leave the registration process within the competence of courts, since experiences from other countries where the process takes place outside courts (e.g. Italy – chambers of commerce, Serbia – a specialised agency) have demonstrated far better results.

The SPIRA⁵⁰⁴ project, which was launched by USAID, at its core has streamlining of the licensing procedures in the registration process and an initiation of business operations, with the ultimate goal of reducing the time needed for founding an average limited liability company by at least 30%. Another serious problem is the long time period needed for registering a foreign investment. Businesspeople complain that the average waiting time for this decision is as long as 60 days.

To whom must the business sector report, in law? Does this accountability for its actions take place in practice?

According to the Entity Law on Accounting and Audit⁵⁰⁵, a legal entity is obliged to submit its financial report for the period ending on 31 December of the current year to the Ministry of Finance or another relevant authority not later than the last day of February next year. The financial report is signed by the owner or the director of the legal entity or the manager of the budget beneficiary or entrepreneur submitting the report. Pursuant to the decision of the Madrid Conference on the Implementation of Peace which was held in 1998, a transformation of the payment/clearing system was undertaken in BiH. A key point in this transition was the transfer of payment operations to commercial banks, which entailed termination of the Payment Operations Service (clearing service). The assumption that commercial banks will be able to offer the same services in the free market environment, under more favourable terms and without central clearing control, proved to be correct. The Payment Operations Services were transformed into statistics agencies which legal entities submit their financial reports to (APIF in RS and AFIP in FBiH).

Is the public required to be consulted in the work of business in any way? Does this consultation take place in practice?

PARTLY – Consultation process is certainly necessary in creating quality business environment. That there is demand for consultation is witnessed by the “Regulatory Guillotine” process, which engaged a large number of businesspeople, with a support of RS Chamber of Commerce, who jointly demanded to

contribute to the improvement of the regulatory framework in this bottom-up process. Unfortunately, apart from this example and sporadic consultations on the critical laws, a direct dialogue between the authorities and the legislature on one side and the general public and business community on the other is virtually non-existent.

4. Integrity mechanisms

To what extent is there concern with integrity of the private sector? From within the sector? From outside the sector?

Awareness about the need for association of enterprises that take care of their corporate image is still not developed in BiH. Through associations care of the whole sector can be taken. So far, enterprises have mostly engaged in isolated lobbying actions resulting in issuance of decisions often unacceptable for other companies from the same branch of economic activities.

The Chambers of Commerce have adopted their Codes of Business Ethics establishing the principles and rules that are binding for business entities, members of the Chamber, employees, members of bodies and persons working under contract for a business entity as well as for foreign business entities operating in the country. An honest relationship with business partners, based on mutual trust, is one of the most significant postulations of business ethics.

There is a global trend of association of groups of companies into clusters or districts which represent vertical networking of one branch of economic activities. Clusters are not located in one place – district. Districts can therefore be something similar to trading estates, free zones, industrial parks or incubators. Such type of organising enterprises is still unknown in BiH and similar zones as yet remain only in the medium-term planning phase. Once established, they might be able to take care of the integrity and interests of the business sector.

Does anti-corruption figure in the corporate social responsibility agenda? In the corporate governance agenda?

NO – Main principles associated with the existing definition of corporate social responsibility are: engagement in the life of the community, accountability, sustainability, transparency, ethical behaviour (without corruption) and honesty. However, these commitments usually remain mere rhetoric as there is no relevant anti-corruption authority that would further strengthen the corporate social responsibility. Corporate governance aims at increasing transparency and consequently curbing corruption. However, educating companies in corporate governance standards and putting these standards in practice is a very

slow process, which is still at an early stage and the principles of corporate governance have been very selectively applied in economy.

To what extent is the business sector free from conflicts of interest? cronyism?

Conflicts of interest are ever less common in the business sector, in particular in the privately-owned enterprises (as the aim remain still a common occurrence. TI BiH is especially active in raising awareness about the detrimental effect of partisan-appointed managements in the state-owned companies and the prices that ordinary citizens have to pay through budgets and taxes to subsidise the loss-making companies. The evidence for this can be found in numerous audit findings (which is discussed in more details in the chapter dealing with supreme audit institutions as well as in the chapters on public contracting and the Election Commission).

How widely are codes of conduct used? Is there evidence that they are effective?

The Chambers of Commerce have adopted the Codes of Business Ethics. In addition to these, an increasing number of companies choose to introduce quality management systems and implement ISO standards which commit them to a higher quality of work. These standards also establish clear guidelines and codes of conduct both within the company (between the management and the employees) and towards the partners and the immediate environment.

To what extent do companies have anti-bribery and/or anti-corruption provisions in their codes of conduct?

In addition to introducing the aforementioned international business standards, which practically constitute anti-bribery and anti-corruption provisions, there is still a significant risk of embezzlement of assets. Two groups of companies are vulnerable to this risk: the first group includes fast-developing companies whose growth is not accompanied by development of adequate internal control systems, which creates fertile ground for mismanagement. The second group is mostly made up of the insolvent state-owned companies, in which a high fluctuation of staff at all levels of management results in dismantlement of the existing internal control systems and a less rigid oversight of procedures, which increases the risk of embezzlement. Such a situation in the state-owned companies suits the Entity governments as it enables the ruling parties to make easy illegal gains, which are very difficult to prove before a court of law.

Do these provisions generally extend to Boards (or the owner, in the case of family-owned companies)?

YES – The basic principles and rules of the Code of Business Ethics include: avoidance of conflicts of personal interests and those of the business entity, observance of regulations on incompatibility of functions, compliance with the standards of business ethics, contribution to further promotion of ethics in business relations, etc. Article 88 of the RS Law on Enterprises, which is entitled Competition Clause, provides that a member of a partnership company, general partner of a limited partnership, member of a limited liability company and member of the management, supervisory board and board of executive directors of a limited liability company, joint stock company and public enterprise cannot be employed or act as proxies in any other enterprise, that is, another legal entity conducting the same or similar activity or an activity that could be considered competitive, nor can they be entrepreneurs conducting such activity.

The next Article of the same Law, entitled Conflict of Interests in Business Management, provides that a member of a partnership, a general partner of a limited partnership, a member of a limited liability company and a member of management, supervisory board and board of executive directors of the limited liability company, joint stock company, public enterprise and a proxy may conclude, with the enterprise where they hold this title, a contract for a loan, deposit, warranty, guarantor and collateral, as well as any other legal business determined by the Founding Act, that is the statute, upon the approval of other members of the company, that is, the managing and supervisory board.

Do these provisions generally extend to subcontractors all the way down the supply chain? Are these provisions actively communicated to such subcontractors?

PARTLY – A whole range of different types of corruption is known to exist, but not all corrupt activities are recognised in the Law on Public Procurement. How to most effectively fight corruption in this segment remains a complex issue. This is further elaborated in the section on public procurement.

How actively are companies training their employees to take a no-bribery stance, including training in the above codes?

According to the ISO standards 9001:2000 and under the codes of conduct for employees, which only a limited number of companies choose to introduce, bribery is considered to be contrary to the requirements of the ISO standards. Despite this, bribery does take place in practice. However, it is far more widespread in administration and higher levels of government than in the private sector. Somewhat more common is private-to-private bribery in public and state-owned companies in large procurements of goods or services.

Are any companies identified/verified as having (adequate/strong) anti-corruption policies?

NO – There are no companies/positive lists of business entities identified as having strong anti-corruption policies.

Do any sectors or business associations have mandatory anti-corruption rules?

NO.

Are there any sectoral anti-corruption initiatives?

NO.

To what extent is there compliance in the sector with corporate governance recommendations, such as the OECD standards (on corporate governance and MNEs)?

Participants at the symposium “Corporate Governance as a Means for Creating a More Stable Business Environment”⁵⁰⁶ underlined that, although the country has been undergoing transition for as long as 15 years, its citizens still appear unclear about the notion of corporate governance. Inadequate corporate governance is thought to be one of the reasons for a sluggish recovery of enterprises and economy in BiH. In the newly privatised companies as well as in public utilities, the freshly established corporate governance practice is far from that in developed countries.

None of the public institutions conduct systemic education or engage in the improvement of relevant regulations, nor does any attempt to determine what international solutions would be most suitable for BiH, including the OECD standards. Only towards the end of 2006 several initiatives are worth noting, dominated by the Banja Luka Stock Exchange and TI BiH in the form of specialised training.

Have any companies subscribed to the UN Global Compact? If so, how many/which ones?

PARTLY – This initiative was presented to the business sector only in mid 2006 through joint efforts by TI BiH and UNDP (as discussed above). Implementation of the Global Compact is expected to gain momentum in 2007, when first members join it.

5. Transparency

Is general data on registered companies available to the public?

YES – All data on registered companies are entered into a registry, which is maintained in the relevant courts. The data are available to the public, which means that any interested party may access them or may request an excerpt from the registry upon paying the prescribed stamp duty.

What kinds of disclosure rules pertain to corporate boards?

Members of corporate boards are required to disclose their property status, which is similar to property reports that politicians must file.

Are there particular transparency requirements related to stock exchange listing?

The listed joint stock companies are required to submit to the Stock Exchange their annual and semi-annual financial reports, revised reports, information on press conferences, decisions of the stockholders' assembly, information on events that affect the joint stock company's business operation, information on capital, information on changes to the joint stock company's statute and other information affecting the price.

The new Law on Securities Market introduces an obligation for joint stock companies to submit *inter alia* quarterly reports to the Stock Exchange. The Banja Luka Stock Exchange requires that a list of stockholders of the listed business entities is publicly accessible. This list is not available in practice at the Sarajevo Stock Exchange. All the information submitted by the joint stock companies is made publicly accessible at the Banja Luka and Sarajevo Stock Exchanges' websites.

How transparent is the ownership of business? Investments?

Capital market in the region is generally considered to be transparent. The data on ownership structure and ten largest stockholders in companies whose securities are traded at the Stock Exchanges in BiH are made available to the public. On the Stock Exchanges' websites one can also find financial reports as well as other information about the listed joint stock companies. The data available on the Banja Luka Stock Exchange's website, however, appears to be much more systemic, complete and transparent.

What is the standard of CSR reporting among the business sector?

These standards are mainly contained in national legislation, as described above.

What about disclosure of company financial records more generally?

The Entity Laws on Enterprises provide that capital companies (i.e. joint stock companies and limited liability companies) must submit to the court that maintains the register: statements from accounting reports, management's statements about the business performance and the auditor's reports. Small enterprises are exempt from this obligation. Creditors of the enterprise and third parties are notified of the business operations of the enterprise through the provision of the said documents. In most cases, however, this provision is not followed in practice.

There is no disclosure of company financial records, except that the payment of direct taxes in RS and FBiH is monitored by the Tax Administration of RS and Tax Administration of FBiH respectively, while at the level of BiH the payment of indirect taxes is monitored by the Indirect Taxation Administration of BiH. In practice, there have been cases of tax evasion and even trials before courts in BiH⁵⁰⁷.

What do companies disclose/report relating to countering corruption?

Given the prevailing phenomenon of 'state capture' the efforts of the non-public sectors to actively lead the anti-corruption campaign are negligible. Enterprises do not introduce corporate governance principles, and their financial statements due for publishing correspond more with their book-keeping reviews. Commercial banks over time continue to introduce higher standards of transparency, which they proudly announce and once such new tools and systems are in place, they are rewarded through a higher market share and increased savings. Such responsibility has not been demonstrated by the enterprises.

Is there any third party/external verification of such reporting?

PARTLY – Auditor General, pursuant to the Entity Law on Public Sector Auditing (see the section on SAIs), carries out annual auditing of public accounts of all enterprises, companies and organisations which are entirely or partly state-owned, or financed from the government budget. This means auditing of nearly 900 clients' accounts. Auditor General reports to the relevant parliament:

- whether the accounts have been in line with the current regulations and whether they have been purposefully used;
- whether or not the annual accounts present a true and a fair record of the operations for the year and their end-of-year status: and
- on effectiveness and efficiency with which these organisations have used funds for the performance of their functions.

However, Auditor General cannot manage to audit all enterprises in annual cycles, so the audits are conducted once every three years on average.

In the private sector there is no mandatory audit of financial operations of all business entities.

Are such reports made available to the public?

YES – Auditors General at all levels publish their reports at their respective websites or in electronic or print media. Other audit reports on the private sector are available at the request of an enterprise. Financial reports on companies that are listed at a stock exchange are available through the stock exchanges' website.

To what extent are bribery and corruption cases reported publicly? Who does such reporting?

The media extensively carry the findings of the Auditor General's reports and in some cases prosecution has launched appropriate investigations. In addition to that, the NGO sector, in particular TI BiH, and the print and electronic media report on identified cases of bribery and corruption in BiH.

6. Complaints/enforcement mechanisms**What kind of whistleblower protection exists in the business sector?**

There is no formal whistleblower protection. There is only disclosure of corruption affairs by the media and the NGO sector, in accordance with the information they obtain.

Does whistleblowing occur in practice? To what extent do companies provide advice or hotlines or other channels for whistleblowing, in practice? Does the law succeed in protecting those who blow the whistle?

NO – There are no such laws or a similar positive practice.

What significant accusations of corruption have been made against companies in recent years, whether local companies or international companies operating in the country?

Mostly in connection with conflict of interest through association with influential individuals in power for the purpose of making illegal gain.

Is there a stock market oversight body (e.g., SEC, FSA) responsible for publicly listed companies? Is it independent? Does it explicitly address bribery and corruption? Can it investigate or sanction those who infringe the rules?

YES – The Entity Law on Securities Market provides that the Securities Commission is a permanent and independent legal entity, established for the purpose of regulating and controlling joint stock companies

and trade in securities. The Securities Commission is, *inter alia*, required to press charges to the relevant authority against legal entities and individuals for whom there is a reasonable doubt, based on a control process conducted, that they have committed a criminal offence or violation of law.

To what extent have regulators successfully targeted and punished business sector corruption?

Mostly unsuccessful. In practice, this Law is still not implemented in terms of reporting corruption in the private sector.

Are business lobbies in any way accessible to the general public? To what extent are the public as stakeholders regularly consulted in developing/improving companies' anti-corruption policies and practice?

There is no law on lobbying in BiH. On several occasions, based on partial decisions of the relevant authorities favouring individual manufacturers, general decisions were issued that were unfavourable for the rest of the business community. This includes some of the decisions issued by the OHR's "Bulldozer Initiative".

Is the subject of business sector corruption part of public debate? Is the public engaged in any way in reform of the sector?

The public is engaged through the media as well as through the activities of the NGO sector, in particular TI BiH. The public engagement is minimal.

7. Relationship to other pillars

To what extent does the business sector play a key part of this country's NIS?

Without a stable economy there is no development of society as a whole. The business sector is therefore a very important pillar of BiH's National Integrity System.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

Almost all other pillars are important for the business sector as they all affect its work. Particularly important are the legislature, the judiciary and the local authorities, while nowadays it is also necessary for the business sector to strengthen co-operation with public procurement, anti-corruption agencies and the civil sector.

The business sector, by its very nature, is dependent on the legislators, because they regulate conditions for doing business. Efficiency of business operations in this sector is very much affected by the judiciary, as well. Slow processing of economic disputes, lack of specialised commercial courts, uncertainty of the case's outcome and other adverse impacts on business activities are discussed in more detail in the section dealing with judiciary.

What kind of hurdles (from the public sector) are in place from other pillars in setting up a business? For example, are business licenses easy/difficult to obtain?

The "Regulatory Guillotine" project is aimed at scrapping unnecessary and inefficient regulations and formalities (permits and procedures) that pose an obstacle to doing business in RS. In mid 2006, a situation analysis was carried out to assess the conduct of procedures and issuance of permits. The analysis identified institutional weaknesses, obsolete technical regulations and illegal administrative barriers imposed by certain individuals in the civil service as major problems. Another problem is the practical implementation of regulations as a result of the "introduced practice through interpretation of application" by an authority that is not authorised to do so. All the relevant World Bank surveys have for years ranked BiH among the worst-ranking countries when the ease of doing business is concerned⁵⁰⁸.

What is the general level of need in terms of licenses and/or other permits to do business?

As a part of the "Regulatory Guillotine" project, a preliminary stocktaking was conducted in RS with the aim of assessing the situation with regard to permits, certificates and other formalities. A total of 438 formalities have been identified in RS and it is estimated that a similar number of business formalities in addition exist at the level of joint BiH institutions. Cantons too have a large number of additional formalities, some of which are divided between FBiH and cantons, but also between cantons and municipalities. A preliminary analysis of regulations in RS has shown that there is a need to preserve only 29.2% of the existing formalities, change/simplify 43% of formalities and annul 27.8%. For this to happen, it will be necessary to make changes to 31 laws and change or annul 57 acts of the RS Government.

How well do the tax authorities and customs co-operate/co-ordinate with the business sector?

Their co-operation/co-ordination with the business sector is at an unsatisfactory level. The business community is not consulted in the preparation of bylaws that causes many problems in their practical implementation. Also, there is no warning of changes to the existing legislation, so the business community often learns of a certain legal solutions once it is too late, that is, after the changes and amendments have been adopted.

What is the ability of the business sector to redress concerns in courts of law, regarding decisions by public agencies or for non-fulfilment of contract? Overall, to what extent does law enforcement assist in keeping the business sector transparent and clean?

Such a legal possibility certainly exists, but the judiciary is too slow and susceptible to external influences, which is discussed at greater length in the chapter on judiciary.

What role does the media play in keeping the business sector transparent and clean?

The media have recently played a more active role in disclosing cases of corruption. There is also a trend among journalists to specialise in reporting on economy and corruption issues, so their positive role is on the rise, depending on the extent to which the media they work in is independent (discussed more exhaustively in the chapter dealing with the media).

Does the chamber of commerce ever serve as arbiter? Is there another type of special ombudsman for the business sector?

YES – Alternative Dispute Resolution (ADR) refers to a variety of methods for resolving disputes between parties without traditional legal representation or litigation. Most common methods of ADR include mediation, arbitration, early neutral assessment of the outcome of the court procedure, and settlement meetings. The Association of Mediators in BiH was established in March 2002. The purpose of the Association is to create conditions for introducing mediation as an alternative method of dispute resolution, applying and promoting it. The Law on Mediation Procedure of BiH⁵⁰⁹ governs the mediation procedure in the whole of BiH.

The foreign trade arbitration within the Chambers system is an international economic arbitration board with the seat in the town in which the Chamber of Commerce is seated. It resolves disputes arising from international business relations, applies principles and rules of international trade law, and ensures highly professional, speedy and efficient arbitration procedure. The Arbitration Board is comprised of local as well as foreign professionals. Within the Chamber System there is also the Court of Honour and the Permanent Elected Court (internal arbitration). The Chamber also provides expert legal assistance⁵¹⁰.

Regional and local government

1. Role(s) of institution/sector as pillar of NIS

Do national agencies with a remit to deal with corruption (anti-corruption 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 – In January 2006 the OHR's Anti Crime and Corruption Unit (ACCU) handed over its responsibility for investigation, criminal prosecution and adjudication of major cases of organised crime and corruption to the national authorities, namely the BiH Court and the BiH Prosecution. During its mandate, the ACCU worked closely with several national institutions such as the police, financial police, customs administration, and State Border Service (SBS).

The adoption of new criminal procedure codes at State and Entity levels meant that prosecutors, rather than judges or police officers, were now leading the local investigations. ACCU investigators and prosecutors continue to assist international and local prosecutors and law enforcement officials at the State, Entity and cantonal levels in their work. The OHR's Rule of Law Department continues to work closely with the EUPM, the European Commission and other partners to position SIPA as a full-fledged, State-level police agency with the resources and authority to combat organised and international crime, corruption and terrorism⁵¹¹.

By presenting their audit reports to the parliaments, media and the general public, the SAIs (at State and Entity levels) and their branch offices ensure transparency and improve accountability in public spending and make sure that budget beneficiaries and other beneficiaries of public funds use these funds in accordance with the law. The institution of Ombudsmen, which operates at both State and Entity levels, has the constitutional and legal authority to act in accordance with citizens' complaints concerning the poor functioning of the judicial system or the poor administration of an individual case.

What are the anti-corruption responsibilities designated to regional and local government?

Under the applicable law, the Civil Service at all levels must ensure the respect and the application of the following principles: legality, transparency and publicity, accountability, efficiency and effectiveness, and professional impartiality. In the performance of their duties, civil servants must be guided by the public interest and respect the legal system, constitutional order and laws of BiH and its Entities, and in particular they must serve, assist and provide the public, interested parties and public institutions with the information requested, subject to the applicable Laws on freedom of access to information. Especially important is the civil servants' obligation to refrain from any action or omission which is incompatible

with or infringes their duties as established by the law. Further, civil servants must not occupy real estate property which is owned by a refugee or displaced person, nor occupy an apartment where a refugee or displaced person has claimed an occupancy right, nor occupy an apartment which should be under the administration of the municipal administrative authority responsible for provision of alternative accommodation.

Does decentralisation (to the extent that there is a process of such) contain specific anti-corruption elements?

NO – Self government is regulated in Entity and cantonal laws on local self government. The Law on Local Self Government of RS⁵¹² and the Law on Principles of Local Self Government in FBiH⁵¹³ provide for the autonomy of administrative units in the field of local government issues and limit the administrative control only to the determination of legality of undertaken actions, whereas in the field of delegated matters administrative control includes determination of legality and promptness of the issued decisions. In RS the responsibility for administrative control of the work of administrative units rests with the Ministry of Administration and Local Self Government, while in FBiH this responsibility is shared by the federal and cantonal authorities.

Is there evidence that decentralisation has facilitated anti-corruption efforts at the regional or local level?

The Constitutions of BiH, FBiH and RS regulate the distribution of powers as well as the relations between different levels of administration. Administrative self-governing units and their competences, powers and resources represent the essence of decentralisation. While the Constitution of BiH does not regulate the issue of local self government at all, the Entity constitutions do not grant much independence and authentic self-rule to the municipal level, so the municipalities remain highly dependent on the higher tiers of administration, namely Entity government in RS and cantonal governments in FBiH. The European Charter of Local Self Government, which BiH unconditionally ratified on 12 July 2002, provides for a high level of genuine functional and fiscal decentralisation.

According to the Constitution of BiH, the following matters are the responsibility of the central government: foreign policy; foreign trade policy; customs policy; monetary policy; finances of the institutions and the international obligations of BiH; immigration, refugee, and asylum policy and regulation; international and inter-Entity criminal law enforcement, including relations with Interpol; establishment and operation of common and international communications facilities; regulation of inter-Entity transportation; and air traffic control, while all other responsibilities are delegated to the Entities in accordance with Article III, Paragraph 2 of the Constitution of BiH – Responsibilities of the Entities. In short, according to the constitutional distribution of responsibilities, the relations between the different tiers of government are characterised by the following:

- weak position of municipalities (too many responsibilities without appropriate powers and adequate sources of funding);
- strong position of cantons in FBiH (too many powers and too few responsibilities);
- high level of responsibility and large powers of RS; and
- weak position of the central government (limited responsibilities and powers).

Cantons have been granted a direct authority in a number of issues that are by definition considered to be local government matters (culture, tourism, public services, local land management, etc.), with stipulation that these functions can (or in some cases must)⁵¹⁴ be delegated to municipalities, so municipalities in FBiH perform a large share of the cantonal original competences as delegated, under the full and strict control from the cantonal level. Cantons also have a regulatory role – to pass laws and other regulations. According to the Constitution of FBiH, legal organisation of local self government comes within joint competence of FBiH and cantons (as the right to make policy and enact laws) as well as within a separate canton competence (as responsibility that is not expressly granted to the Federal Government). There are several intermediary city administrations: e.g. Sarajevo and Mostar, inserting a level of government between their respective municipalities and the canton, with a score of competencies and its budgets, which adds the total of the layers of government in some parts of FBiH to five.

The Constitution of RS abolishes the municipalities' right to propose laws and considerably limits their responsibilities, delegating to them only local and public utility services, which they are obliged to fulfil.

By limiting the scope of municipalities' original responsibilities and increasing the extent of delegated functions, the higher tiers of administration substantially reduce autonomy of the local governments. In comparison to central and local authorities, the middle tiers of administration enjoy large powers and manage a larger share of resources. In FBiH responsibilities, powers and resources are shared between three levels of government (federal, cantonal and municipal), and in RS between Entity and municipal levels⁵¹⁵.

There are frequent conflicts of competences between FBiH and its cantons. Most disputes between FBiH and its cantons before the FBiH Constitutional Court are about the conflict of competences between cantons and FBiH in the field of legislation, particularly in matters where, according to the Constitution of FBiH, there is a joint competence between FBiH and cantons. The Constitutional Court of FBiH has declared some laws unconstitutional (e.g. FBiH Law on Building, FBiH Law on Urban Planning, etc.) because, according to the Constitution of FBiH, these laws fall within the exclusive competence of the cantons. Such rulings are most often not observed by the cantons.

In addition to the abovementioned tiers of administration, there is the Brčko District of BiH as an autonomous and formally defined unit of local self government which has been established by an international arbitration as the condominium of both Entities in BiH. In September 2006 the OHR's

Special Supervisor for Brčko District issued a Supervisory Order abolishing the application of Entity legislation in Brčko District and requiring replacement of Entity legislation applicable in the District with the corresponding District legislation⁵¹⁶.

According to the surveys conducted by Transparency International BiH (TI BiH), corruption is most widespread at local and cantonal levels⁵¹⁷. This casts doubt on the assumption that the local levels of government can facilitate anti-corruption efforts in BiH, and anti-corruption strategies therefore remain centralised. The example of the Central Bosnia Canton (CBC) is very illustrative. In the general elections, the electorate in this canton voted for several politicians who should stand trial rather than elections. Mr. Dragan Popović, Deputy Chief Prosecutor of CBC, confirmed that his department had launched an investigation against 21 former and incumbent politicians in CBC suspected of criminal offences of corruption and malfeasance. The investigation was launched following a 144-page report submitted by the Financial Police in early 2003, associating cantonal officials, ranging from assistant ministers to the Prime Minister, with various offences committed between 1997 and 2001 which accounted for loss of KM 1.2 million in public funds. To date, none of these officials has faced trial for the said offences. Since 2003, when she was mentioned in the Financial Police's report for malfeasance, Ms. Ljerka Marić has advanced from former cantonal Minister of Finance to the incumbent State Minister of Finance and Treasury⁵¹⁸. At the time of writing this publication, Mr. Adnan Terzić, the then Governor of CBC, is ending his full term in office as the Chair of the Council of Ministers of BiH.

Is there formal independence (vis-à-vis national government) for regional and local government institutions working on corruption-related activities? Are such regional and local government bodies independent in practice?

YES – Regional and local government institutions (e.g. SAIs, ombudsmen, courts, prosecutor's offices) working on corruption-related activities have a formal independence.

The organisation of municipal self government is based on a principle of independent decision-making in matters that fall within the municipal competence, with an administrative control of legality of the undertaken actions and obligation to inform representative bodies and supervising authorities.

To what extent have regional/local government organised its work based on/committed itself in any extraordinary way to an agenda of integrity, transparency and good governance? What is the evidence for this?

PARTLY – On 28 March 2003 in Brussels the President of the Council of Ministers and Entity Prime Ministers accepted the “Public Administration Reform – Our Programme” Document (an agenda for reform agreed between the governments in BiH and the international community), with the aim of establishing good governance at all levels, because public administration “must be cost-effective, must

manage public funds in a reliable way, and must be accountable, transparent and efficient in delivering its services”⁵¹⁹. The USAID Governance Accountability Project (GAP) also aims to create a more accountable, efficient and transparent local administration. This still does not offer a sufficient evidence that local governments really comply with the principles of good governance, but it is an important step towards setting examples of excellence in BiH which will introduce new and better quality standards that will be followed by other municipalities. Unfortunately, there are no similar attempts or steps forward at the cantonal level.

2. Resources/structure

What are the key government institutions related to corruption at regional and local level? (please provide a list)?

Corruption is most widespread at the regional and local levels (i.e. cantonal and municipal levels). Over half of the population believe that corruption is present in municipal governments. However, this does not necessarily mean that the municipal governments are more prone to corruption than other levels of government, but rather that citizens perceive them to be such because most interaction materialises at the local level, i.e. this is the level of administration that is in most direct contact with citizens. In a 2004 TI BiH’s survey, municipal civil servants were perceived as third most corrupt category of officials (following doctors/medical staff and police officers).

The key institutions related to anti-corruption combat are: local and regional courts, prosecution, police, etc.

What is the budget/staffing of these key institutions?

These institutions are funded from the budget. Their budget and staffing is determined in accordance with the relevant laws. Capacities and staffing vary widely across the country, largely depending on public revenues and budgets of municipalities and cantons.

What is the budgetary process that governs them?

Although laws in both Entities in principle guarantee availability of sufficient funds for performance of obligations and duties at the local level, analyses show that none of the principles contained in the European Charter of Local Self Government concerning provision of funds is applied in practice, the principle of revenue adequacy is threatened by a huge vertical and horizontal imbalance, and no appropriate systems of vertical (each level of administration manages funds that are proportionate to its competences) and horizontal (solidarity with slower-developing local communities) fiscal balancing

(balancing of revenues received by different levels of administration and revenues of local communities) have been put in place yet. Municipalities receive only around 8% of all public revenues in both Entities. These funds are far from being sufficient to satisfy the needs of local communities. Generally, local communities' revenues in BiH are modest, and their own original revenues are particularly low. Common revenues and revenues controlled by a higher tier of administration make up the majority of all revenues. In neither Entity can municipalities exercise an influence on the amount or quality of the base tax that is used for shared taxes (sales tax, which has been replaced by VAT, and income tax) or local taxes (property tax and real estate sales tax), while the allocation of funds to the municipalities remains insufficiently predictable and transparent, which adversely affects the financial planning of municipalities. Besides poor quality of administrative and public services, another key shortcoming of the local governments is a very limited participation (or a total lack thereof) of the public in budget creation and insufficient transparency of budget spending.

Do they have access to off-the-books funds?

YES – Off-the-books funds, i.e. donations to different levels of government in BiH, and their distribution and spending should be considered from the standpoint of the relations between the governments in BiH and their donors, which are “not based on the principles of partnership and their transparency is very low”. A truth of the matter is that it is impossible to obtain a breakdown of the total funds donated to BiH. The occasionally published data are incomplete and do not reflect the actual situation. In BiH there is no relevant data on diversion of funds/non-earmarked funds; on deferred money transfers on unjustified grounds; excessive wages and honorariums not recorded in the original documentation; irrational expenditures and inappropriate interference of fund providers with the process of implementation⁵²⁰. Consequently, direct donor support constitutes a significant off-the-books contribution to the budgets of certain local communities.

3. Accountability

What kind of laws/rules govern oversight of the above regional and local government institutions? Are these laws/rules effective?

The Law on Local Self Government of RS⁵²¹ and the Law on Principles of Local Self Government in FBiH⁵²² govern the oversight of the local administrative units. In the area of local government issues, administrative control is limited to the determination of legality of the undertaken actions, whereas in the area of delegated matters administrative control includes determination of legality and promptness of the issued decisions. In RS the responsibility for administrative control of the work of administrative units lies with the Ministry of Administration and Local Self Government, while in FBiH this responsibility is shared by the federal and cantonal authorities, with no clear delineation of competences.

To whom must these institutions report, in law? Does this accountability take place in practice?

Local administrative units, regional and local authorities, SAIs and Ombudsmen have the obligation to inform the representative bodies, senior authorities and general public of their work, which they do in practice. Municipalities report to their respective canton or FBiH only if they have been delegated to implement cantonal or federal laws and to the Ombudsperson at their request. Experience has shown that accountability takes place sporadically and depends mainly on the individuals that hold power at the local level.

Is the public required to be consulted in the work of such institutions? Does this consultation take place in practice?

The laws on local self government and the Statute of the Brčko District provide for a possibility and manners of indirect decision-making on local matters on the part of citizens, as well as for participation of citizens in decision-making processes in their respective local administrative units. In addition, citizens are entitled to lodge complaints against local and regional authorities directly with the agencies that are responsible for monitoring of their work. The authorities against whom a complaint has been lodged are obliged to consider the complaint and respond. Citizens also get information about the work of institution through the media, both local and national. Within the existing legal framework, the most common method of expressing citizens' opinions and views in the decision-making processes is a public debate. However, experience has shown that there are problems in this regard: lack of clear criteria for issues that are subject to public debate, non-transparent preparation and conduct of public debates, inadequate status of conclusions reached at public debates, poor feedback, citizens that are often passive and inadequately informed, and lack of initiative on the part of citizens, with the exception of citizens' associations which are more actively involved in decision-making processes, most commonly at the local/municipal level, whereas this practice remains unusual at the higher levels of government. This is dealt with in more detail in the chapter on civil society.

4. Integrity mechanisms**At regional and local level, are there rules similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public office employment? Are they effective?**

Issues of election and responsibility of public officials at the local level are partly regulated by the Entity laws on civil service. However, these regulations refer to local administrations only in part. Thus, the Law on Civil Service of FBiH⁵²³ covers, in addition to staff at the levels of FBiH and the cantons, all the employees of municipal administration with the required qualifications (university degree). As for the

remaining more than 80% of the staff in municipal administration (with no university degree), they are subject to the Law on Employees of Civil Service Bodies in FBiH⁵²⁴. The employees of municipal administrations in RS are not covered by the Law on Administrative Service in RS Administration at all. Rather, the procedures for employment, evaluation, promotion, assignment and (material and disciplinary) liability of civil servants working in the local administrative service units are defined in the Law on Local Self Government of RS. This is discussed in more detail in the section dealing with civil service.

“Public officials in municipal offices (secretaries, heads of departments/services, heads of sections, advisors and associates, etc.) are employed through public competition. This represents a discontinuation of the negative war-time and post-war practice of employment based on nepotism, with no public insight, on the basis of criteria of party, family, and clan relations”⁵²⁵. In the performance of their duties, civil servants at all levels must ensure a respect and an application of the following principles: legality, transparency and publicity, accountability, efficiency and effectiveness, and professional impartiality. Direct election of the head of municipality (i.e. mayor) by the citizens of the municipality ensures his/her direct accountability to these citizens.

Special obligations of elected officials, executive officeholders and advisers in government institutions of BiH in performance of their duties are governed by the Law on Conflict of Interest in Governmental Institutions of BiH. According to this Law, a conflict of interest exists whenever an elected official, executive officeholder and adviser has a private interest that may affect the legality, transparency, objectivity and impartiality in exercising of the public duty. The Law on Conflict of Interest is also applied at the municipal level.

In practice, especially interesting is the fact that the law provides for appointment of advisors, who are appointed only for the duration of the term of office of the official who appointed them. Advisors are not civil servants and are consequently outside the competence of the Civil Service Agency, and they are completely responsible and loyal to the ministers and officials who appointed them. Thus, due to the simplicity of appointing and relieving advisors of their duty, almost no limitation exists in the number and qualifications of the appointed advisors, and due to the fact that the advisors are accountable for their actions exclusively to the official who appointed them, advisors have become the favourite solution for the problem of the lack of ‘loyalty’ among the personnel and of the inability to exercise adequate control over a particular professional administration.

The existence of protection mechanisms such as the Ombudsmen and the Civil Service Board prevents unjustified dismissal of civil servants and limits the options for imposing unfair sanctions against them. Ministers and other officials therefore resort to reassignment (or the so-called internal transfer) of civil servants to similar positions within the same institution, which may actually imply a demotion of the reassigned civil servant and could threaten his/her career.⁵²⁶

5. Transparency

Are registers of disclosed assets/gifts required, in law? Are they maintained in practice? Is there any lifestyle monitoring?

The Central Election Commission of BiH (CEC BiH) has legal powers to enforce disclosure. About 80 gifts worth over KM 100⁵²⁷ have been reported since the Law on Conflict of Interest came into force four years ago. CEC BiH is responsible for implementation of the Law on Conflict of Interest, which prescribes transparency of assets of elected officials, executive officeholders and advisers (they are bound to disclose their assets in a personal data form, which they have to submit to the CEC 30 days upon coming into office, at least once a year during their mandates, and 30 days after leaving office). This is discussed in more detail in the section dealing with the Election Commission.

Who is monitored at regional/local level?

The Law on Conflict of Interest in Governmental Institutions of BiH defines special obligations of the elected officials, executive officeholders, and advisers in governmental institutions in BiH and applies to all levels: State, Entity, cantonal and municipal.

Who maintains these registers?

The register of received gifts is maintained by the CEC BiH.

Are disclosed assets required to be made publicly accessible? Is this information accessible in practice?

PARTLY – In principle, registers are available at the CEC BiH's website, but they have not been updated and made publicly accessible in over a year. CEC BiH makes these data available upon request.

Must budgets be made public and accessible? Is this done in practice?

YES – Governmental institutions' budgets are made public and are publicly accessible through municipal, cantonal, etc. official gazettes and can be obtained on request.

Is there a legal requirement that meetings of city/town councils be open to the press and public? Does this take place?

YES – Entity Laws on Local Self Government, cantonal laws, and statutes of the lowest units of local administration, Laws on Freedom of Access to Information (at national and Entity levels)⁵²⁸, Law on

Conflict of Interest in Governmental Institutions in BiH⁵²⁹, Law on Public Procurement⁵³⁰, Law on Administration of BiH⁵³¹, Law on Ministries and Other Bodies of Administration of BiH⁵³², Law on Administration of FBiH⁵³³, Law on Administrative Service in RS Administration⁵³⁴, and Law on Ministries of RS⁵³⁵ are the most significant laws governing the publicity of work of governmental bodies, administration and local self government in accordance with the principles of publicity, accountability and transparency, which does take place in practice.

Cantonal constitutions stipulate that meetings of cantonal assemblies must be open to the public (save in exceptional cases which are defined in regulations for the conduct of meetings) and reports on meetings and decisions must be published. So, there is a legal requirement that meetings of city/town councils are open to the press and public and this does happen in practice.

Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public? Are these criteria followed?

YES – Public access to the work of city/town councils can be restricted only in accordance with the law and in exceptional circumstances which are defined in regulations for the conduct of meetings. The representative (legislative) bodies almost never exclude the press and public from their meetings, while the executive bodies (governments) occasionally avail themselves of this possibility.

6. Complaints/enforcement mechanisms

Who investigates allegations of corruption at regional or local level?

Establishment of the Special Department for Organised Crime, Economic Crime and Corruption of the BiH Prosecution has led to enhanced investigations in the area of organised crime, thefts and embezzlement, and corruption. However, this still does not solve the problem of processing cases of corruption and abuse of power by Entity and district/cantonal prosecutor's offices.

The SAIs (at State and Entity levels) and their branch offices ensure transparency and improve accountability in public spending and make sure that the budget beneficiaries and other beneficiaries of public funds use these funds in accordance with the law. The institution of Ombudsmen has the constitutional and legal authority to act in accordance with the citizens' complaints concerning poor functioning of the judicial system or poor administration of an individual case. CEC BiH is responsible for implementing the Law on Conflict of Interest in Governmental Institutions of BiH, invoking sanctions for bribery in civil service, and reporting to the relevant prosecution any violation of the said Law which might constitute a violation of the Criminal Code. Agencies for Civil Service of BiH, FBiH

and RS oversee the employment procedures and work of public service employees and are responsible for suspending and penalising civil servants.

According to the latest audit report by the BiH SAI, only one third of the governmental institutions in BiH obtained a positive opinion. Establishment of internal control in cantonal and municipal bodies is under way, especially in the field of budget spending. The audit findings and the internal audit process are discussed in more detail in the section dealing with SAI.

Are there provisions for whistleblowing on misconduct by regional and local authorities? If so, have these provisions been exercised?

YES – Civil servants at all levels of administration are subject to disciplinary and criminal responsibility. According to the relevant laws, all civil servants and employees of governmental institutions are entitled to confidentially file to the appointing authority a disciplinary case against a civil servant who has allegedly committed a violation. All civil servants must undergo a performance appraisal carried out by their direct hierarchical superior at least every twelve months. The appraisal must be verified by the Head of the institution. If the institution only has the Head, then he/she performs the performance appraisal. These provisions are exercised in practice only to a certain extent because of a limited freedom of reporting, i.e. civil servants fear to report senior staff. This is explained in more detail in Paragraph 4.1 and in the section dealing with civil service.

Are any members of such regional and local institutions immune from prosecution? If yes, has this immunity interfered with prosecution of corruption?

YES – In order to protect the integrity of legislative and executive institutions of the State and the Entities, Laws on immunity have been enacted at all three levels⁵³⁶, pursuant to which members of the legislatures may invoke immunity from criminal and civil liability, while members of the executive at all levels may invoke immunity from civil liability. For the purpose of these laws, the phrase “actions taken within the scope of their official duties” refers to actions arising from their duties as applicable and as defined in the Constitutions of BiH, FBiH and RS.

Although the immunity granted under these laws may be invoked at any time, this is not considered to be a general preclusion from criminal prosecution or civil proceedings. If any of the aforementioned individuals invokes immunity, this issue shall be heard and decided by a relevant court. That decision is subject to appeal before the Constitutional Court of BiH, FBiH or RS, depending on the relevant level of administration⁵³⁷. In conclusion, the institution of immunity applies to the members of legislative and executive as applicable and as defined in the relevant laws.

Can citizens sue the regional and local government for infringement of their civil rights? Have they done so?

YES – Citizens can sue the regional and local governments for infringement of their civil rights by instituting court proceedings before a relevant court. Citizens often institute administrative court proceedings. In several cases citizens indeed sued the government. Actions are brought against governments at all levels.

What powers of sanction are in place against civil servants? Have they ever been invoked?

Provisions for imposition of sanctions against civil servants are contained in the relevant laws dealing with civil service and public administration, in Criminal Codes as well as in the Law on Conflict of Interest.

Agencies for Civil Service of BiH, FBiH and RS ensure the recruitment of civil servants is conducted in accordance with the law (based upon open competition and professional merit) and carry out appraisals of the recruitment procedures and performance of civil servants. There have been instances of civil servants who failed to meet performance requirements. Agencies for Civil Service are responsible for suspending and penalising civil servants. Disciplinary measures are described in more detail in the section dealing with the civil service.

Chapter XIX of the Criminal Code of BiH⁵³⁸, which the Entity Criminal Codes⁵³⁹ have been aligned with, defines criminal offences of corruption and criminal offences against official duty or other responsible duty. The Law on Conflict of Interest is also applied at the local level. This Law is explained in more detail in several places in this publication, including the section on electoral commission.

Decisions of the Election Commission of BiH (now CEC BiH) are final and binding. Decisions of the CEC are subject to appeal before the Administrative Division of the Court of BiH. CEC BiH is required to submit a report on its work to the Presidency of BiH every six months and at least annually to the public. CEC BiH is also required to report to the relevant prosecutor's office any violation of law which might also constitute a breach of the Criminal Code. Sanctions for bribery in civil service are primarily prescribed by the CEC, and the case may also be forwarded to the prosecution.

According to the Third Report of the Election Commission to the Presidency of BiH⁵⁴⁰, a total of 87 resignations have been submitted at the local level and 6 resignations at the cantonal level. This is a key piece of data in this segment. This may expand as new information or examples become available.

In some cases the High Representative in BiH has barred the removed officials (including many local officials) from holding any public office⁵⁴¹. The opinion of the Venice Commission on this issue is that by

taking individual decisions concerning the rights of individuals, in particular the removal from office of the State and Entity civil servants, elected politicians, and in earlier periods judges and police officers, while the ordinary courts do not have jurisdiction to challenge the decisions of the High Representative, the OHR is acting in contravention of the standards and constitutional principles on the possibility of a legal appeal⁵⁴².

Have senior officials at regional or local level been investigated or prosecuted in the last five years?

YES – There have been instances of civil servants who failed to meet performance requirements during appraisals conducted by the Agency for Civil Service. Also, a few investigations have been launched following the SAIs' reports. In some cases the High Representative in BiH has barred the removed officials (including many local officials) from holding any public office. CEC BiH has also imposed sanctions on several occasions.

What capacity is there for citizen complaints/redress?

Reform of the criminal, substantive and procedural legislation as well as litigation and executive procedure has created a good legal framework for improvement of the situation in the field of human rights. However, despite reforms of the legislature and the judiciary in BiH, the citizens continue to complain about the work of local, i.e. cantonal and municipal courts, mainly due to the slow processing of cases. Citizens can also appeal to the Ombudsmen, which is discussed in more detail in the section dealing with the Ombudsmen.

Is there a particular right of redress regarding employment?

In the field of labour rights as basic civil rights, besides a legal protection, citizens also enjoy the right to association in trade unions, collective negotiations, and positive discrimination of vulnerable groups. Actions brought before the courts are notoriously long and expensive.

How successfully have regional and local governments targeted corruption, both internal and external?

Reports by the State and Entity SAIs are available to the public on the websites of these institutions. Audit reports often point to violations of the Law on Public Procurement, mismanagement of funds in public institutions and companies and a whole range of other irregularities at all levels of government. However, only a small number of investigations has been launched following these reports. Although the establishment of a Special Department for Organised Crime, Economic Crime and Corruption of the Prosecutor's Office of BiH has led to enhanced investigations in the area of organised crime, theft,

embezzlement and corruption, this still does not solve the problem of processing cases of corruption and abuse of power by Entity and district/cantonal prosecutor's offices. Opinion polls and statistics from 2005 and 2006 show that the incumbent local and especially cantonal authorities generally make very little effort to eradicate corruption, both internally and externally.

7. Relationship to other pillars

To what extent is regional and local government a key part of this country's NIS?

In a highly decentralised system such as BiH, the sub-national levels are of particular importance. This especially applies to the Entity level, or in case of FBiH, to the cantonal level. Such complex distribution of governance often leads to non-transparent relations and division of responsibilities, so the 'bottom-up' transition processes are expected to take place in the next period and the local communities are expected to take a lead in most segments of the reforms.

Which other pillars does it most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

The area of local and regional government is, both formally and in practice, most commonly connected with the executive, the legislature, the judiciary and public administration as well as civil society and civil service, as expected.

Is there judicial review of these institutions? If so, how routine and how extensive is it?

YES – There is an administrative performance control of local and regional government institutions and a possibility of instituting administrative court proceedings as well as filing a disciplinary case or instituting criminal proceedings against civil servants. These possibilities are used whenever possible and to a greater extent than before, but sanctions against responsible persons are not imposed to a satisfactory degree.

International Institutions

1. Role(s) of institution/sector as pillar of NIS

Which international legal instruments are relevant in the country? To what extent have they been implemented? Enforced?

BiH signed the United Nations Convention against Corruption (UNCAC) on 16 September 2005. The Presidency of BiH decided on its 89th regular session on 27 March 2006 to ratify UNCAC. According to Article 21 of the Law on the Procedure for Conclusion and Implementation of International Agreements, the next step in the process of ratifying international agreements is a deposit of the ratification documents with the UN Secretary General, whereupon the Convention enters into force and becomes binding for BiH. This has been accomplished on 16 October 2006 by the Ministry of Foreign Affairs through the BiH Mission to the UN in New York, which is when the Convention entered into force and became binding for BiH.

Other most significant international anti-corruption instruments signed and/or ratified by BiH are:

- Council of Europe Criminal Law Convention on Corruption of 27 January 1999; signed on 1 March 2000, ratified on 30 January 2002, entered into force on 1 July 2002.
- Council of Europe Civil Law Convention on Corruption of 4 November 1994; signed on 1 March 2000, ratified on 30 January 2002, entered into force on 1 November 2003.
- United Nations Convention against Transnational Organised Crime of 15 November 2000; signed in 2005, still not ratified.
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; signed, but not ratified.

A consistent implementation of UNCAC is one of the most important steps in achieving progress in anti-corruption combat. UNCAC is the first genuinely global and most comprehensive legal instrument for anti-corruption combat that should bring about significant improvements to BiH in at least three areas: combating corruption in the business sector, confiscation of the proceeds from crime, and international co-operation⁵⁴³.

Are international institutions formally able to act independently in the country? Are international institutions independent in practice?

YES – International institutions are fully independent, both formally and in practice, and they can freely perform their activities.

Following the successful negotiation of the Dayton Peace Agreement in November 1995, a Peace Implementation Conference was held in London on 8-9 December 1995 to mobilise international support for the Agreement. The meeting resulted in the establishment of the Peace Implementation Council (PIC). The PIC comprises 55⁵⁴⁴ countries and agencies that support the peace process in many different ways, by: assisting it financially, providing troops for SFOR, or directly running operations in BiH. PIC also maintains a fluctuating number of observers.

Since the London Conference, the PIC has come together at the ministerial level another five times to review progress and define the goals of peace implementation for the coming period: in June 1996 in Florence; in December 1996 for a second time in London; in December 1997 in Bonn; in December 1998 in Madrid, and in May 2000 in Brussels. The Office of the High Representative (OHR) is directly responsible for PIC.

The London Peace Implementation Conference also established the Steering Board of the PIC to work under the chairmanship of the High Representative as the executive arm of the PIC⁵⁴⁵.

The Steering Board provides the High Representative with a political guidance. In Sarajevo, the High Representative chairs weekly meetings of the Ambassadors to BiH of the Steering Board members. In addition, the Steering Board meets at the level of political directors every three months⁵⁴⁶.

To what extent have international organisations organised their work based on/committed themselves in any extraordinary way to an agenda of integrity, transparency and good governance? What is the evidence for this?

International organisations have organised their work based on the standards of transparency, openness and good governance existing within each individual organisation or country in which this organisation has its seat. After the Special OHR Anti-corruption Department was disbanded, international institutions have not been particularly engaged in anti-corruption activities.

The activities of the OHR's Rule of Law Implementation Unit are directed by the role the High Representative and the EU Special Representative plays in the fight against organised crime and corruption, as a consequence of its co-ordinating mandate relative to EUFOR and EUPM. The Unit is also engaged in helping to build up the capacities and independence of the Ministry of Security, the State Border Service, and SIPA, in working with the BiH authorities to resolve security issues remaining from the war and in training BiH personnel engaged in exterminating financial and computer fraud. However, OHR stopped dealing directly with anti-corruption activities once the Court of BiH commenced its operations and a Criminal Code and Criminal Procedure Code were enacted. Anti-Crime and Corruption Unit, under the Rule of Law Department, existed from January 2004 until the end of 2005. From January 2006, the BiH Prosecution have taken over the cases previously developed by ACCU.

A large number of international organisations and donors has at times led to almost embarrassing overlaps of competences and scope of work. Although the efforts aimed at co-ordination of aid and harmonisation of donors remain unimpressive, some steps have indeed been taken to eliminate the lack of transparency in the work of international organisations. Following an extensive study carried out by the OHR at the request of the PIC, the co-ordinating structure of the international community in BiH was 'streamlined' in 2002 so as to eliminate overlapping effort and responsibilities and increase effectiveness. As a part of this process a Board of Principals was established, under the chairmanship of the High Representative, to serve as the main co-ordinating authority of the international community activities in BiH. The Board of Principals meets once a week in Sarajevo. Its permanent members are OHR, EUFOR, NATO HQ Sarajevo, OSCE, UNHCR, EUPM and the European Commission. International financial institutions such as the World Bank, the IMF as well as the UNDP are also regular participants at the Board of Principals⁵⁴⁷.

2. Resources/structure

Which international institutions are active in the country in the fight against corruption (please provide a list)? What is the nature of this involvement?

The following international organisations are active in BiH:

- OHR – Office of the High Representative
- EUPM – European Union Police Mission
- EUFOR – European Union Force in Bosnia and Herzegovina
- UN Agencies: UNDP (Development Program), FAO (Food and Agriculture Organisation), UNESCO (Science and Culture, Regional Office), UNHCR (High Commissioner for Refugees), UNODC (Office of Drugs and Crime), UNFPA (Population Fund), ILO (International Labour Organisation)
- OSCE – Organisation for Security and Co-operation in Europe
- NATO (as integral part of EUFOR)
- IMF – International Monetary Fund
- WB – World Bank, including IFC, IDA and IBRD (members of the WB group)
- USAID – United States Agency for International Development

However, the peculiar situation in BiH requires that more attention is given to the work of the Office of the High Representative, which oversees the implementation of the civilian aspects of the Dayton Peace Agreement. The mandate of the High Representative is set out in Annex 10. It declares the High Representative the final authority in theatre to interpret the agreement on the civilian implementation of the peace settlement. The High Representative is nominated by the Steering Board of the PIC. The

United Nations Security Council, which approved the Dayton Peace Agreement and the deployment of international troops in BiH, then endorses the nomination.

Article II of Annex 10 of the Dayton Peace Agreement directs the High Representative to:

- Monitor the implementation of the peace settlement;
- Maintain close contact with the parties to the Agreement, to promote their full compliance with all civilian aspects of the Agreement;
- Co-ordinate the activities of the civilian organisations and agencies in BiH to ensure the efficient implementation of the civilian aspects of the peace settlement. The High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement;
- Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation;
- Participate in meetings of donor organisations; and
- Report periodically on progress to the United Nations, European Union, United States, Russian Federation and other interested governments, parties and organisations.

The OHR's involvement in BiH's political life has changed and evolved according to its mandate and focus and in line with the requirements of the PIC. At the beginning of the peace process, the High Representative chaired a number of joint bodies that brought together representatives of the wartime parties and took care of the initial requirements of the peace process. The State and Entity institutions envisaged in the Constitution were set up after the first post-Dayton elections in September 1996, but it took some time before they started meeting regularly. Now, one of the OHR's key tasks is to ensure that the institutions function effectively and in a responsible manner.

In the economic field, the reconstruction phase, financed under a \$5.1 billion World Bank/European Commission programme, has largely been completed; the emphasis now is on revitalising the economy through the market reforms that will create jobs and stabilise the BiH economy. The OHR has also focussed on the establishment of the rule of law, which is the starting point and an essential requirement for progress in all the other areas of reform.

Among the most important milestones in the peace implementation process was the PIC Conference in Bonn in December 1997. Elaborating on Annex 10 of the Dayton Peace Agreement, the PIC requested the High Representative to remove from office public officials who violate legal commitments and the Dayton Peace Agreement, and to impose laws as he sees fit if BiH's legislative bodies fail to do so.

Nonetheless, the governing principle of the OHR's engagement in BiH is the concept of domestic responsibility. This concept calls on the officials and citizens of BiH to take responsibility for the peace process and the problems that their country faces.

In February 2002, the European Union's General Affairs Council appointed the High Representative the EU's Special Representative (EUSR) in BiH. The HR/EUSR maintains an overview of the whole range of activities in the field of the Rule of Law, including the European Union Police Mission (EUPM), which has succeeded the UN International Police Task Force (IPTF) and taken over some previous peace functions of UNMBiH. In this context, the HR/EUSR provides advice to the UN Secretary General/EU High Representative and the Commission itself.

The current High Representative, Christian Schwarz-Schilling, is the fifth High Representative of the International Community in BiH. The first High Representative of the International Community in BiH was the former Prime Minister of Sweden and the European Union's Special Negotiator at the end of the war in BiH, Carl Bildt (December 1995 - June 1997). He was succeeded by a former Spanish Secretary of State for European Affairs and Minister of Foreign Affairs, Carlos Westendorp (June 1997 - July 1999). Carlos Westendorp was succeeded by a former EU Chief Negotiator at the Kosovo peace talks in Rambouillet, Wolfgang Petritsch (August 1999 - May 2002). Wolfgang Petritsch was succeeded by a former Leader of the UK's Liberal Democrat Party, Paddy Ashdown (27 May 2002 - 31 January 2006). The OHR currently has Regional Offices in Sarajevo (in the HQ building), Banja Luka, Mostar, Tuzla as well as the Supervisor's Office in Brčko⁵⁴⁸.

Once Mr. Paddy Ashdown's term in office expired and Mr. Christian Schwarz-Schilling was appointed as the new High Representative of the international community in BiH, it was obvious that the PIC intends to change the purpose of the High Representative and replace it by the European Union's Special Representative in BiH. Although Mr. Schwarz-Schilling has formally kept the Bonn powers, he noted as early as in his inaugural speech that he intended to act as a partner to the domestic authorities, which must take responsibility for the country's destiny, and would only exercise the Bonn powers as a corrective measure of last resort in cases of serious violations of the Constitutional order⁵⁴⁹. During the 2006 Election campaign which lasted throughout September and which was infused with harsh nationalist rhetoric, the High Representative confined his actions to warnings and threats of resorting to the Bonn powers. However, he has not exercised these powers once since he was appointed as the High Representative a year ago, which his predecessors probably would not have hesitated to do. The former High Representatives often exercised their powers to remove elected or appointed officials from office on suspicion of corruption⁵⁵⁰.

In addition to OHR, there are other international multilateral organisations playing a significant role in BiH such as the European Union Police Mission, which is tasked with the police reform as part of the process of stabilisation and association with the European Union. SFOR handed over the responsibilities

for oversight of military aspects of the Dayton Agreement to EUFOR. Specialised UN agencies are engaged in their regular operations. The 1995 Dayton Peace Accords assigned the OSCE Mission to BiH responsibilities in four areas: education, democratisation, human rights, and security co-operation. The OSCE Mission once occupied a pivotal role in the organisation and monitoring of elections. Once the Election Law has been adopted and the Election Commission of BiH established, the Mission's main role is to monitor the four aforementioned areas. NATO is tasked with oversight of the activities aimed at BiH's admission to the Partnership for Peace.

The largest multilateral donor is the European Union, whose main objective is to support BiH in the framework of the Stabilisation and Association Process, in particular: to help consolidate the peace process and foster inter-Entity co-operation; to help ethnic reconciliation and the return of refugees and displaced persons to their homes of origin; to establish functioning institutions and a viable democracy, based on the rule of law and respect for human rights; and to lay the foundations for sustainable economic development and growth. EU assistance focuses on the following five areas: democratic stabilisation; administrative capacity building; economic and social development; justice and home affairs, environment and natural resources.

IMF and WB play an advisory role and also oversee economic reforms and fiscal policy in the country. BiH still enjoys the status of a borrower of the favourable "IDA funds" of the WB, although it is expected to 'graduate' in the near future to a higher class of developing countries, which means that the funds from these sources will be borrowed on more commercial terms.

Of bilateral donors, greatest assistance is provided by USAID through its programmes focusing on four areas: economic restructuring, democracy & governance, minority integration and cross-cutting programs (social, educational, environmental, etc.). In addition to these governmental organisations, very prominent in terms of donations for recovery and reconstruction programmes are the governments of Japan, Netherlands, Norway, the Swedish SIDA, the Canadian CIDA, the Swiss SDC and others.

How many resources are involved in the work of international institutions to fight corruption in the country? What forms do these resources take? What is the budget/staffing of these key institutions?

Except for indirect resources engaged through consultancy projects, international organisations do not have any additional resources to fight corruption in the country.

USAID operates in the four abovementioned programme areas, of which economic restructuring is particularly aimed at strengthening transparency of financial and private sector including corporate governance.

A number of donors are engaged in promotion of good governance at the level of local authorities (USAID, Open Society Fund, SDC (Swiss Development Co-operation), SEED/IFC, etc.) with the aim of building capacities for service delivery and making local officials realise that it is them who are supposed to serve citizens, and not the other way round. A number of municipalities have been awarded quality certificates, which is discussed in more detail in the section dealing with local and regional governments.

BiH is currently undergoing the third stage of the judiciary reform: the reform was first launched during the UNMIBH mandate and gathered momentum when the High Judicial and Prosecutorial Council was established, when a more extensive reorganisation of the judiciary was set in motion, with support from multiple donors, after the adoption of the new Criminal Code and Criminal Procedure Code.

USAID and the Open Society Fund remain the largest donors in the area of media freedoms. Other donors tend to 'specialise' by supporting reforms of specific pillars of national integrity; e.g. SIDA provides support to the supreme audit institutions.

To what extent do international institutions co-ordinate their anti-corruption work?

PARTLY – Such activities are very limited and only take the form of sporadic co-ordination among donors. British DfID and Swedish SIDA once launched an initiative for harmonisation of aid aimed at a more transparent aid distribution. On the other hand, OHR used to ensure a certain level of co-ordination of anti-corruption efforts through its former Anti Crime and Corruption Unit (ACCU), but these activities were substantially reduced following the establishment of the Rule of Law Implementation Unit. The World Bank Mission to BiH continues to co-ordinate donor initiatives aimed at economic reforms and transparency of the private sector, although its co-ordination role has been significantly reduced with a decrease of the WB funds for these purposes over the last couple of years.

What is the budgetary process that governs them?

Each donor has its own way of endorsing a disbursement of funds. Bilateral donors, for example, internally approve their national budgets and plan funds for international aid programmes (which are usually disbursed through specialised ministries or governmental agencies). Donors may also offer their assistance through country assistance strategies (e.g. the World Bank and some foundations). Most donors, whether bilateral or multilateral, develop their medium-term plans, based on which they make annual plans and harmonise both these plans with their local partners (governments and NGOs) as well as with other donors through a particular form of co-ordination or collaboration. Aid distribution is generally transparent: it takes place in the form of invitation for tenders for procurement of goods or services or calls for project proposals (usually sent to local communities or NGOs). The largest portion of direct budget assistance used to come from WB funds on favourable IDA terms or through the Stand-By Agreement with IMF, but it has been substantially reduced over the last couple of years. Donors have

to report on the disbursement of funds in BiH to their sources of funding, most often to the budget-makers, and so are themselves subject to regular (or rarely non-scheduled) audit controls.

Do they have access to off-the-books funds?

PARTLY – The only cases of foreign off-the-books funds in BiH were those used to fund the war activities in the 1990s and, some years later, to fund terrorist cells that are a part of or associated with Al-Qaeda. These funds are closely investigated, monitored and, when found, closed by domestic and international investigation agencies. There have been several examples of misuse of donor humanitarian agencies for such purposes (e.g. the Saudi High Commissioner and similar Islamic foundations and financial institutions), which were brought to light in the wake of the 11 September 2001 events.

3. Accountability

What kind of laws/rules govern oversight of international institutions working in the country? Are these laws/rules effective?

UN agencies are governed by the UN rules, which are established by the UN Secretariat in New York, as well as by the special standards that are valid only for a particular UN agency. These rules can be said to be effective in most cases, although there have been cases of their abuse through IPTF. On 29 May 2001, Washington Post featured a front-page story about violations of laws and codes of conduct in the form of bribery, personal ID trade, poor selection of staff serving in BiH, etc⁵⁵¹.

The oversight of USAID is governed by the US laws. The oversight of all other bilateral donors is governed by the laws of their respective countries. The transparency of their assistance to BiH has never been questioned or criticised by the domestic authorities or general public. EU institutions are subject to the oversight rules that are in effect in the European Union. No significant objections were raised about their work either, except for occasional comments regarding the time-consuming and complex bureaucratic procedures that would sometimes hold back a launch or a closing of EU assistance projects.

To whom must they report, in law? Does this accountability take place in practice?

There is no law requiring international organisations to report to the BiH authorities. Reporting obligations are regulated by internal rules, and international organisations report to their headquarters. However, almost all the international institutions operating in BiH make their annual reports and periodic impact assessments available to the public.

OHR submits regular reports to the PIC. These are not financial, but analytical reports that explain the OHR's role and the actions it has taken in the country. The OHR's financial reports are not publicly available, nor is it known to whom they are being submitted⁵⁵².

Is there any in-country monitoring required? Does it take place?

YES – There certainly is a need for in-country monitoring, but it takes place with a limited success. On two occasions prior to 2006 a parliamentary committee was established to submit a report to the Parliament on the spending of international donations, but it failed to do so. The executive branch at the level of BiH (Ministry of Foreign Trade and Economic Relations) and the Entities (the former RS Ministry for Foreign Economic Relations, now the Ministry for Economic Relations and Co-ordination, and the former FBiH Ministry without portfolio, now the Ministry for Development, Entrepreneurship and Crafts) attempted to establish Aid Co-ordination Units, which recorded a moderate success only in RS, yet there was little co-operation at the State level. It is only over the last three years that the Council of Ministers has stepped up its efforts to establish, through the Medium-Term Development Strategy (MTDS) – a product of the PRSP, a Unit for Economic Planning and Implementation of PRSP BiH (EPPU), which is administratively a part of the Office of Chairman of the BiH Council of Ministers (CoM).

EPPU is composed of two subunits: Policy Implementation and Monitoring Unit (PIMU) and Economic Policy Research Unit (EPRU), whose common goal is a successful implementation of MTDS and economic development of BiH.

Pursuant to Article 28 of the Law on the BiH Council of Ministers and conclusions of the BiH CoM from 51st session held on 29 April 2004, the Chairman of the CoM made a decision to establish of the Unit for Economic Planning and Implementation of MTDS. Main tasks of the EPPU are:

- to co-ordinate the preparation of socio-economic studies, especially those needed for acceleration of the process of EU integrations;
- to co-ordinate and monitor the implementation of MTDS BiH;
- to co-ordinate the preparation of macroeconomic analyses and projections on BiH level;
- to monitor implementation of indicators presented in MTDS BiH;
- to analyse short-term and medium-term economic trends in BiH, reporting to BiH CoM and Entity governments;
- to assess poverty in BiH, and draft measures for poverty reduction;
- to prepare annual economic report for BiH;
- to co-ordinate technical aid for BiH;
- to co-operate with civil society in preparation of economic researches and implementation of MTDS BiH;

- to report to the public about results of economic researches and implementation of MTDS BiH; as well as other tasks and activities assigned by BiH CoM.

Considering that all governments in BiH regard EU integrations as a high priority, EPPU closely cooperates with the Directorate for European Integrations. In order to enhance co-ordination in implementing the MTDS, offices of the Entity Prime Ministers and the Entity Ministries of Finance were strengthened, as part of the continued activities on reviewing the medium-term expenditure frameworks and the related priorities of MTDS with the budget cycles⁵⁵³. EPPU has never taken root as a focal point of medium-term planning and monitoring, and PRSP remains, partly due to its deficient concept, a list of wishes and issues that call for intervention of the authorities, but do not oblige the authorities in any way.

In any case, recipients of international aid present the donations in their regular budgets under the so-called international grant budget item. The spending of foreign aid is controlled by regular budget control mechanisms (including the SAIs).

Is the public required to be consulted in their work? Does this consultation take place in practice?

NO – There is no such obligation. However, what happens in practice is that each international organisation seeks to assess the needs before developing its medium-term assistance plan. A typical example of high-quality and wide consultation that takes place on a regular basis is the development of the World Bank's Country Assistance Strategy.

In law, does the public have input into the choices/allocations of international actors, particularly with regard to their anti-corruption work? In practice?

NO – The public does not have a direct input into the choices/allocations of the international actors. They can provide an indirect input by using influence of the public opinion and NGOs. An example of such activities is the angry reaction of the domestic public with regard to the special audit of "Hercegovačka banka" [Herzegovina Bank] undertaken by OHR in the Spring of 2001. Although the unrests that took place following this audit represented an extreme outburst of public anger and failed to exert impact on the investigation or on the OHR's future selection of special auditors, such situations indicate that citizens want, whether by their own will or as instructed by their ethnic leaders, some level of consultation with the international community.

4. Integrity mechanisms

Are there codes of conduct for staff international institutions operating in-country? Are these determined exclusively by the international institution, or in part by the host country?

YES – Each international organisation lays down a code of conduct for its own staff, both internationally and locally. These codes are determined exclusively by the international institutions and the host country has no inputs to them. Rights and obligations of an international organisation are governed by a Memorandum of Understanding (MoU), which provides that the organisation and its international staff are exempted from normal processes of law before the courts of the host country (diplomatic immunity). This immunity, pursuant to the provisions of the Vienna Convention on Diplomatic Relations, does not apply to local staff. The Memoranda, however, contain a standard clause stipulating that the international organisation “shall observe the laws and regulations applicable in the host country”.

Internal rules and codes of conduct of the international organisations are established in the headquarters of these organisations and are automatically applied in their country offices and missions to BiH, without the host country’s influence.

Are there rules on conflict of interest? Are they effective?

YES – These rules are contained in the international organisations’ internal rules and in most cases they are effective with regard to both international and local staff. For example, the contracts governing engagement of consultants for USAID’s and other bilateral donors’ programmes stipulate that the consultants may not in parallel engage in other similar remunerative activities, be involved in political life, etc.

Are there rules on gifts and hospitality? Are they effective?

This varies from organisation to organisation. In most cases there are such rules and they are strictly followed. For example, internal rules stipulate that those employed with international organisations are reimbursed for travel and accommodation expenses and are required to submit reports on any such travels. Most organisations have rules providing that the staff are forbidden from accepting any gifts exceeding US\$ 100 and the implementation of these rules is controlled by the internal audit.

Are there post employment restrictions? Are these restrictions adhered to?

YES – Most organisations have rules providing that their consultants may not be employed with a similar organisation within a certain time period after the end of their service. Also, there is a post-employment obligation not to disclose a business secret, i.e. ban on use of business information obtained or acquired

during the service in the international organisation. Likewise, copyright on publications produced or published during that service shall be owned by the organisation, but the author is allowed to take quotations from it.

5. Transparency

What kind of disclosure rules govern the international institutions operating in the country?

These institutions are governed mainly by the international accounting standards and internal rules of these institutions.

Must their budgets be made public and accessible in the home and host country? Is this done in practice? In what form?

The budgets must be made public and accessible in the home country, but not in the host country. Most international institutions have enhanced their transparency through the years of work in their missions to BiH and they publish their current and previous budgets at their websites. Organisations affiliated with the UN publish their budgets as a part of the overall UN Budget (ACABQ) and on the central website of the United Nations. Formally, the host country does not need to have an insight or an input into how an international organisation spends its funds, although such a consultation sometimes does take place in practice (as described above). Representatives of the host-country institutions are mainly present during contracting procedures for procurement of goods or services from the donor-funded projects.

Must procedures and criteria for decisions be published (e.g. relating to grants and loans)? Does this take place?

YES – They must be published in the cases of public procurement and invitation for tenders because this is required by the internal rules of the international organisations, which are in turn subject to the international accounting standards. Decisions relating to awarding grants and loans are not usually published in the media but at the organisation's website or through a direct notification of all bidders.

How available to the public is the work of these international bodies? What forms do publications take, for instance? What are the languages of publication?

Such information is only partly available. All communication usually goes through the organisations' spokespersons (which is especially so in the case of the most significant international organisations such as OHR and EUPM/SFOR). The local staff are forbidden from disclosing information from the

organisations in which they work, or else they face dismissal. Information for the public is usually published on their websites. There is a selection of languages in which this information is available.

The described practice does not correlate with the importance of the role that a particular international organisation plays like e.g. OHR, which the public has relatively little information about. The mechanisms for decision-making and development of analyses, conclusions, recommendations, etc., and preparations for imposition of constitutional, legislative or institutional solutions and removals of officials are usually well-concealed, and the public finds out about such internal procedures only after they have been announced, usually in the form of press releases.

6. Complaints/enforcement mechanisms

Are there any provisions for whistleblowing on misconduct by international institutions? Have they been exercised?

There are no whistleblowing provisions, with the exception of internal control departments. Prosecution authorities of the host country may only inform the international organisation's head of the alleged violations committed by the organisation or an individual employed with it. The host-country courts and prosecutors have no jurisdiction in such cases, which on several occasions before 2002 placed international organisations and domestic authorities in very complicated situations. Internal whistleblowing is regulated in the codes of conduct and exists in most international organisations.

What remains a serious problem are the High Representative's decisions about removals of officials or changes to the Constitution, legislation, etc. which may not be subject to appeals at any domestic complaints mechanism that could repeal or modify such decisions.

The 30 June 2004 removals of 59 elected and appointed officials in the RS, imposed by the High Representative undermined democratic institutions as well as the very free elections – the will of the citizens. It was unacceptable that these officials had no rights to justify their position vis-à-vis the accusations of the High Representative presented in a short media communiqué dismissing them. This approach denies their basic human right to defend themselves against the charges, before any sanctions are applied.

Moreover, the public had no information, which a trial for crimes would have offered. No details existed that indicate to the BiH citizens the direct responsibility of the individuals that fully state their guilt. Just ahead of the end of his mandate, Mr. Ashdown 'pardoned' a few of those and brought them back to public life – quietly and without explanations, just as he removed them. There are equally no publicly

available indicators that suggest when a removed politician may be reinstated to their previous post, which never halted Ashdown to remove and then unexplainably restore selected politicians⁵⁵⁴.

Has there been investigation or prosecution of international institution staff for corruption-related crimes in the last five years?

There have been internal investigations resulting in cancellation of the employment contract with the individual in question and their return to the country of origin. Very often corruption was found to exist in the public procurement sector, as this sector offered the very direct contact with local business entities. There have also been cases of abuse of powers of the international missions for private gain, which was commented on in the TI BiH's 2001 report "International Community is Not Immune to Corruption Either"⁵⁵⁵. A number of corrupt practices have been identified in the application of criteria for awarding funds for reconstruction of houses, giving loans to returnees and the like, but these were mainly committed by the local officials who misused the funds donated by international organisations.

Have there been any prosecutions for corruption in the country based on international legal provisions? Have the international institutions present in the country contributed to these efforts?

So far, there have been no prosecutions for corruption based on international legal provisions because UNCAC has not entered into force yet. Based on the information available, all Memoranda of Understanding that BiH has concluded with the international organisations to date contain provisions on immunity from prosecution. However, if the corruption provisions of either domestic or international laws were to be applied, exemptions from immunity in cases of corruption must also be granted. Outside the lobbying activities, there have been no significant cases of foreign business entities bribing domestic authorities or international organisations, including the High Representative (e.g. the 'Bulldozer' initiative, which is discussed in more detail in the section dealing with the business sector).

To what extent have international institutions successfully targeted corruption, both internal and external?

The least successful was the UN Mission in BiH (UNMIBH, closed in 2003), which operated in BiH longer than any other international institution and had most staff coming from numerous countries worldwide. Corruption seems to have been most successfully targeted by the international financial institutions (WB and IMF) and their missions to BiH, since anti-corruption combat does fall within the scope of their mandates. These institutions conducted systematic diagnostics, provided the domestic authorities with guidance on how to tackle corruption and no cases of embezzlement or corrupt conduct on the part of their staff have ever been recorded.

7. Relationship to other pillars

To what extent are international institutions a key part of this country's NIS?

Given the fact that the so-called international community remains a significant bearer of BiH's sovereignty, although it does not carry a corresponding responsibility for the processes in the country, the international organisations remain a very important, if not the key part of BiH's national integrity⁵⁵⁶.

Which other pillars do they most interact with? Rely on, formally and in practice? Are there others with which it should engage more actively?

Thus far the international organisations have interacted with all other pillars, though they can be said to interact mostly with the legislature. A reason for that, on the one hand, was the inability of parliaments to swiftly and efficiently enact laws that are necessary for the EU and NATO integrations and alignment with the European standards, and on the other hand, a need to replace a backlog of laws left over from the previous socio-political system, or to enact the entirely new laws that never existed in the former Yugoslavia (such as the Law on Securities, on Stock Exchange, on the Securities Commission etc.).

Yet, over the last four years, OHR has imposed 46 laws, including the Law on Civil Service, the Criminal Code, etc., while the OHR's Legal Department has taken an active role in drafting most of the key laws in the country. OHR has even repealed certain laws because they were open to abuse (e.g. the Law on Amnesty). The first Election Law was practically entirely developed by the OSCE Mission to BiH and its Head Mr. Robert Berry. If the reform of the legislature and the executive proves successful and the parliaments are enabled to perform their legislative functions more swiftly and efficiently, the co-operation focus will shift to other integrity pillars such as civil society, media and business sector.

However, what the international community will accept as a successful reform will not fall short of a radical revamping of the existing system of governance in BiH, which is currently thought to be highly complex and expensive and the reform of which is not expected to end soon. Similar problems beset the reform of the police, the judiciary, privatisation of the state-owned capital, etc., so the international community remains a very important actor in the reform of most pillars of national integrity. The finalisation of these reforms and determination of the final status of Kosovo will determine how long OHR⁵⁵⁷ and the other key international actors will stay in BiH, given the intensive political signals from RS that any scenario is possible for RS, even a referendum for separation from BiH, if the outcome is deemed unfavourable.

To what extent is the work undertaken by international institutions done with the support of the government?

Very often the anti-corruption efforts undertaken by the international institutions remain without an appropriate support from the government. That such behaviour runs only a limited international support is demonstrated by the findings of the Venice Commission that *inter alia* remains concerned with the role of the High Representative and the institutional inability for those accused by him to appeal – a legislative gap similar to the situation in Guantanamo. “As a matter of principle, it seems unacceptable that decisions directly affecting the rights of individuals taken by a political authority are not subject to a fair hearing or at least the minimum of due process and scrutiny by an independent court”.⁵⁵⁸

However, whether or not the BiH judiciary, particularly at the Entity level is fit to try such individuals in a professional, independent and fair manner is yet another question – precisely the one which corresponds to the issue of how long the High Representatives will be running the country. The same Venice Commission concludes that such situation cannot last forever and that a day will soon come when the national judiciary will take over the responsibilities from the High Representative⁵⁵⁹. It is rather bizarre that despite a significant control the High Representative exercises over the BiH judiciary, Mr. Ashdown still preferred not to deal with it when self-indicting these individuals. However, whether or not this was to Ashdown’s liking or more importantly Schwarz-Schilling’s, such situation is not acceptable to the Venice Commission, which proposes setting up an independent, possibly international authority to review decisions of the High Representative⁵⁶⁰. Such authority has not been established to date, though it would be a very smart and transparent move of good will for Schwarz-Schilling in demonstrating that his rule will differ from his predecessors.

BiH appears to have had a largely subordinated role in relation to the international institutions, given the fact that the perceptions of the so-called ‘international community’ have had a direct influence on whether a certain politician will remain in power or not. That international organisations enjoy an ‘untouchable’ status in BiH is witnessed by the fact that, since the Dayton Peace Agreement was signed, the employees of international organisations have caused thousands of car accidents killing over 200 people and leaving many more with permanent injuries, without anybody being held responsible for these accidents before the domestic courts⁵⁶¹. There have even been instances of investigation of international organisations’ employees for criminal offences such as trafficking in human beings or organised prostitution, which resulted only in termination of their employment contracts and return of these individuals into the countries of origin⁵⁶². As for their relation with the media, the international organisations tend to enjoy wide and affirmative coverage in the media outlets to which they provide financial support, the elaboration of which is available in the media chapter of this book.

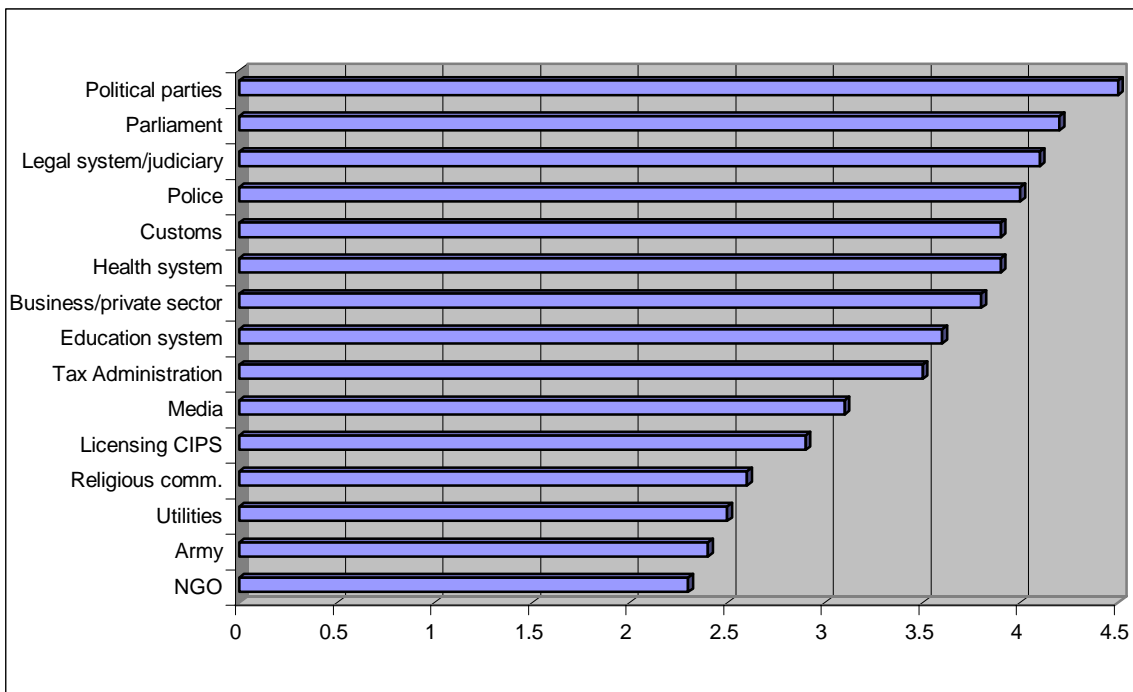
However, regardless of the criticism that is rightfully levelled at the international institutions in BiH, it is important to note their crucial role in initiating and implementing much needed reforms. Comparatively

successful regulation of the banking, financial and taxation sectors and some of the integrity pillars such as SAIs is mainly ascribed to donors' technical assistance. Good quality of certain laws has often been a product of pressure from OHR or other international institutions on the public officials. Donors and embassies will have to continue to protect the integrity of such laws and institutions bilaterally or through the institution of the EU Special Representative for BiH, which in its entirety will never reach the extent of powers that OHR exercised during the mandate of Mr. Wolfgang Petritsch or Mr. Paddy Ashdown.

Evaluation of the NIS

The public sector is generally massive, inefficient, not professionalised enough and with it comes corruption and lack of orientation to provision of services as well as to free market principles. This is partly anchored in the old habits that change slowly and some staff inherited from the previous governing system, but much more so due to the twisted value system that spreads top-down, whereby corrupt elites set different standards of operations. This is well acknowledged by the citizens of BiH, who trust politicians very little.

The TI's Global Corruption Barometer in 2005 examines BiH among 69 countries as an opinion poll among 55,000 interviewees in total. The Barometer seeks to understand how and in what ways corruption affects ordinary people's lives, providing an indication of the form and extent of corruption from the view of citizens around the world. The Barometer asks people about their opinions regarding which sectors of society are the most corrupt, which spheres of life are most affected, whether corruption has increased or decreased in relation to the past, and whether it is likely to be more or less prevalent in future.



Global Corruption Barometer – BiH in 2005 – who is most corrupt?

Political parties are branded most corrupt in BiH, while over 70% of respondents consider corruption to be detrimental for the political life of BiH. In addition, the survey verifies the apathy and pessimism of citizens as over 40% of them expect corruption to increase to some extent. Over half of BiH's public witnessed negative effects of corruption on the business environment and dread its consequences on domestic and foreign direct investments as well as further economic growth.

The overarching issues in analysis the BiH integrity pillars were the following:

- a) Excessive bureaucracy, conditioned by the concept of 'equal engagement of all three constituent peoples' in institution building and staffing, adding to public spending and government expenditures, fiscal burden, foreign debt, while hampering transparency, accountability and finally legality and economic growth.
- b) Overlapping and complex legal and regulatory framework: the Dayton Constitution created a multi-tiered legal and regulatory framework that is often duplicative, contradictory and creates a confusing array of regulations, fees, taxation, and standards requirements. The critical overlaps and worst state of corruption is noted at the cantonal level, which is most complex and least transparent and service oriented but maintains vast responsibilities.
- c) Weak enforcement structures and mechanisms: BiH's legal/judicial system provides no means for quick resolution of disputes. Law enforcement agencies are overly politicised and often accountable to informal power structures rather than the constitutional setup. Internal control mechanisms (audits, supervisions etc.) are conducted rarely and often upon severe pressure posed from political cliques when it suits other political purposes.
- d) Administrative procedures incl. business regulations remain non-transparent: rent-seeking and bribe extortion opportunities are numerous, thereby increasing costs of living, poverty and cost of doing business. In particular, public procurement tenders are seldom open and transparent, as EU-compliant public procurement legislation has been adopted but not adequately enforced. Certain institutions are elevated to the State-level (ombudsmen, some technical licensing etc.) which increases costs of access to these institutions and makes certain public services less citizen-friendly.
- e) Detrimental lack of collaboration among various pillars/institutions, not only across the various levels of government, but also within the same government. This is particularly worrisome in case of the triangle: judiciary-prosecution-police, as well as collaboration of other State agencies with judiciary, where political responsibilities remain much stronger than the constitutional/legal. As a result, the sanction mechanism is very weak, courts slow and overburdened with cases, which all has adverse effects on prevention of corruption and crime.
- f) Diminishing role of the international community/OHR that provides a much greater sense of 'ownership' to the national institutions, a far stronger responsibility and accountability to the electorate and much more clarity as to the institutional tasks and the legal *modus operandi* of the entire system of national integrity. This is on one hand an opportunity, while on the other hand

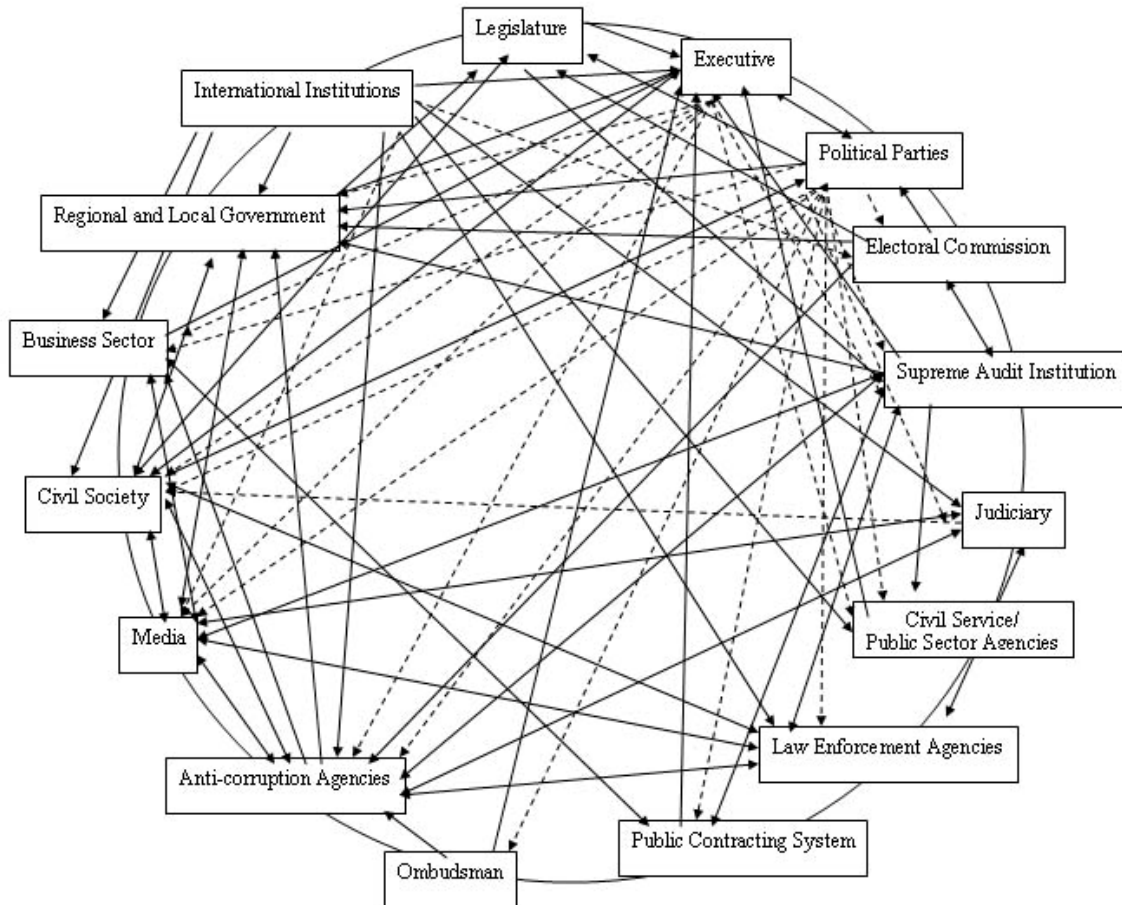
some concern remains as to how the rule of law will be strengthened, given the ‘captured state’ phenomenon that dominates the country’s institutions.

All these are barriers to a greater citizen engagement and participation, which is largely abused from all levels of government. An evidence of this is the falling interest in elections, with the lowest turnouts recorded in the region of SEE, dwelling around the 50% in the last local and general elections. In order to maintain for them very favourable *status quo*, the top politicians successfully try to shift the focus of citizens from the critical reforms’ issues to the inter-ethnic divergences, that easily spark verbal and unfortunately also physical conflicts. This has over the past 15 years been the most successful formula to monopolise public policies, revenues as well as capture the economy, while the citizens are left to dwell on alleged ethnic perseverance issues.

The international community is transforming from the most engaged role it played in any European country this century into an observer and partner. From NIS BiH 2004 when every single pillar recorded a direct management and supervision of the extra-institutional international community and particularly OHR, the country has matured to a self-governing state, with a guiding and informative status of the international organisations. Some political pressure remains anchored in the bilateral diplomatic missions with the individual PIC embassies playing a strong role in the political landscape and reform priorities.

This shift has certainly been a long-term goal of the international community and an implementation of their exit strategy, for which it had been called from many independent sources both within and outside of BiH. However, there must not be a limbo in which the still strong elites hope to capture as many benefits for themselves as possible, favourably smiling at the departure of the massive international apparatus from the country. Before that final transition happens, much more importantly than any other transition aspect, the law enforcement agencies must prove that they are capable of processing and prosecuting even the most demanding legal and political cases and the judiciary must send a strong message that crime pays not and that it is sanctioned timely and appropriately.

The following chart describes the inter-relations among the NIS pillars as they should be (the full line) and the links that currently exist and must be dismantled (dotted line). In some instances the arrow directs both ways that indicates mutual collaboration and where the arrow goes in a single direction, it assumes support that institution should provide to the beneficiary, corresponding organisation. While the chart may not be that straightforward and simple, it displays all the complexities and intensity of collaboration among all the pillars and the need to a holistic approach described in this and the final chapter of the book.



Unfortunately, much energy of both the remaining international community as well as the national institutions is being used to address issues of secondary concerns that play well in favour of the nationalist agendas and bring the country and reform negotiations to a deadlock. A very good example is the police reform, which is halted at the time of writing of this article, because parties cannot agree on the territorial responsibilities and divisions. Any drawing of maps in the Balkans has inevitably led to conflicts and so it does with the police reform, which is left to a narrow intra-party consultative task force. The party leaders quickly embraced this decoy for their respective ethnic audiences and the depoliticisation, professionalisation and the actual reforms of police suffers with unpredictable delays and repercussions on the EU accession process and the introduction of the rule of law.

Another couple of similarly sensitive issues cannot be addressed, as they remain politically very sensitive yet hinder the progress of further growth and development. The critical issue is the one of the government layers of BiH. Since the very Dayton Constitution, national priorities have shaped themselves solid. Bosniaks perceive the central State level as their long term interest, hoping to centralise powers and gradually take control of decision making away from all other governing structures. Serbs embrace the Entity level as critical for state building, while hoping to retain as many powers within RS in order to dominate all its institutions. Croats however hold on to the cantons, where in some instances, they represent an absolute majority and create ethnically coloured policies at that level. Therefore neither party is willing to concede control over what they see as 'their' level and the institutions they portray as the means of their ethnic preservation or even sheer survival. It is still a blasphemy in BiH to openly address such issues, because of the two reasons: they are too sensitive and opening up the concrete constitutional reform agenda is dangerous for the reasons previously stated; and because nobody has a viable solution.

Similar is the case with the national census that has not been undertaken since 1991 in BiH, so institution has and viable official statistics. Conducting of the census is perceived as cementing the ethnic cleansing of the civil war and the subsequent homogeneity that resulted from it. The current legislation prescribes a proportional representation according to the last census, which creates enormous human resources deficiencies (e.g. parliament of FBiH was unconstitutional for four years as there were not enough Serbs to populate one of its houses, as described in the legislature chapter). In many instances positions are being filled with individuals of lesser qualities and any attempt to brand their behaviour as unprofessional results in counterattacks on the ethnic basis. As several chapters, including judiciary and civil service elaborated, deficient and corrupt officials sometimes dominate institutions and cannot be replaced, because this would violate the inter-ethnic compositions. This is absolutely no way forward for BiH! Nevertheless, for exactly the same two reasons as stated in the previous paragraph, the status quo remains, endangering the BiH's long-term development opportunities.

This also goes to demonstrate a lack of courage and vision, both within the diminishing international community and the national authorities, who dare not launch a frank and open discussion engaging all the pillars of society, including the quasi-state sector and civil society. This study does not aspire to claim having a solution to such difficult issues, but it does address them as being the unspoken yet alarming priorities. This study therefore raises them and opens them to public for a broad discussion that must be launched in such critical times for BiH. Any postponement of the discussion plays directly into the hands of criminals and dangerous elites benefiting from such *status quo* situation.

Priorities and recommendations

The public sector has demonstrated its incapability to effectively address the governance issues, efficiently build its capacities and to lead a strong anti-corruption campaign. Three anti-corruption strategies have failed thus far for the reasons of the lack of institutional commitment, close collaboration, but also the actual political will to combat corruption. This is understandable from the prism of benefits the national politicians retain by maintaining their non-transparent self-governed feudal territories, effectively accountable to nobody and gaining from financial and economic resources solely at their disposal.

What is required in order to move away from the *status quo* is an imperative public requirement to reform, which can best be spurred by reinforcing trust in certain quasi-state pillars, such as professional supreme audit, election commission, public contracting mechanisms, civil service and ombudsmen, supported by the non-state pillars such as independent media, business sector and NGOs, topped by the still dominant international community. These will build a sufficient pressure on the law enforcement institutions and judiciary, strengthened if necessary by a dedicated anti-corruption co-ordination authority or institutional setup that can eventually address all the existing deficiencies and problems of the critically problematic pillars: political parties, executive, legislative and local/regional governments, perceived as most corrupt.

This is indeed the holistic approach to the NIS that is constantly being missed in BiH and that must be translated into a feasible and very concrete anti-corruption strategy that applies all across BiH and is co-ordinated by the trustworthy department of the Council of ministers. In this case, the lines of responsibilities have to be most clearly defined, deadlines realistically set and the monitoring mechanism must be completely different to the implementing one and ideally non-governmental.

Very specific recommendations that promote functioning of every individual pillar have been contained within the strengths and weaknesses analysis in the central body of this document and will not be reanalysed in the concluding chapter. The very breakdown of each institution sheds a direct light at the present deficiencies or demonstrates where the local practice diverges from the positive international standards. Precisely these are the areas that require improvements in the next period, which will strengthen the pillars. Such changes can be led from within the institutions as well as externally through a systemic reform approach.

Besides the reforms, which can be undertaken by the public institutions, it may be worthwhile considering a complementary approach. The public sector continuously attempts to engulf all services, instead of delegating some to the private sector while retaining only a regulatory function, including provision of standards for delivery. This would, on a competitive basis, reduce the costs of service provision and enable independent control and verification mechanisms, in line with the legal requirements for minimal quality of delivery. The neighbouring countries, particularly the recent EU

members as well as Romania and Bulgaria, have successfully experimented with delegation and outsourcing of the 'traditional' roles of the public offices to the private sector, yielding exclusively positive results. Due to the country's strong decentralisation, the public sector must embrace the principle of subsidiarity, which governs the European Union – only the most appropriate level of government to address an issue, deals with it, rather than many or all at a time, as is currently the case.

In the meantime, public awareness campaigns and embracing of the positive examples and developments in terms of strengthening the rule of law must be utilised by all the pillars of integrity to reinforce the demand for reforms and lead the changes. A detailed independent diagnostic will support subsequent division of roles and responsibilities and consultations must be all-inclusive, obtaining a seal of approval from all the pillars. Only such an approach and strategy that brings all the citizens and formal institutions together in a common cause will work for the benefit of BiH and its European future and will see the level of corruption drop, while simultaneously increasing the confidence in the country and its system.

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¹ For more details on NIS please refer to “*The TI Source Book 1997 & 2000*”, “*TI Anti-Corruption Handbook*” (Transparency International, Berlin 1997, 2000) and www.transparency.org

² Source: UNDP – Human Development Report 2005 – Bosnia-Herzegovina

³ Historical, political and economic overview was adapted from: CIA Factbook on Bosnia and Herzegovina, The Commercial Guide to Bosnia and Herzegovina, and OHR General Info

⁴ The High Representative derives his powers from Annex X to the Dayton Agreement making him the “final authority in theatre regarding the interpretation of this Agreement on the civilian implementation of the peace settlement” and giving him, inter alia, the power to “facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”

⁵ Knaus and Martin

⁶ Ringler, pp. 76-77

⁷ Divjak: Parting With Ashdown – A New Dawn or Business as Usual for BiH, October 2005 - March 2006, p. 6

⁸ World Bank at the request of the BiH authorities: Diagnostic Study on Corruption, Sarajevo, 2000, pp. 31-34

⁹ Sources: http://www.trezorbih.gov.ba/publications/bos/budzet2006_bos.pdf ,
http://www.vladars.net/pdf/Budzet2006_cir.pdf, <http://www.fbihvlada.gov.ba/indexx.html>

¹⁰ Ibid.

¹¹ For example, the financing of the lawsuit filed by BiH against FR Yugoslavia for aggression, which was supported by Bosniac and Croat MPs and rejected by an overwhelming majority of Serb MPs. This is perceived by all sides as the issue of ultimate national importance

¹² Budget expenditures include current expenditure, capital expenditure, borrowing and repayment of debt, and specific-purpose funds

¹³ The Law was in fact imposed by the then High Representative, and the Parliamentary Assembly of BiH was obliged to adopt it in full

¹⁴ Article 1, Law on Conflict of Interest in Governmental Institutions of BiH

¹⁵ Article 8, Guide for Implementation of the Law on Conflict of Interest in Governmental Institutions of BiH

¹⁶ For example, RS Prime Minister, Mr Milorad Dodik said in the political talk show “Dosijs” [*Dossier*] aired on Alternativna televizija [*Alternative Television*] from Banja Luka on 23 October 2006 at 20:00 that the whole BiH system is not mature enough for such a legal instrument

¹⁷ For more information see above: “Integrity Mechanisms” – Are there rules on gifts and hospitality? Are they effective?

¹⁸ <http://www.izbori.ba/FAQ.asp>

¹⁹ Article 183 of the Rules of Procedure of the National Assembly of RS and Articles 144 and 145 of the Rules of Procedure of the Parliament of FBiH provide that an initiative for adoption of laws or other acts may be submitted by citizens, citizens’ associations, enterprises and other legal entities. Initiatives are submitted to the Speaker of the NA RS and the Chair of the House of Representatives of the FBiH Parliament, who forward them to the competent working bodies, the Legislative Committee, the Constitutional and Legal Affairs Committee and the Government for opinion. After obtaining their opinion, the NA RS/FBiH Parliament decide on the initiative and notify their decision to the persons who submitted the initiative. Source:

<http://www.narodnaskupstinars.net/cir/poslovnik.htm> and http://www.parlamentfbih.gov.ba/bos/predstavnicki_dom/poslovnik/index.html

²⁰ Official Gazette of BiH, 32/02

²¹ Articles 8; 33; 23, Paragraph 6; Article 24 Paragraph 4, and Article 20 of the Law on the Council of Ministers

²² Article 4, Law on Civil Service in the Institutions of BiH – full text

²³ Law on Ministries of RS

²⁴ Law on Ministries of RS

²⁵ Law on Administrative Service in the RS Administration

²⁶ Official Gazette FBiH, 19/03, 38/05

²⁷ Law on Civil Service of FBiH

²⁸ Besides the Law on the Council of Ministers, this is also provided for in the Rules of Procedure of the Council of Ministers of BiH

²⁹ Law on Administrative Service in the RS Administration

³⁰ According to the Law on General Administrative Procedure, the decision must contain: short elaboration of the requests of the parties concerned, determined facts, and, if necessary, reasons that were of crucial importance in assessing evidence, reasons why the request of a party is dismissed, and regulations and reasons that, based on the facts determined, influence the decision issued

³¹ See: Law on Administrative Service in the RS Administration

³² See: Law on Civil Service of FBiH

³³ Performance of the Secretary with a Special Assignment is appraised by the CoM (Article 30 of the Law on Civil Service in the Institutions of BiH)

³⁴ See: Law on Civil Service of FBiH

³⁵ Official Gazette of BiH, No. 49/02

³⁶ Official Gazette of RS, No. 25/02

³⁷ Official Gazette of FBiH, No. 40/02

³⁸ Article III, Paragraph 1 of the Constitution of BiH

³⁹ Article 7 of Amendment IV to the Constitution of BiH

⁴⁰ Official Gazette of BiH, No. 61/04

⁴¹ Article 6, Paragraph 1, Law on Financing Institutions of BiH

⁴² Article 7, Law on Financing Institutions of BiH

⁴³ Article 7, Paragraphs 3 and 4, Law on Financing Institutions of BiH

⁴⁴ Article 10, Law on Financing Institutions of BiH

⁴⁵ See: Budget Calendar in Article 15, Law on the Budget System of RS

⁴⁶ See: Articles 16-19, Law on Budgets in FBiH

⁴⁷ Article 17, Paragraph 2, Law on Implementation of the Budget of the Institutions of BiH and the international obligations of BiH for 2006

⁴⁸ Article 34, Law on the Council of Ministers

⁴⁹ Articles 124-135, Rules of Procedure of the House of Representatives of the Parliamentary Assembly of BiH;

Articles 117-126, Rules of Procedure of the House of Peoples of the Parliamentary Assembly of BiH

⁵⁰ In addition to that, Article 94 of the Constitution of RS provides that, if the President of RS assesses that there has been a crisis in the work of the Government, he/she may, at the initiative of at least 20 Assembly representatives and after obtaining the opinion of the Speaker of the National Assembly and the Prime Minister,

demand that the Prime Minister resign. Should the Prime Minister refuse to resign, the President of the Republic may dismiss him/her

⁵¹ Article 5, Paragraph 3, Constitution of FBiH

⁵² Paragraph XI.2, Point (c) of the Bonn Declaration provides that the measures taken by the High Representative to ensure implementation of the Peace Agreement and smooth operation of institutions may include “actions against holders of public offices who absent themselves from the meetings without justification or those that the High Representative finds to be in violation of legal commitments established in the Peace Agreement or in violation of the deadlines for their implementations”

⁵³ Such a case happened even at the highest level of the executive in RS on 17 April 2006, when the Prime Minister suspended an Assistant Minister within 30 minutes, based on only one complaint that was voiced verbally in front of the government building. The dismissal happened at a press conference, which represents an example of the opposite extreme

⁵⁴ In RS – Civil Procedure Code of RS

⁵⁵ Criminal Code of BiH

⁵⁶ Criminal Procedure Code of BiH

⁵⁷ Law on Administrative Disputes of BiH

⁵⁸ N. Pabrić, 2000, p. 477

⁵⁹ Article 10, Paragraph 2(c), Constitution of FBiH

⁶⁰ Article 1, Law on Administrative Procedure of RS

⁶¹ Article 9, Paragraph 2, Law on Administrative Procedure of FBiH

⁶² The Constitution of BiH is contained in Annex 4 of the General Framework Agreement for Peace in BiH and it incorporates a number of international conventions, treaties and other legal instruments further regulating the political life of the country: Universal Declaration of Human Rights (Preamble of the BiH Constitution), 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto (Annex I to the BiH Constitution), and European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 2, Paragraph 2 of the BiH Constitution)

⁶³ Law on Political Organisations

⁶⁴ Unofficial version of the cleared text of the BiH Election Law developed by the Association of Election Officials in BiH. This version incorporates: Election Law of BiH, Laws on Changes and Amendments to the Election Law of BiH, and Correction of the Law on Changes and Amendments to the Election Law of BiH

⁶⁵ Law on Party Financing

⁶⁶ See chapter on Election Commission

⁶⁷ Democracy Assessment in BiH, Open Society Fund BiH, Sarajevo 2006

⁶⁸ The following political parties were audited: Union of Independent Social Democrats – Milorad Dodik (SNSD), Party of Democratic Action (SDA), Serb Democratic Party (SDS), Social Democratic party of BiH (SDP), Party of Democratic Progress (PDP), Party for Bosnia and Herzegovina (SBiH), Civic Democratic Party of BiH (GDS), Croat Democratic Union (HDZ), and Socialist Party of RS (SP RS)

⁶⁹ In the exercise of his Bonn powers, the High Representative for BiH, in his Decision No. 202/04 of 2 April 2004, suspended all disbursements of budgetary itemisations for political party funding to SDS on the grounds of “violating the Law on Party Financing and assisting persons indicted under Article 19 of the Statute of the International Criminal Tribunal for former Yugoslavia”

⁷⁰ TI Global Corruption Barometer

- ⁷¹ <http://www.ti-bih.org/Articles.aspx?ArticleID=2ee4a760-af67-4a48-9030-fb8ba3f9387e>
- ⁷² TI BiH Corruption Perception Study 2002 and 2004
- ⁷³ Analysis of the Alignment of the Election Programmes of the Political Parties Participating in the General Elections in BiH with the GROZD Civic Platform
- ⁷⁴ TI BiH's press release "Citizens Extremely Disappointed in Parties and Leaders", http://www.ti-bih.org/Content.aspx?CategoryID=Press_Releases
- ⁷⁵ General Elections 2006 – confirmed results, <http://www.izbori.ba/rezultati/>
- ⁷⁶ Official Gazette of BiH, No. 61/06
- ⁷⁷ Conclusions of the scientific and expert conference "2004 Local Elections – Lessons Learned", Hotel "Bistrica", Jahorina 26 – 28 April 2005, organised by CEC BiH and Association of Election Officials in BiH
- ⁷⁸ Budget of the Institutions of BiH and International Obligations of BiH for 2006
- ⁷⁹ Ms Lidija Korać, during the focus group session held on 27 October 2006
- ⁸⁰ Conclusions of the scientific and expert conference "2004 local elections – Lessons Learned"
- ⁸¹ Articles 4 and 5, Law on Party Financing
- ⁸² There is a well-known case of financing political activities through funds of the High Secretariat of Saudi Arabia, which was subjected to thorough analysis following the September 11 attack on the USA, when this organisation was found to be actively providing financial support to the Al-Qaeda cells in BiH
- ⁸³ Law on Party Financing, Article 8 – Prohibited Donations
- ⁸⁴ SNSD, SDP, SDA, SPRS and PDP
- ⁸⁵ Articles 6 and 11, Law on Party Financing
- ⁸⁶ Source: http://www.izbori.ba/documents/revizija/Revizija_SDA2004.pdf
- ⁸⁷ Article 13, Law on Party Financing
- ⁸⁸ This and TI BiH's initiative for amendments to the Election Law is discussed in more detail in the chapter on the legislature
- ⁸⁹ The most pressing problems are: unemployment, poverty, pension system, health and social welfare, agriculture, youth, public administration, education, corruption, EU integration, public enterprises and foreign investment
- ⁹⁰ As long as any political party or coalition maintains such a person in a political party position, that party or coalition will be deemed ineligible to participate in the elections
- ⁹¹ Law on Conflict of Interest in Governmental Institutions of BiH
- ⁹² These conclusions are included in regular semi-annual reports on implementation of the Law on Conflict of Interest, which CEC BiH submits to the Presidency of BiH
- ⁹³ The most important bylaws are: Rules on Conduct of the Procedure, passed in April 2003, and Guide for Implementation of the Law on Conflict of Interest, passed in May 2003, <http://www.izbori.ba>
- ⁹⁴ CEC BiH's reports submitted to the Presidency of BiH during 2005 do not contain any data on implementation of the provisions of the Law on Conflict of Interest requiring public officials to report accepted gifts or services
- ⁹⁵ Article 12.4, Law on Party Financing
- ⁹⁶ For example, when the High Representative suspended all disbursements of budgetary itemisations for party funding to SDS, all its revenues were presented as the financing of party caucuses at different levels (Mr Mladen Lončar, during the focus group session held on 27 October 2006), and subsequent audit reports were very poor and did not meet auditing standards (Mr Boško Ćeko, during the focus group session held on 27 October 2006)
- ⁹⁷ Buturović: Malversations in GRAS Investigated by Financial Police, "Slobodna Bosna" [*Free Bosnia Weekly*], pp. 23-25

⁹⁸ Article 15.8, Election Law of BiH

⁹⁹ Article 15.9, Election Law of BiH

¹⁰⁰ Ms Lidija Korać, during the focus group session held on 27 October 2006

¹⁰¹ Statement by a member of CEC BiH during the training “Anti-corruption, Transparency and Business Sector”, organised by TI BiH, UNDP BiH and Foreign Trade Chamber of BiH, Sarajevo, June 2006

¹⁰² Decisions on removals and other decisions by the High Representative are available on: <http://www.ohr.int/decisions/archive.asp>

¹⁰³ Venice Commission, 11 – 12 March 2005

¹⁰⁴ Articles 14 and 17, Law on Party Financing

¹⁰⁵ The amount of these fines averages KM 3,000

¹⁰⁶ Law on Changes and Amendments to the Election Law of BiH (Official Gazette of BiH, No. 24/06, 3 April 2006)

¹⁰⁷ High Representative’s Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina, dated 4 April 2005

¹⁰⁸ Report on Audits of Financial Operations of the Institutions of BiH for 2004

¹⁰⁹ Official Gazette of BiH, No. 36/04; Official Gazette of RS, No. 62/04

¹¹⁰ The budgetary itemisations intended to fund SDS, which had been blocked by the High Representative pursuant to Decision No. 202/04 and subsequent Decisions No. 220/04 and No. 221/04 of 30 July 2004 and Decision 376/05 of 22 September 2005, were reallocated to the Budget of the Institutions of BiH and transferred in equal portions to the State Information and Protection Agency (SIPA), War Crimes Chamber of the Court of BiH, and CEC BiH

¹¹¹ Proposal for adoption of the Code of Conduct for Election Officials, as a bylaw for the organisation and conduct of elections, was submitted to CEC BiH by the NGO “Association of Election Officials in BiH” in 2001

¹¹² An example of this is the Law on Party Financing, which was enacted in 2000, but whose implementation did not start until 2005. The principal cause for this was the delay in establishing the Department for Audit of Financial Operation of Political Parties within CEC BiH

¹¹³ Article 17, Law on Party Financing

¹¹⁴ Article 19, Rules of Procedure of CEC BiH

¹¹⁵ CEC BiH received the most extensive support from USAID and the International Foundation for Election Systems from Washington, which helped implement the project “Money and Politics” aimed at promoting transparency, accountability and implementation of laws in the area of party financing

¹¹⁶ Association of Election Officials, Centers for Civic Initiatives, and Transparency International BiH

¹¹⁷ By 15 May 2006, CEC BiH launched 96 investigative procedures on conflict of interest charges and suspended a total of 3,874 contracts that the state or entity authorities had concluded with the public or private sector. Recording and review of these contracts is under way

¹¹⁸ Article 15.2, Law on Party Financing

¹¹⁹ Interview with an unnamed member of CEC BiH, July 2006

¹²⁰ Ms Lidija Korać during the focus group session held on 27 October 2006

¹²¹ Centers for Civic Initiatives, “Final Report on Civic Monitoring of the General Elections in BiH”

¹²² Centers for Civic Initiatives, Citizens’ Forum from Tuzla, Urban Culture, and other NGOs

¹²³ Report from the conference “Public Sector Auditing – Coordination Mechanisms”

¹²⁴ Article 17, Paragraph 1, Item f), Law on Conflict of Interest in Governmental Institutions of BiH

- ¹²⁵ HINA Press Agency: Rastrošnost državnog aparata izazvala ogorčenje javnosti [*Overspending on the part of the state apparatus resulted in a public outcry*], 17 June 2004
- ¹²⁶ Article 18 of the RS Law; Article 13 of the BiH Law; Article 13 of the FBiH Law
- ¹²⁷ Article 19 of the RS Law; Article 14 of the BiH Law; Article 14 of the FBiH Law
- ¹²⁸ Transparency International BiH: Conference on “Review of the Public Sector – Co-ordination Mechanisms”, Sarajevo 22, November 2005
- ¹²⁹ Mr Boško Čeko, focus group, 27 October 2006
- ¹³⁰ Budget of the BiH Institutions and Foreign Obligations of BiH
- ¹³¹ Mr Boško Čeko, focus group, 27 October 2006
- ¹³² Sources: websites of the SAIs: (BiH) <http://www.revizija.gov.ba/>, (RS) <http://www.gsr-rs.org/>, (FBiH) <http://www.saifbih.ba/>
- ¹³³ Mr Boško Čeko, focus group, 27 October 2006
- ¹³⁴ Mr Boško Čeko, Ibid.
- ¹³⁵ Supreme Audit Institutions chapter of the 2004 National Integrity System Study – BiH, TI BiH, p. 58
- ¹³⁶ Statement by Mr Milenko Šego, Auditor General of the BiH SAI, Conference on “Review of the Public Sector – Co-ordination Mechanisms”, TI BiH, Ibid., p. 9
- ¹³⁷ E.g. [Čeko] said that “Elektroprivreda” has made several undocumented investments which have nothing to do with the activities of this company and cited the example of the stadium in Ugljevik where each of the 5.000 seats was worth over KM 1.000, which means that KM 6 million have been spent so far and the stadium has still not been completed (FENA, 27 September 2005)
- ¹³⁸ RV 030-04 – www.gsr-rs.org
- ¹³⁹ RV 030-04 – www.gsr-rs.org
- ¹⁴⁰ Statement by Mr Milenko Šego, TI BiH, Ibid., p. 9
- ¹⁴¹ Taken from the statement by Mr Ibrahim Okanović, Auditor General of FBiH, TI BiH, Ibid., pp. 18-19
- ¹⁴² Memorandum of Understanding between the Supreme Audit Office of BiH, Supreme Audit Office of RS and Supreme Audit Office of FBiH with the Swedish State Audit Office, <http://www.revizija.gov.ba/bs/about/>
- ¹⁴³ Article 21, Law on High Judicial and Prosecutorial Council of BiH
- ¹⁴⁴ Ibid., Article 22
- ¹⁴⁵ Ibid., Article 24, Paragraph 1, Item b)
- ¹⁴⁶ Reappointment of judges and prosecutors was launched in 2002 by the international community (under the auspices of OHR), when the Independent Judicial Commission was formed. The attempt to establish three high judicial and prosecutorial councils (1 at the BiH level and two at the level of the Entities) proved unsuccessful, so the single High Judicial and Prosecutorial Council of BiH was formed in early 2004. HJPC conducted the entire procedure for reappointment of judges, while the process of appointment and removal of judges is a continuous process
- ¹⁴⁷ Court presidents also had to undergo the reappointment process like other “ordinary” judges. The Law on HJPC provides that after expiry of the term in office of a Court President, if he/she is not reappointed to the same function, he/she will nevertheless continue to perform a judicial function in the same court
- ¹⁴⁸ HJPC’s Annual Report for 2005
- ¹⁴⁹ <http://www.rs.cest.gov.ba/>
- ¹⁵⁰ Mr Branko Perić, President of HJPC in interview for Radio RTRS on 5 November 2006, aired in Central News at 16:20.

- ¹⁵¹ Article 68, Law on Courts of RS
- ¹⁵² Article 4.13, Code of Judicial Ethics, www.hjpc.ba
- ¹⁵³ Article 86, Law on High Judicial and Prosecutorial Council
- ¹⁵⁴ Articles 1.5 and 4.3, Code of Judicial Ethics
- ¹⁵⁵ BH Dani [*BH Days Weekly*], DŽ.K.D. and S.M.B.: State Judge Vlado Adamović Given Apartment by the FBiH Government
- ¹⁵⁶ SINA, Judge Charged with Abuse of Power
- ¹⁵⁷ Mr Milan Tegeltija, during the focus group session held on 27 October 2006
- ¹⁵⁸ Article 3, Paragraph 1, Law on Protection of Witnesses under Threat and Vulnerable Witnesses
- ¹⁵⁹ Ibid., Article 3, Paragraph 3
- ¹⁶⁰ “Apartment Affair Brought to Conclusion”, 3 January 2005, http://www.srpskaonline.com/modules.php?op=modload&name=Recommend_Us&file=index&req=FriendSend&sid=2254
- ¹⁶¹ “Two Municipal Officials Detained for Bribery”, 3 January 2006, headline news at <http://www.doboj.com>
- ¹⁶² Report on Processing of Cases by the Supreme Court of FBiH for the period 1 January – 30 June 2005
- ¹⁶³ 2005 Statistical Report, Supreme Court of RS
- ¹⁶⁴ Mr Branko Perić, Ibid.
- ¹⁶⁵ Law on Civil Service in the Institutions of BiH
- ¹⁶⁶ Ibid., Article 3
- ¹⁶⁷ Directorate of European Integration, 2005, p. 6
- ¹⁶⁸ Nezavisne novine (*“Independent Daily”*), 6 March 2006: “Assistant Ministers Submit Resignations – most Assistant Ministers and Secretaries in the RS Government resigned from their posts at the request of the RS Prime Minister Mr Milorad Dodik”
- ¹⁶⁹ Nezavisne novine (*“Independent Daily”*), 10 March 2006: “SDS Protests over Removals in the RS Government and Ministry of the Interior” – “The latest invitation to the civil servants in the RS Government, namely Assistant Ministers and Secretaries, to resign from their posts constitutes an outrageous act of political pressure and interference on the part of the executive with the work of civil service, which is in clear contravention of the Law on Civil Service in RS Administration”, said Mr Stojčić (the former Speaker of the National Assembly of RS)
- ¹⁷⁰ Official Gazette of RS, No. 49/06
- ¹⁷¹ Law on Administrative Service in the RS Administration
- ¹⁷² Directorate of European Integration, 2006, p. 167, www.dei.gov.ba
- ¹⁷³ Communication Strategy, Answers to Citizens’ Questions, www.adu.vladars.net
- ¹⁷⁴ Open Society Fund BiH, 2006, p. 186
- ¹⁷⁵ Ibid., p. 186
- ¹⁷⁶ Ibid., p. 47
- ¹⁷⁷ Ms Tina Radonjić and Ms Lidija Korać during the focus group session held on 27 October 2006
- ¹⁷⁸ Article 1, Paragraph 1, Law on Civil Service in the Institutions of BiH
- ¹⁷⁹ Ibid., Article 16, Paragraph 1, Item e)
- ¹⁸⁰ Law on Administrative Service in the RS Administration
- ¹⁸¹ Official Gazette of RS, No. 83/02
- ¹⁸² Open Society Fund BiH, 2006, p. 186

- ¹⁸³ Message of the Director of the RS Agency for Civil Service: “To All Civil Servants in RS Administration”, 26 July 2006, www.adu.vladars.net
- ¹⁸⁴ Law on Local Self-Governance, Chapter XI
- ¹⁸⁵ Report on the Performance of the RS Agency for Civil Service, January – December 2005, p. 7
- ¹⁸⁶ Article 28, Law on Civil Service in the Institutions of BiH
- ¹⁸⁷ Article, Paragraph 1, Law on Civil Service in FBiH
- ¹⁸⁸ Article 48, Law on Administrative Service in the RS Administration
- ¹⁸⁹ Report on the Performance of the RS Agency for Civil Service, January – December 2005, p. 2
- ¹⁹⁰ Article 2, Law on Civil Service in the Institutions of BiH
- ¹⁹¹ Official Gazette of RS, No. 94/03
- ¹⁹² Article 14, Paragraph 3, Item b), Law on Civil Service in the Institutions of BiH
- ¹⁹³ Code of Ethics for the Civil Servants in FBiH (No. 01-05-02-18/05, December 2004, www.adsfbih.gov.ba)
- ¹⁹⁴ Official Gazette of RS, No. 82/02
- ¹⁹⁵ BiH news magazine, No. 469 of 09 June 2006, “*I po babu i po stričevima*”, pp. 24-25
- ¹⁹⁶ Official Gazette of RS, No. 83/02
- ¹⁹⁷ Open Society Fund BiH, 2006, p. 428
- ¹⁹⁸ *Ibid.*, p. 342
- ¹⁹⁹ Article 85, Paragraph 1, Item 1, Law on Administrative Service in RS Administration; Article 18, Paragraph 1, Item a), of the Law on Civil Service in FBiH
- ²⁰⁰ Article 30, Paragraph 3, Items a) and b), Law on Civil Service in the Institutions of BiH
- ²⁰¹ Directorate of European Integration, p. 167
- ²⁰² Report on the Performance of the RS Agency for Civil Service, January – December 2005, p. 1
- ²⁰³ Open Society Fund BiH, 2006, p. 342 (Annual Report by the RS Ombudsmen - Human Rights Protector for 2004, Banja Luka, May 2005)
- ²⁰⁴ www.trezorbih.gov.ba, www.vladars.net, www.fbihvlada.gov.ba
- ²⁰⁵ Article 15, Law on the Budget System of RS
- ²⁰⁶ Article 63, Paragraph 3, Item b), Law on Civil Service in the Institutions of BiH
- ²⁰⁷ Article 24, Law on Ministries and Other Organs of the BiH Administration
- ²⁰⁸ Main goals of the audit institution, <http://www.gsr-rs.org/sluzba.htm>
- ²⁰⁹ Article 38, Law on the Auditing of the Financial Operations of the Institutions of BiH
- ²¹⁰ *Ibid.*, Article 31
- ²¹¹ Official Gazette of BiH, No. 17/04; Official Gazette of RS, No. 01/03; Rulebook on Performance Assessment of Civil Servants in Civil Service Bodies of FBiH (No. 01-05-02-21/05 of 18 January 2005)
- ²¹² Article 18, Official Gazette of BiH, No. 17/04
- ²¹³ Article 3, Law on Civil Service in the Institutions of BiH
- ²¹⁴ Transparency International BiH, “Procedures for Adoption of and Changes to Laws and Regulations”, 2005, pp. 11-12
- ²¹⁵ Official Gazette of RS, No. 25/02
- ²¹⁶ Article 41, Paragraph 4, Rulebook of the RS Commission for Concessions
- ²¹⁷ Article 2, Code of Ethics for the Civil Servants in FBiH
- ²¹⁸ Open Society Fund BiH, 2006, p. 342
- ²¹⁹ Official Gazette of RS, No. 37/05

- ²²⁰ Official Gazette of BiH, No. 21/04
- ²²¹ Ibid., Article 1, Paragraph 2
- ²²² Article 87, Paragraph 3, Law on Civil Service in RS Administration
- ²²³ Article 14, Paragraph 3, Item b), Law on Civil Service in the Institutions of BiH
- ²²⁴ Article 16, Paragraph 1, Item b), Law on Civil Service in the Institutions of BiH
- ²²⁵ Article 87, Paragraph 4, Law on Civil Service in RS Administration
- ²²⁶ Official Gazette of BiH, No. 32/01
- ²²⁷ Official Gazette of BiH, No. 28/00
- ²²⁸ Ibid., Article 8
- ²²⁹ Information Department, www.ads.gov.ba
- ²³⁰ Ibid., Article 1
- ²³¹ http://www.ads.gov.ba/zakoni/doc/pravilnik_o_prihvatljivom_koristenju_interneta.pdf
- ²³² www.egov.ads.gov.ba
- ²³³ Article 230, Criminal Code of BiH
- ²³⁴ Ibid., Article 225
- ²³⁵ Article 14, Paragraph 2, Law on Civil Service in the Institutions of BiH
- ²³⁶ Article 16, Criminal Procedure Code of BiH
- ²³⁷ Article 56, Law on Civil Service in the Institutions of BiH
- ²³⁸ Article 68, Paragraph 1, Law on Civil Service in RS Administration
- ²³⁹ www.ti-bih.org
- ²⁴⁰ Statistics, Statistical Reports: Overview of Criminal Offences of Economic Crime for 2005, www.mup.vladars.net
- ²⁴¹ State of Crime 02/2006, www.upravapolicije-fmup.gov.ba
- ²⁴² 2005 Activity Report of the RS Prosecutor's Office, www.tuzilastvo-rs.org
- ²⁴³ Article 105, Law on Civil Service in RS Administration
- ²⁴⁴ Open Society Fund BiH, 2006, p. 341
- ²⁴⁵ Article 19, Paragraph 1, Law on Civil Service in the Institutions of BiH
- ²⁴⁶ Official Gazette of RS, No. 84/03
- ²⁴⁷ Article 63, Law on Law on Civil Service in the Institutions of BiH
- ²⁴⁸ Article 5, Rules for Tender Sale (issued by the Director of the RS Agency for Privatisation on 22 December 2003), www.rsprivatizacija.com
- ²⁴⁹ Criminal Procedure Code of BiH, Criminal Procedure Code of RS, Criminal Procedure Code of FBiH – Chapter: Special Investigative Actions
- ²⁵⁰ Law on Changes and Amendments to the Law on Council of Ministers of BiH, Law on Civil Service in the Institutions of BiH
- ²⁵¹ Chapter XIX of the Criminal Code of BiH (Criminal Offences of Corruption and Criminal Offences against Official Duty or Other Responsible Duty) defines criminal offences of corruption in Articles: 217 (Accepting Gifts and Other Forms of Benefits); 218 (Giving Gifts and Other Forms of Benefits); 219 (Illegal Interceding); 220 (Abuse of Office or Official Authority). The Criminal Code of FBiH defines criminal offences of corruption in four Articles of Chapter 31 (Criminal Offences of Corruption and Criminal Offences against Official Duty or Other Responsible Duty): Article 380 (Accepting Gifts and Other Forms of Benefits); Article 381 (Giving Gifts and Other Forms of Benefits); Article 382 (Illegal Interceding); and Article 383 (Abuse of Office or Official Authority). Provisions contained in these Articles are identical to those in Articles 217, 218, 219 and 220 of the Criminal Code

of BiH. The Criminal Code of District Brčko defines criminal offences of corruption in Articles 374, 375, 376 and 377 of Chapter 31 (Criminal Offences of Corruption and Criminal Offences against Official Duty or Other Responsible Duty). Provisions contained in these Articles are identical to those in the abovementioned Articles of the Criminal Code of BiH and Criminal Code of FBiH. The Criminal Code of RS defines corruption as criminal offence in Chapter 27 (Criminal Offences against Official Duty) – Articles 351 (Accepting Bribe), 352 (Giving Bribe) and 353 (Illegal Interceding). The Criminal Code of RS differs from the aforementioned Codes in formulation of the criminal offence and severity of sanctions

²⁵² Agreement on Restructuring of Police Structures, http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=36200

²⁵³ Rodnić, *Adnan Terzić Signs Mladen Ivanić's Resignation*, 07 June 2005

²⁵⁴ Observation of the author (Mr Predrag Čeranić)

²⁵⁵ Article 25, Law on Intelligence and Security Agency of BiH

²⁵⁶ Official Gazette of RS, No. 33/02

²⁵⁷ Official Gazette of FBiH, No. 19/03

²⁵⁸ This is the case in RS, but they do not decide on recruiting or removing prosecutors from office

²⁵⁹ Law on Public Prosecutor's Office of RS

²⁶⁰ Dnevni avaz [*Avaz Daily*], 12 June 2006, www.avaz.ba (according to the OHR Media Round-Up of 13 June 2006, www.ohr.int)

²⁶¹ Strategic Plan of the Prosecutor's Office of BiH 2006-2009, p. 6

²⁶² Official Gazette of BiH, No. 25/04

²⁶³ Criminal Procedure Code of BiH, Criminal Procedure Code of RS, Criminal Procedure Code of FBiH

²⁶⁴ Official Gazette of BiH, No. 25/04

²⁶⁵ *Ibid.*, Article 60

²⁶⁶ *Ibid.*, Article 58

²⁶⁷ High Judicial and Prosecutorial Council of BiH, Annual Report 2005, p. 24

²⁶⁸ Article 33, Law on Home Affairs of RS

²⁶⁹ Official Gazette of FBiH, No. 49/05, Article 33

²⁷⁰ *Ibid.*, Article 33

²⁷¹ RS Budget for 2006, p. 22

²⁷² High Judicial and Prosecutorial Council of BiH, 2005 Annual Report, p. 51

²⁷³ RS Budget for 2006, p. 22 and pp. 47-51

²⁷⁴ Law on Budget System of RS

²⁷⁵ RV-020-05 – report on audit of the Financial Report by the RS Ministry of the Interior for 2004, 2 August 2005 – www.gsr-rs.org

²⁷⁶ BH Dani [*"BH Days" Weekly*] "Rat su pokrili mobiteli i čađ..." [*The War is Covered with Mobile Phones and Soot*], No. 143, Archive 2000, <http://www.bhdani.com/arhiva/143/t434a.htm> and the Office of Budget Audit of FBiH, excerpt from the Report on the Work of the Office of Budget Audit of FBiH for 2003, Sarajevo, 29 January 2004, No. UR-54/04, <http://www.saiFBiH.ba/bs/revizija/izvod-o-radu2003.asp>

²⁷⁷ Official Gazette of BiH, No. 27/04

²⁷⁸ High Representative's Decision No. 18/00 imposing the Law on State Border, 13 January 2000, http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=358

²⁷⁹ Official Gazette of RS, No. 48/03

- ²⁸⁰ Official Gazette of FBiH, No. 49/05
- ²⁸¹ Official Gazette of the Brčko District, No. 1/00
- ²⁸² Nezavisne novine [*Independent Daily*], 19 September 2006
- ²⁸³ O.A., Oslobođenje [*Liberation Daily*], 10 October 2006
- ²⁸⁴ German Ambassador to BiH, H.E. Arne Freiherr von Kittlitz: Reforma policije u BiH je neizostavna [*Police in BiH to Be Reformed Without Fail*], Nezavisne novine [*Independent Daily*], 24 October 2006, <http://www.nezavisne.com/dnevne/Paragraph/st09162005-02.php>
- ²⁸⁵ Mr Milorad Dodik, Prime Minister of RS, Address to the National Assembly of RS, 28 February 2006, http://www.vladars.net/lt/pm/ekspoze_281206.HTML
- ²⁸⁶ Pešević, Večernje novosti [*Evening News Daily*], 28 September 2006
- ²⁸⁷ Centre for Investigative Journalism: Financijska policija pronašla krivce [*Financial Police Find Culprits*], http://www.cin.ba/Stories/P5_Elektrobosna/?cid=370,2,1
- ²⁸⁸ Official Gazette of BiH, No. 16/02
- ²⁸⁹ E.g. the police action of MI RS “Hajdučke vode” [*Outlaw Waters*] conducted in September 2003
- ²⁹⁰ High Judicial and Prosecutorial Council of BiH, 2005 Annual Report, Ibid.
- ²⁹¹ Mr Milan Tegeltija, during the focus group session held on 27 October 2006
- ²⁹² Centre for Investigative Journalism: Zatrpano predmetima, tužilaštvo ne rješava slučajeve korupcije kantonalnih vlasti [*Overwhelmed by Cases, the Prosecutor's Office does not Solve Cases of Corruption among Cantonal Officials*], published on 28 September 2006, http://www.cin.ba/Stories/P10_Canton/?cid=555,2,1
- ²⁹³ Official Gazette of FBiH, No. 49/05
- ²⁹⁴ Nezavisne novine [*Independent Daily*], “Potukli se ispred zgrade Predsjedništva BiH” [*Clash in front of the Building of the BiH Presidency*], 27 September 2006, p. 1
- ²⁹⁵ Admir Katica, SIPA’s spokesman, Over 79,000 Reports of Crime, 15 January 2005, statement for Reuters
- ²⁹⁶ Ombudsman of RS, February 2005
- ²⁹⁷ Mašjević et al., 2006, p. 95
- ²⁹⁸ High Representative’s Decision removing Mr Zoran Petrić from his position as Chief of Crime Department in Bijeljina PSC, 30 June 2004, www.ohr.int
- ²⁹⁹ High Judicial and Prosecutorial Council of BiH, 2004 Annual Report, Chapter 4 – Disciplinary Measures
- ³⁰⁰ High Judicial and Prosecutorial Council of BiH, 2005 Annual Report, Ibid., pp. 11-12
- ³⁰¹ Verdict of Not Guilty for Mr Dodik: “Mr Milorad Dodik Acquitted of the Charges for Abuse of Office during his mandate as Prime Minister of RS. Mr Novak Kondić, the then Minister of Finance, was also acquitted of charges”, report by Radio Free Europe (Milorad Milojević), 17 October 2005, www.slobodnaevropa.org
- ³⁰² Source: Nezavisne Novine [*Independent Daily*], http://www.eteleboro.com/sr/index.php?option=com_novosti&id=3195&catnovosti=Ekonomija
- ³⁰³ Dozo, 27 October 2006
- ³⁰⁴ Nezavisne novine [*Independent Daily*], Dokiću rok 10 dana da podnese ostavku [*Dokić Has 10 Days to Resign*], 31 March 2005, <http://www.nezavisne.com/dnevne/dogadjaji/dog03312005-05.php>
- ³⁰⁵ Mr Milan Tegeltija, during the focus group session held on 27 October 2006
- ³⁰⁶ Metiljević, 14 September 2006, pp. 18-20
- ³⁰⁷ Conclusions of the focus group held on 27 October 2006
- ³⁰⁸ European Commission, 08 November 2006, p. 34
- ³⁰⁹ World Bank, June 2002

- ³¹⁰ The Human Rights Chamber ceased to exist on 31 December 2003 and its responsibilities were taken over by the Commission on Human Rights of the Constitutional Court of BiH
- ³¹¹ Ceased to operate on 1 November 1998 in accordance with Protocol No. 11
- ³¹² Official Gazette of BiH, No. 19/02
- ³¹³ Official Gazette of FBiH, No. 32/00
- ³¹⁴ Bihać, Livno, Mostar, Sarajevo, Travnik, Tuzla and Zenica
- ³¹⁵ Official Gazette of RS, No. 4/00
- ³¹⁶ Official Gazette of RS, No. 49/04
- ³¹⁷ Official Gazette of BiH, No. 32/06, 25 April 2006
- ³¹⁸ Article 43, Law on Changes and Amendments to the Law on the Human Rights Ombudsman of BiH
- ³¹⁹ Article 13 of the Law on Ombudsman of RS, Article 14 of the Law on Ombudsmen of FBiH, and Article 15 of the Law on the Human Rights Ombudsman of BiH
- ³²⁰ Decision of the Constitutional Court of BiH, No U-5/98 of 1 July 2000 and 18 August 2000, www.ustavnisud.ba
- ³²¹ Paragraph 15 (v)(c) of the Council of Europe Parliamentary Assembly's Opinion, OP 234 (2002), 22 January 2002, (www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/EOPI234.htm)
- ³²² Article 10 of the Law
- ³²³ Article 8, Paragraph 7, Changes and Amendments to the BiH Law
- ³²⁴ Article 11 of the BiH Law
- ³²⁵ Article 10 of the BiH Law
- ³²⁶ Mr Vitomir Popović was member of SDS (Serb Democratic Party) and acted as Deputy Prime Minister of RS for one term during war, Mr Mariofil Ljubić is one of the founders of HDZ BiH (Croat Democratic Union of BiH), and Mr Safet Pašić was member of SDA (Democratic Action Party)
- ³²⁷ See amendments to Article 8 of the said Law
- ³²⁸ Article 12 of the BiH Law, Article 11 of the RS Law, and Article 13 of the FBiH Law
- ³²⁹ Article 38 of the FBiH Law
- ³³⁰ New Article 34 A
- ³³¹ New Article 39
- ³³² The Austrian Ambassador's message to the Ombudsmen of RS, 2002
- ³³³ Article 40 of the FBiH Law
- ³³⁴ Former Article 37 of the BiH Law
- ³³⁵ Amended Article 37 of the BiH Law
- ³³⁶ For more information visit: www.hjpc.ba
- ³³⁷ www.ohro.ba
- ³³⁸ Article 34, Paragraph 1 of the BiH Law provides that the Ombudsmen must submit their annual reports to the Presidency of BiH, the House of Representatives and the House of Peoples of the Parliamentary Assembly of BiH, the National Assembly of RS, and the Parliament of FBiH
- ³³⁹ Official Gazette of BiH, No. 29/02, Article 42, Paragraph 4
- ³⁴⁰ Official Gazette of FBiH, No. 2/98 and 48/99, Article 49, Paragraph 4
- ³⁴¹ Official Gazette of RS, No. 13/03
- ³⁴² Civil Procedure Codes of RS and FBiH
- ³⁴³ www.bihfedomb.org
- ³⁴⁴ See: NIS BiH 2004

- ³⁴⁵ Conclusions of the focus group held on 27 October 2006
- ³⁴⁶ For more details refer to the reports posted on the Entity Ombudsmen' web pages
- ³⁴⁷ Official Gazette of RS, No. 01-402/06 of 05 April 2006
- ³⁴⁸ The Law on Changes and Amendments to the Law on Prevention of Organised Crime and Grave Economic Crimes was published in Official Gazette of RS, No. 01-887/06, 4 July 2006
- ³⁴⁹ Article 7, Law on State Investigation and Protection Agency
- ³⁵⁰ Article 8, Law on State Investigation and Protection Agency
- ³⁵¹ The Strategy contains findings, also carried by the media, that BiH annually loses enormous funds in tax evasions, M. Čubro: Zbog poreskih utaja BiH gubi 1,5 milijardi evra godišnje [*BiH Annually Loses € 1.5 Billion in Tax Evasions*], *Nezavisne Novine* [*Independent Daily*], 12 June 2006
- ³⁵² *Nezavisne Novine* [*Independent Daily*], Ibid.
- ³⁵³ This information is based on the analysis of budgets of the executive at all levels
- ³⁵⁴ Information on police reform activities submitted by the Minister of the Interior of RS, Mr Stanislav Čađo, at the special session of the RS Government, Banja Luka, 10 May 2006, http://www.vladars.net/lr/rps/informacija_aktivnosti.html
- ³⁵⁵ Risojević and Karić, 01 December 2005
- ³⁵⁶ See the chapter on SAIs
- ³⁵⁷ Official Gazette of BiH, No. 16/02
- ³⁵⁸ TI BiH's press release on the work of the ALAC centre, 9 June 2006
- ³⁵⁹ Law on Communications of BiH, Official Gazette BiH, No. 33/02, 12 November 2002
- ³⁶⁰ Broadcasting Code of Conduct, came into force on 1 August 1998. Changes and amendments: 9 June and 8 September 1999, and 10 February 2000
- ³⁶¹ Law on Freedom of Access to Information was adopted at the state level in November 2000, followed by RS in November 2001, and FBiH in February 2002
- ³⁶² Article 1, Law on Freedom of Access to Information in BiH
- ³⁶³ Articles 6, 7, 8 and 9, Law on Freedom of Access to Information in BiH
- ³⁶⁴ IREX, 2005
- ³⁶⁵ Džihana, 2006
- ³⁶⁶ Earlier researches yielded similar results. In November 2004 TI BiH conducted a research into the implementation of the Law on Freedom of Access to Information in BiH by sending requests for information to hundred public institutions and authorities at all levels. The results indicated no progress in comparison to a basic study that was conducted 18 months earlier, in April 2003: "Only 54% of the public institutions included into the sample responded to the requests within the legally set time limit of fifteen days, which is a decrease of 2% in comparison to the last year's research. By 20 December 2004, long after the set time limit expired, an additional 11% of institutions responded. It is important to note that, after the expiry of the legally set time limit, the TI BiH staff contacted for the second time the institutions that failed to respond to requests for information. All in all, only 65% of the institutions responded to the requests for information, whether within the time limit or after its expiry". In 2005 the Centre for Free Access to Information conducted a similar research on a sample of 110 requests, in cooperation with the Helsinki Committee of Croatia and NGO Yucom from Serbia. They received responses from 63 public authorities (57%), while 47 requests (43%) remained unanswered
- ³⁶⁷ OSCE, Public Opinion Poll - June 2004, Democratisation Department, (www.oscebih.org), quoted in Džihana, 2006

³⁶⁸ Ombudsmen of FBiH, 27 June 2005, p. 4

³⁶⁹ Ombudsmen of FBiH, *Ibid.*, p. 6

³⁷⁰ Article 3, Law on Communications of BiH

³⁷¹ Law on Financing of Institutions of BiH of 29 December 2004. The Law on Financing of Institutions of BiH establishes a financial independence mechanism for CRA. Namely, although the CRA submits its annual budget for approval to the Council of Ministers, Article 9 sets clearly that the Council of Ministers may not decrease its budget by more than 20 percent

³⁷² Law on Communications of BiH, Article 36

³⁷³ See CRA's website www.rak.ba and Law on Communications of BiH, Article 40

³⁷⁴ Article 42, Law on Communications of BiH, Official Gazette BiH, No. 33/02, 12 November 2002

³⁷⁵ The public broadcasting system is made up of three broadcasters: BiH Public Broadcasting Service (BHRT) covering the level of the state, Public Broadcasting Service of FBiH (RTFBiH) at the level of the Federation BiH, and Public Broadcasting Service of RS (RTRS) at the level of Republika Srpska

³⁷⁶ Law on the Public Broadcasting System in BiH. Earlier Law on Principles of PBS from 2002 regulated the PBS system as a whole, but it also regulated the state broadcaster BHRT. The new Law on PBS from October 2005 regulates only the work of public broadcasters system as a whole, whereas separate laws on public broadcasters should be adopted for each of the three broadcasters, at the level of the state (BHRT) as well as the level of the entities (RTFBiH and RTRS)

³⁷⁷ N.K., "Neprihvatljiv zahtjev sindikata", [*Trade Union's Requests Unacceptable*], *Oslobođenje [Liberation Daily]*, 25 October 2005, p. 6

³⁷⁸ Text published in the "Dani" weekly gives details on the boycott of the RTV license fee by leading Croat politicians in BiH, including Dragan Čović, the then Member of the Presidency of BiH. According to this source, payment of the RTV licence fee was conditioned by RTVFBiH introducing an ethnically defined TV channel for BiH Croats, in Croatian language (Eldin Hadžović, 4 March 2005)

³⁷⁹ Eldin Hadžović, "Hrvatska televizija u hrvatskoj državi" [*Croat TV in a Croat state*], *Dani [Dani Weekly]*, 4 March 2005

³⁸⁰ Quoted in N. Krsman, 25 October 2005, p. 10

³⁸¹ See reports: Karlekar (ed.), pp. 60-61; Media Task Force: 2003, p. 11; IREX 2005 and the Freedom House's Map of Press Freedom 2006

³⁸² IREX, 2005, pp. 19-20

³⁸³ S. Gojković, 13 October 2006

³⁸⁴ For example, HTV, the national public broadcaster from neighbouring Croatia published information on police protection of Roman Catholic sacral buildings in the holy place of Međugorje from possible retaliation by Islamist extremists for attack on a mosque in eastern part of the town of Mostar which took place in summer 2006. Another example is total failure on the part of all media outlets in FBiH to report on laudatory Reuters' analysis of the work of Banja Luka Stock Exchange because the same analysis characterised the Sarajevo Stock Exchange as non-transparent and lacking quality. Even an attempt to initiate discussion on possible causes of such ignoring of important news on the part of media outlets would be considered intolerant in BiH, which only leads to distortion of the system of values and somewhat perverse interrelations

³⁸⁵ See, for example, "Novinarima prijeli 62 puta" [*Journalists threatened 62 times*], *Nezavisne novine [Independent Daily]*, 31 August 2005, p. 11 (available at:

<http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=64406>, 18

- October 2005). See also “Osuđen napad policije na novinara Dnevnog lista” [*Police attack on Dnevni list journalist condemned*], *Oslobođenje* [*Liberation Daily*], 01 June 2005, p. 11 (available at: <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=45113>)
- ³⁸⁶ Report from the roundtable “The Media and Government – (Ab)use of the Media”, Ibid.
- ³⁸⁷ IREX, 2005, p. 19
- ³⁸⁸ According to the CIA estimates for 2004, there are 4,007,608 persons living in BiH. Of that number, according to the domestic estimates, approximately 2,318,972 live in FBiH and 1,490,993 live in RS. Source: Wikipedia: http://bs.wikipedia.org/wiki/Bosna_i_Hercegovina#Stanovni.C5.A1tvo
- ³⁸⁹ Register of RTV Stations maintained by CRA, 5
- ³⁹⁰ Mareco Index Bosnia, Radio Ratings Survey, 14-20 March 2005. Also see Public Register of RTV Stations maintained by CRA
- ³⁹¹ Henderson *et al*, 2003
- ³⁹² IREX (2005), Media Sustainability Index 2004, according to research data by Mareco Index Bosnia, 13-22 September 2004
- ³⁹³ Jusić, 2003
- ³⁹⁴ McCann-Erikson 01/02, quoted in Henderson *et al*, 2003, pp. 8-9
- ³⁹⁵ These are net values and they do not include direct sales of advertising nor exchanges of goods and services, which is why it is not possible to give a more accurate assessment of the value of the advertising market. It is assumed that the gross value of the advertising market in BiH in 2002 amounted to approximately KM 60 million (see Henderson *et al.*, 2003, pp. 8-9)
- ³⁹⁶ IREX, Media Sustainability Index 2005, Washington DC, 2005, p. 27
- ³⁹⁷ See also: Television across Europe (*Televizija u Evropi*), Open Society Institute: EU Monitoring and Advocacy Program & Network Media Program, Budapest, 2005, p. 174
- ³⁹⁸ N. Krsman, “Za plate i doprinose dužni 10 miliona KM” [*KM 10 mil. owed in salaries and benefits*], *Nezavisne novine* [*Independent Daily*], 21 October 2005, p. 5; Z. Perišić, “Duraković: Odliv novca od reklama nerazumna odluka” [*Duraković: unreasonable decision to give away advertising revenue*], *Dnevni avaz*, 25 October 2005, p. 10
- ³⁹⁹ Report by the Independent Union of Professional Journalists in BiH, quoted in Media Task Force: 2003, p. 11
- ⁴⁰⁰ Which was adopted by the House of Representatives of the BiH Parliament on 19 April 2001, and by the House of Peoples on 23 October 2001
- ⁴⁰¹ CRA, 2003: The Future of Broadcasting; Jusić, 2004
- ⁴⁰² Public Register of RTV Stations maintained by CRA, available at: <http://www.rak.ba/bs/broadcast/reg/?cid=2415>
- ⁴⁰³ The communications sector includes radio, TV, cable TV, Internet, telecommunications, and other related areas
- ⁴⁰⁴ Article 3, Law on Communications of BiH
- ⁴⁰⁵ Broadcasting Code of Conduct came into force on 11 August 1998, amended on 9 June and 8 September 1999 and 10 February 2000
- ⁴⁰⁶ Rulebook on Media Presentation of Political Parties in Election Period
- ⁴⁰⁷ Official Gazette BiH, No. 23/2001
- ⁴⁰⁸ Final Report on Media Coverage of Elections in BiH, Communications Regulatory Agency, October 2004
- ⁴⁰⁹ De(con)struction of Public Discourse: Print Media in the BiH Election Campaign, 5 August to 5 October 2002, Mediacenter Sarajevo, www.media.ba

- ⁴¹⁰ Coordination of Associations of Journalists in BiH, Monitoring of Election Coverage in Print Media (General Elections, 5 October 2002), 9 December 2002, Sarajevo, BiH
- ⁴¹¹ Helsinki Committee for Human Rights in BiH, 2004
- ⁴¹² Council of Europe, 2004b, p. 8
- ⁴¹³ Law on Protection from Defamation, Official Gazette of RS, No. 37/01; Official Gazette of FBiH, No. 31/01
- ⁴¹⁴ Halilović, 2005
- ⁴¹⁵ Halilović, 2005
- ⁴¹⁶ Halilović, 2005
- ⁴¹⁷ Halilović, 2005
- ⁴¹⁸ Halilović, 2005
- ⁴¹⁹ For more details about CRA visit their official webpage: <http://www.rak.ba>
- ⁴²⁰ Press Code of Conduct, available at the Press Council's webpage: <http://www.vzs.ba/default.asp?id=2>
- ⁴²¹ The Press Council tries to resolve any disputes between the readers/the public and the press using only the journalistic tools available: right to a response, publication of correction, apology and rebuttal. The Council has no power to sanction, issue or revoke licenses, or fine newspapers and magazines. So, the government has no legal mechanisms of direct influence over editorial policies of the press. All information on the Press Council is available at: <http://www.vzs.ba>
- ⁴²² Press Council, 2004, p. 10
- ⁴²³ Press Council, 2004, p. 12
- ⁴²⁴ Mediacentar Sarajevo/Save the Children UK, 2005, p. 36
- ⁴²⁵ Gender Media Watch 2004, Programme analysis: FTV, TVRS, BHTV1, ATV and NTV Hayat, 09-15 December 2002, Gender Centres of FBiH Government and RS Government, IBHI-BiH, 2003, p. 61
- ⁴²⁶ Helsinki Citizens' Assembly of the City of Banja Luka, Women in the media, October 2004
- ⁴²⁷ Association of BiH Journalists, July 2005, p. 1
- ⁴²⁸ Čengić, 17 September 2005, p. 11
- ⁴²⁹ Mr Mladen Mirosavljević, focus group held on 27 October 2006
- ⁴³⁰ Definition and Obligations of Public Broadcasters – CRA's rule 01/1999, amended and cleared text, 14 June 2004), <http://www.rak.ba/bs/legal/rules-codes/broadcast/rules/default.aspx?cid=2812>
- ⁴³¹ Article 6 (2), Rulebook on Media Presentation of Political Parties in Election Period, Official Gazette BiH, No. 40, 29 May 2006
- ⁴³² IREX, 2005, pp. 17-19
- ⁴³³ "Novinarima prijekali 62 puta" [*Journalists threatened 62 times*], Nezavisne novine [*Independent Daily*], 31 August 2005, p. 11, <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=64406>. See also "Osuđen napad policije na novinara Dnevnog lista" [*Police attack on "Dnevni list" journalist condemned*], Oslobođenje [*Liberation Daily*], 01 June 2005, p. 11 (available at: <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=45113>)
- ⁴³⁴ Čengić, R., "Nacionalističke stranke i dalje raspiruju strah" [*Nationalist parties still spread fear*], Nezavisne novine [*Independent Daily*], 11 January 2005, p. 9, <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=17965>
- ⁴³⁵ Halilović, 2005
- ⁴³⁶ At the level of BiH as well as at the level of the Entities
- ⁴³⁷ Source: NGO "Lex International" Banja Luka, www.lex-ngo.org

- ⁴³⁸ Document “NGO Legislation in Central and Eastern Europe”, p. 4; ICNL 2002
- ⁴³⁹ USAID, 2004
- ⁴⁴⁰ USAID, 2004
- ⁴⁴¹ External influence can be defined as participation in establishment of CSOs’ priorities or selection of key staff
- ⁴⁴² Centres for Civic Initiatives BiH, January 2005; TI BiH – 2004 Corruption Perception Study
- ⁴⁴³ Qualitative Study No 3: “Employment, Social Service Provision and the NGO Sector”, Independent Bureau for Humanitarian Issues (IBHI) & Birks Sinclair & Associates; Sarajevo, April 2005; p. 3
- ⁴⁴⁴ Independent Bureau for Humanitarian Issues (IBHI) & Birks Sinclair & Associates: Qualitative Study No. 3: “Employment, Social Service Provision and the NGO Sector. Status and Perspectives for Bosnia and Herzegovina, Analysis and Implications for Policies”, Sarajevo, April 2005, http://www.ibhibih.org/Publikacije/KS3NVODokumenti1_9.pdf
- ⁴⁴⁵ Sources: Ministry of Education and Culture of RS and Ministry of Education and Science of FBiH
- ⁴⁴⁶ For example, the “Crime-Stoppers” campaign which was launched and led by the European Union Police Mission (EUPM) – www.eupm.org and was taken over by the BiH’s State Investigation and Protection Agency (SIPA) in 2005
- ⁴⁴⁷ The most important organisations concerned with governance and corruption are: Transparency International BiH, Enterprise Development Agency (EDA), Center for Promotion of Civil Society (CPCD), Centers for Civic Initiatives (CCI) – Source: various reports by the Open Society Fund BiH (www.soros.bih.org) and the European Commission’s Delegation to BiH, 2005
- ⁴⁴⁸ Business groups surveyed include: Association of Employers of the Sarajevo Canton, Chamber of the Economy of RS, and Chamber of the Economy of the Sarajevo Canton
- ⁴⁴⁹ In December 2004 the Association of BiH Employers took over the management of the Bulldozer Initiative from OHR
- ⁴⁵⁰ Nezavisne novine [*Independent Daily*], 12 December 2004
- ⁴⁵¹ IBHI, 2005, p. 6
- ⁴⁵² Pursuant to the Law on Associations and Foundations of BiH and Law on Associations and Foundations of RS, all CSOs are entitled to apply for being conferred the “public benefit status”. Such a provision is not included in the Law on Associations and Foundations of FBiH – www.lex-ngo.org/dokumenti
- ⁴⁵³ Delegation of the European Commission, 2005
- ⁴⁵⁴ Source: a high-ranking official of one of the three trade union organisations in BiH mentioned in this document
- ⁴⁵⁵ IBHI, 2005
- ⁴⁵⁶ Article 52, Paragraph 2, Law on Associations and Foundations of BiH
- ⁴⁵⁷ For further information on the Code of Conduct for NGOs in BiH (Agreement between the Council of Ministers of BiH and the NGO Sector) visit: www.civilnodrustvo.ba
- ⁴⁵⁸ “Disputed property status” refers to cases of refugees from Croatia who traded the property they had in Croatia for the property of refugees from BiH who left for Croatia, which became subject of dispute after the war because refugees from BiH now claim return of this property
- ⁴⁵⁹ Mr Vuković, Assistant Minister of Security, “San” Daily, 12 August, 2005
- ⁴⁶⁰ ICVA 2005 and CCI, May 2005
- ⁴⁶¹ Influence here refers to the raising of awareness about various issues that NGOs are concerned with as well as other forms of education and/or dissemination of information to the general public in BiH
- ⁴⁶² USAID, 2004, pp. 22-24

- ⁴⁶³ Source: Mr Miodrag Dakić, one of the leaders of the NGO “Young Explorers”, Banja Luka (www.mibl.org)
- ⁴⁶⁴ USAID, 2004, conclusions
- ⁴⁶⁵ Local Governance Best Practices in BiH in 2005 – Soros BiH; Laktaši Municipality – best practice “Participation of Young People in the Work of Local Self-Governance” and Gračanica Municipality “Support to the Creation of New Jobs in Agriculture” – (www.soros.org.ba/images_vijesti/izvjestaj_prakse_lok)
- ⁴⁶⁶ Adoption of the “Youth Policy” document by the Government of RS with high level of participation of NGOs representing youth interests (<http://www.pmm-bl.rs.ba/op.htm>); 36% of domestic NGOs interviewed said they received some funding from their cantons in FBiH – see USAID 2004, p. 33
- ⁴⁶⁷ ICVA, 2006
- ⁴⁶⁸ A number of laws were adopted in 2004 and 2005 as a result of a broad NGO initiative: Law on Amendments to the Law on Social Welfare; Law on Depoliticisation of Education in the Tuzla Canton; Law to Declare Prokoško Lake a Natural Monument; Law on Direct Election of Heads of Municipalities in FBiH – source: CCIBH
- ⁴⁶⁹ PRSP
- ⁴⁷⁰ CCI, 2005
- ⁴⁷¹ Official Gazette of RS, Nos. 24/98, 62/02, 66/02, 38/03, 97/04
- ⁴⁷² Official Gazette of RS, No. 42/05
- ⁴⁷³ Official Gazette of RS, Nos. 67/02, 77/02, 38/03, 96/03
- ⁴⁷⁴ Official Gazette of RS, No. 64/02
- ⁴⁷⁵ Official Gazette of FBiH, No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03
- ⁴⁷⁶ Official Gazette of FBiH, Nos. 29/03, 32/04
- ⁴⁷⁷ Official Gazette of FBiH, No. 29/03
- ⁴⁷⁸ Great support to the development of bankruptcy legislation was provided by the USAID-FILE Project through extensive preparation of materials and consulting. The USAID-FILE Project organised conference entitled “Bankruptcy – Building a Better Economy” on 17 May 2006 in Sarajevo. Before the conference, the Project conducted a survey to assess the state of the bankruptcy legislation. The survey covered 50% of bankruptcy judges, 28% of bankruptcy trustees, and 22% of representatives of trade unions, banks, government officials and law professors. 100% of those who took part in the survey said the bankruptcy laws adopted in 2003 had improved the bankruptcy practice and procedures
- ⁴⁷⁹ Adopted at the session of the RSCE’s Assembly on 15 March 2006 and published in the RSCE’s magazine “Privredne informacije” [*Economic Information*], Nos. 69-70, May-June 2006
- ⁴⁸⁰ Official Gazette of BiH, No. 3/03
- ⁴⁸¹ Chapter XIV, Criminal Code of BiH – Liability of Legal Persons for Criminal Offences
- ⁴⁸² Article 221, Criminal Code of BiH – Embezzlement in Office; Article 384, Criminal Code of FBiH – Embezzlement in Office; Article 348, Criminal Code of RS – Embezzlement
- ⁴⁸³ Official Gazette of RS, No. 44/03
- ⁴⁸⁴ Official Gazette of RS, Nos. 10/98, 16/00, 18/01, 71/02, 18/03, 39/03
- ⁴⁸⁵ Official Gazette of FBiH, Nos. 39/98, 32/00, 48/01, 41/02
- ⁴⁸⁶ Official Gazette of FBiH, Nos. 9/96, 27/98, 20/00, 45/00
- ⁴⁸⁷ Official Gazette of BiH, No. 20/02
- ⁴⁸⁸ Official Gazette of BiH, No. 29/04

- ⁴⁸⁹ Divjak, B. “Citizens Lose Sevenfold, while Politicians Gain Sevenfold on State-Owned Companies”, discussion paper for the debate “Corruption as a Drag on the Development of BiH” at the conference on the occasion of the 10th anniversary of the Dayton Peace Agreement, Geneva, 20 October 2005
- ⁴⁹⁰ Official Gazette of BiH, No. 48/05
- ⁴⁹¹ More detail on that can be found in various publications, including Banfield et al. (ed.), 2006
- ⁴⁹² Source: RS Directorate for Privatisation and RS Economic Policy for 2006
- ⁴⁹³ Official Gazette of RS, No. 33/06
- ⁴⁹⁴ Official Gazette of RS, No. 92/06, entered into force on 2 October 2006, and the identical Law in FBiH
- ⁴⁹⁵ The Reuters’ analysis published in October 2006 points to glaring differences in transparency and performance of the two bourses and notes a significant progress and financial growth of the Banja Luka Stock Exchange and stagnation and politicisation of the one in Sarajevo. REUTERS, 25 October 2006
- ⁴⁹⁶ 29 December 2005 in RS; in FBiH – Official Gazette of FBiH, No. 32/01 from 2001
- ⁴⁹⁷ Source: www.sudbih.gov.ba
- ⁴⁹⁸ Biznis.ba: “Bosnalijek Wants Monopoly”, Saturday, 28 October 2006, http://www.biznis.ba/index.php?option=com_content&task=view&id=7360&Itemid=2 and Dispute over law on pharmaceuticals – Politicians under pressure of Bosnalijek, OHR BiH Media Round-up, 22 July 2006, http://www.ohr.int/ohr-dept/preso/bh-media-rep/round-ups/default.asp?content_id=37693
- ⁴⁹⁹ Law on Associations and Foundations of BiH
- ⁵⁰⁰ Law on Foreign Trade Chamber of BiH, Law on Chamber of Economy of RS, Law on Chamber of Economy of FBiH, and Law on Chamber of Economy of the Brčko District
- ⁵⁰¹ Article 82, Paragraph 1, Law on Registration of Business Entities
- ⁵⁰² Article 74, Law on Registration of Business Entities
- ⁵⁰³ Article 77, Law on Registration of Business Entities
- ⁵⁰⁴ USAID launched the SPIRA Project (Streamlining Permits and Inspection Regime Activity) at the beginning of September 2005. The project is programmed to run for four years
- ⁵⁰⁵ Law on Accounting and Audit of RS
- ⁵⁰⁶ Collection of papers and presentations, Banja Vrućica, 12 and 13 June 2006
- ⁵⁰⁷ For example, the case of the Dušanić company
- ⁵⁰⁸ Doing Business 2007 ranks BiH as 159th of the total number of 160 countries, with respect to the ease of dealing with licences, and as 139th of a total of 142 countries with respect to the ease of registering property. This methodology refers to business operation of an average business entity in the country’s capital
- ⁵⁰⁹ Official Gazette of BiH, No. 37/04
- ⁵¹⁰ For example, the RS Chamber of Economy provides expert legal assistance in cooperation with the Institute for International Law and Business Cooperation and the Law School of the University in Banja Luka
- ⁵¹¹ OHR’s Report, June-December 2004
- ⁵¹² Law on Local Self-Governance of RS
- ⁵¹³ Law on Principles of Local Self-Governance in FBiH
- ⁵¹⁴ Such an obligation exists if the municipality has a majority population whose ethnic composition is different from that of the canton as a whole
- ⁵¹⁵ Miović (2006), pp. 356-357
- ⁵¹⁶ Supervisory Order Abolishes Entity Legislation, Ends Legal Significance of IEBl in Brčko District, OHR, Sarajevo, 4 August 2006, http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=37761

- ⁵¹⁷ BiH Leadership Accused of Lacking Political Will for Combating Corruption, BBC Monitoring Service, 27 February 2006
- ⁵¹⁸ Centre for Investigative Journalism, 25 September 2006
- ⁵¹⁹ Steering Board of the Peace Implementation Council, 28 March 2003, p. 4
- ⁵²⁰ Papić (2006), pp. 376-377
- ⁵²¹ Law on Local Self-Government of RS
- ⁵²² Law on Principles of Local Self-Governance in FBiH
- ⁵²³ Law on Civil Service of FBiH
- ⁵²⁴ Law on Employees of Civil Service Bodies in FBiH
- ⁵²⁵ Miović (2006), p. 362
- ⁵²⁶ Rašidagić (2006), pp. 186-187
- ⁵²⁷ Radio Free Europe, Milorad Milojević, “Minister Reports Receiving Gift”, 16 February 2006
- ⁵²⁸ Law on Freedom of Access to Information in BiH, Law on Freedom of Access to Information in FBiH, Law on Freedom of Access to Information of RS
- ⁵²⁹ Law on Conflict of Interest in Governmental Institutions of BiH
- ⁵³⁰ Law on Public Procurement of BiH
- ⁵³¹ Law on Administration of BiH
- ⁵³² Law on Ministries and Other Organs of the BiH Administration
- ⁵³³ Law on Administration of FBiH
- ⁵³⁴ Law on Administrative Service in RS Administration
- ⁵³⁵ Official Gazette of RS, No. 70/02
- ⁵³⁶ Law on Immunity of BiH, Law on Immunity of FBiH, Law on Immunity of RS
- ⁵³⁷ Sali-Terzić (2006), p. 44
- ⁵³⁸ Criminal Code of BiH came into force on 1 March 2003 by decision of the High Representative
- ⁵³⁹ Criminal Code of FBiH (Official Gazette of FBiH, No. 36/03) and Criminal Code of RS (Official Gazette of RS, No. 49/03)
- ⁵⁴⁰ The Third Report of the BiH Election Commission, www.izbori.ba
- ⁵⁴¹ High Representative’s decisions are available at: <http://www.ohr.int/decisions/archive.asp?m=&yr=2005>
- ⁵⁴² European Commission for Democracy Through Law (Venice Commission): Opinion On The Constitutional Situation in BiH and the Powers of the High Representative, adopted by the Venice Commission at its 62nd plenary session, Venice, 11-12 March 2005
- ⁵⁴³ Report from the Conference on the UN Convention against Corruption held on 9 December 2005 in Sarajevo, organised by TI BiH and Anti-Corruption Initiative of the SE Europe Stability Pact
- ⁵⁴⁴ PIC Members and Participants: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, China (resigned in May 2000), Croatia, Czech Republic, Denmark, Egypt, Federal Republic of Yugoslavia, Finland, Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Jordan, Luxembourg, Malaysia, Morocco, Netherlands, Norway, Oman, Pakistan, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States of America; the High Representative, Brčko Arbitration Panel (dissolved in 1999 after the Final Award was issued), Council of Europe, European Bank for Reconstruction and Development (EBRD), European Commission, International Committee of the Red Cross (ICRC), International Criminal Tribunal for the former Yugoslavia (ICTY), International Monetary Fund (IMF), North Atlantic Treaty Organisation (NATO), Organisation for

Security and Co-operation in Europe (OSCE), United Nations (UN), UN High Commissioner for Human Rights (UNHCHR), UN High Commissioner for Refugees (UNHCR), UN Transitional Administration of Eastern Slavonia (UNTAES; disbanded in January 1998) and the World Bank.

The PIC observers so far: Australia, Central Bank of BiH, Estonia, European Investment Bank (EIB), Iceland, South Africa, Liechtenstein, Latvia, Lithuania, International Federation of the Red Cross and Red Crescent Societies (IFRC), International Mediator for BiH, International Organisation for Migration (IOM), New Zealand, Human Rights Ombudsperson in BiH, Special Coordinator of the Stability Pact for South Eastern Europe, and Holy See

⁵⁴⁵ Members of the Steering Board are: France, Italy, Japan, Canada, Germany, Russia, United States, United Kingdom, the Presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), which is represented by Turkey

⁵⁴⁶ Rule of Law Implementation Unit, <http://www.ohr.int/ohr-info/gen-info/index.asp#pic>

⁵⁴⁷ Rule of Law Implementation Unit, Ibid.

⁵⁴⁸ Information on OHR, <http://www.ohr.int/ohr-info/gen-info/index.asp#pic>

⁵⁴⁹ Central News by BHT, 31 January 2006, and Oslobođenje [*Liberation Daily*], A. Omeragić, 18 March 2006

⁵⁵⁰ Removals by High Representative Slow Down Democratic Processes in BiH, Press Release by TI BiH, 30 June 2004

⁵⁵¹ Washington Post, 29 May 2001. p. A01

⁵⁵² It is possibly submitted to ACABQ (Advisory Committee on Administrative and Budgetary Questions) and the Steering Board of the PIC, but this is only a guess

⁵⁵³ Unit for Economic Planning and Implementation of PRSP (EPPU), <http://www.eppu.ba/index.html>

⁵⁵⁴ Divjak, No. 1120-1121, p. 6

⁵⁵⁵ Report No. 2, TI BiH, Banja Luka, 18 August 2001

⁵⁵⁶ “To all intents and purposes Bosnia is a member of the EU; in fact more than this, Bosnia is the first genuine EU state where sovereignty has in effect been transferred to Brussels” [...] “After 10 years of state-building in Bosnia there is now a complete separation between power and accountability. This clearly suits the EU, which is in a position of exercising control over the tiny state without either admitting it into the EU or presenting its policy regime in strict terms of external conditionality.” Chandler, 24 October 2005

⁵⁵⁷ It is not until the session of PIC in February 2007 that the dilemma surrounding OHR is definitely resolved (according to Mr Mladen Lončar, focus group held on 27 October 2006)

⁵⁵⁸ Article 96, Article 94, Venice Commission, 11-12 March 2005

⁵⁵⁹ Article 97, Opinion of the Venice Commission, Ibid.

⁵⁶⁰ Article 98, Opinion of the Venice Commission, Ibid.

⁵⁶¹ BH Dani [*BH Days Weekly*], No. 375, 20 August 2004

⁵⁶² Gajić, 30 November 2000