

Corruption in Bosnia and Herzegovina - 2005

Options for Swedish Development
Cooperation 2006-2010

Vera Devine and Harald Mathisen

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1. Summary¹

Corruption is rampant in all spheres of public and political life in Bosnia and Herzegovina (hereafter also referred to as BiH). In Transparency International's 2004 Corruption Perception Index (CPI), BiH scored 3.1 out of 10 and ranked 82nd on a descending scale of 145 countries reviewed.

The full version on this report shows how corruption threatens the consolidation of a viable, strong, multi-ethnic state and breeds politicians and institutions unable or unwilling to implement reforms that are crucial for the country's integration into the European Union and NATO's Partnership for Peace. Corruption holds back much needed investment and prevents economic growth that would benefit the population at large.

In BiH, we find that corruption exists in all its facets – bribery, nepotism, embezzlement, diversion of public funds, tax fraud, illegal rent seeking, kick-back schemes etc. The victims of corruption are often the most vulnerable groups: the elderly, the unemployed and other low-income groups, who cannot afford to pay for up-grades of health care services; women, who, through traditional role patterns, are more often exposed to corruption; and minorities, facing a judiciary and administration appointed according to ethnic majority criteria, are denied impartial treatment based on clearly established rules and regulations.

Petty or administrative corruption is routine. Few decisions in the political, social and judicial sectors are open and transparent. The full version of this report gives a detailed account of the most frequent types of corruption in BiH and the institutions which are most affected. Among them are public utilities, customs, police and other enforcement bodies, judiciary, public sector delivery (herein health, education, business registration process and privatizations). These are very important, as it is here that the citizens meet the state and it is here that faith in the state is lost or won. Unfortunately, evidence point to that more is lost than won at this level. Of even greater concern, however, is the fact that there is widespread evidence of high-level corruption linking political parties/senior politicians to organized crime.

Political and grand scale corruption has multiple roots. We argue that the pre-war dispensation was not without corruption. The communist past with weak democratic values and institutions, low economic development and non-transparent decision-making created a fertile ground for what was to come. The war in BiH left a vacuum where a corrupt political class emerged. By focusing on ethnic hatred, these elements were able to obscure some of the profit-making motives behind the war. This focus explains the prolongation of the war and the post-war criminalized dispensation. The far-reaching, cross-ethnic collusion between political elites and their criminal networks during and after the war leads us to point to greed as a powerful motivation behind much of the most serious political corruption we observe in BiH today.

¹ This report exists in two versions. A short paper is produced for those who have less interest in the underlying causes of the corruption problem and its manifestations across sectors and institutions. The full range of recommendations is included in the short version. The extended version on the other hand gives a comprehensive picture of the corruption problem. Part one look into the specifics of corruption in the Bosnian context, including the background causes of the problem. It analyzes how these background factors shape current patterns and mechanisms of corruption in the most affected sectors. Part two map out the most important responses to the problem by the international community and national authorities to date. Part three provide recommendations to Sida on possible directions of how best to address corruption in its next Country Strategy for Development Co-operation 2006 – 2010.

The new criminal elite has close ties to the nationalist political parties. And while elites in other transitional countries have taken years to establish, the transition in BiH happened overnight. As opposed to the nomenclature elsewhere, which turned political capital into economic capital, the accumulation of wealth that took place during the war in BiH was very effectively turned into political capital.

We also point to the complex governmental structures established by the Dayton Peace Agreement (DPA) as being unsuitable for democratic politics and effective government. While the pre-war Yugoslav public sector had already been highly politicized, the war cemented this into politicization based on the ethnic majority principle. The result is that Bosnia and Herzegovina is being kept divided along ethnic lines. The public sector in general and the public administration in particular, provide most of today's employment in BiH. It is still being manipulated and exploited by the leading nationalist parties. This politicized public sector is in itself corrupt and provides a framework for more corruption to occur.

The bloated public sector accounts for 54% of the annual GDP - more than in any other European country. The different layers result in confusion over legislation and competencies. They make it difficult for citizens to hold government structures accountable, as there is no clarity on the areas or services for which they are responsible. This facilitates the abuse of office and the diversion of public funds. Government in BiH is therefore not yet rooted in the principles of democratic governance: transparency, accountability to the citizen, stakeholder involvement and consultation in policy making.

As a result, many ordinary citizens are left under or close to the poverty line. Many Bosnians have found a living in the gray/black economy and through contributions from the Bosnian diaspora. Participating in corruption is for many a survival strategy. The situation is made worse by the lack of a sense of responsibility and ownership of Bosnians for their country's own affairs. This dates back to the pre-war period, and even further. The post-war presence and the invasive policy-making authority of the international community have contributed to a loss of ownership of the Bosnians for the challenges ahead. This remains one of the biggest obstacles to moving BiH forward.

Unfortunately, we find that the media and the civil society are unable to make a meaningful contribution to better the situation. Their role has been to throw up dust, rather than to disentangle the problem and show the fine line between mismanagement and corruption, and to point to a way forward. There is some evidence that citizens are beginning to recognize the cost of corruption. However, trust in the political system and its institutions is so low that few are actively demanding new or cleaner forms of government.

The Bosnian government elaborated a Medium Term Development Strategy (MTDS or Poverty Reduction Strategy Paper), which was adopted in March 2004 by the Council of Ministers. The 'Strategy for Combating Crime and Corruption' is an integral part of the MTDS; it is complemented by an Anti-Corruption Action Plan. The *Strategy* is a largely descriptive document, in which the Bosnian authorities commit themselves to legislative, institutional and educational activities. It outlines broader concerns about good governance and repression of corruption through investigation and prosecution, and strengthening the judiciary and law enforcement agencies.

The reduction of the level of corruption and the severing of links to organized crime should be a top priority for all Bosnian authorities in fulfilling their obligation in the MTDS. These are pre-conditions for BiH's integration into European and Euro-Atlantic structures. The rhetoric of politicians of all parties would suggest that the MTDS and EU accession are high on the agenda, but tangible proof of commitment seems to be wanting. Few reforms would have happened without the

pressure exerted on the Bosnian authorities by the international community. Nor would they have been possible without international funding. Criminal politicians understand that the modernization of the Bosnian state will pose a direct threat to their operations. Political elites have therefore fended off reform by hiding behind nationalist rhetoric and maintaining ethnic voting patterns and segregated institutions.

The international community, on the other hand, has repeatedly stressed its determination to tackle corruption. There have been some high-profile internationally funded awareness campaigns. The High Representative has imposed reform initiatives, and removed from office a number of politicians who had been openly exposed as being corrupt. Acknowledging that it is difficult to address corruption in isolation from the wider institutional and structural context in which it occurs, donors have mainly opted to embed corruption concerns into comprehensive sectoral reform efforts.

Donors have set out an ambitious reform agenda in BiH, and have put in place an advanced legislative and institutional setup compared to many other transitional countries. However, we find that BiH has seen few *explicit* anti-corruption programs and projects. Reforms have targeted the overall establishment of the rule of law, including the reform, or in most cases creation, of a national legal framework and the restructuring of the judiciary and enforcement institutions at state, entity and cantonal/district levels. The donor community in BiH has therefore addressed corruption as part of larger governance, economic and judicial reform packages.

These efforts have had limited success. Often, they have focused excessively on passing legislation without paying sufficient attention to subsequent implementation. Public campaigns have not been accompanied by parallel attempts to address the issues they raised (and have perhaps contributed to public cynicism). Most importantly, with few exceptions, the Bosnian authorities have failed to show a real commitment to challenge corruption.

Defining an anti-corruption agenda for the international community in general, and for bilateral donors like Sida in particular, is a challenge under these circumstances. Experience from anti-corruption interventions elsewhere suggests that progress cannot be achieved without the full cooperation of national authorities. The lack of political will described in this report could justify a recommendation not to engage until the circumstances have changed.

What then is the role of the bilateral donors.

However, the authors believe that it is essential to address corruption and organized crime in BiH – both in order to minimize the consequences for Europe and to facilitate the countries progress *towards* Europe. This report therefore suggests a number of possible interventions focused on:

- helping the government fulfilling its obligations under the MTDS and the EU pre-accession agenda, and spend less effort and resources on participating in a range of other less binding regional initiatives;
- expediting the establishment of an independent judicial sector with the resources to tackle the major political and criminal actors;
- enforce strict control over the financing of political parties;
- grooming a new generation of politicians and civil servants with a genuine commitment to open and transparent government;
- contributing to a rationalization of Bosnian government structures, which increases their transparency and accountability;
- developing a business sector that will reject the transaction costs of corruption;

- reforming the ownership structure of the media, and increasing journalistic integrity and professionalism;
- changing the way NGOs interact with citizens, government and the donors;
- helping citizens transform their knowledge of the cost of corruption into mature political demands.

2. Introduction

Ten years after the signing of the Dayton Peace Agreement (DPA), and despite a high-profile international presence with wide-ranging powers, and high-levels of international assistance², corruption in BiH pervades all aspects of life.

Corruption threatens the consolidation of a viable, strong, multi-ethnic state with politicians and institutions able to implement reforms that are crucial for the country's integration into the European Union and NATO's Partnership for Peace and thus consolidates the country's division along ethnic lines. It holds back much needed investment and prevents economic growth that would benefit the population at large.

Corruption and poverty go hand in hand. While poverty certainly facilitates corruption, corruption is, more importantly, a root cause *for* poverty and seriously reduces the impact of any pro-poor reform effort. For donor agencies with poverty reduction at the core of their mission, the present level of poverty – 19.5% of the population below the poverty line (25% in the RS and 16% in the Federation) and another 30% just above that line, ready to slip with even small declines in income³ - is cause for serious concern.

The victims of corruption are often the most vulnerable groups: the elderly and other low-income groups, who cannot afford to pay for up-grades of health care services; women, who, through traditional role patterns, are more often exposed to corruption; and minorities, facing a judiciary and administration appointed according to ethnic majority criteria are denied impartial treatment based on clearly established rules and regulations.

In BiH, we find that corruption exists in all its facets – bribery, nepotism, embezzlement, diversion of public funds, tax fraud, illegal rent seeking, kick-back schemes etc. Rumors and anecdotal evidence about corruption are in no short supply. This report will highlight concrete examples of the range of corrupt activities and give evidence on the multitude of actors involved. On both dimensions we encounter a more complex situation than researchers normally find when conducting country specific analyses of corruption.

In this study we are trying to supplement earlier studies of corruption which have used a fixed framework or a set of integrity “pillars” to assess a country's institutional framework and its efforts against corruption. Our contribution will be to introduce a milieu and set of players which are not treated as central in most anti-corruption studies, namely the covert world of smugglers, war criminals, traffickers and the security establishment. It is these groups that in various ways very often block the reforms that donors are putting forward.

For the purposes of this report, we define corruption as *any transaction between private and public sector actors through which collective goods are illegitimately converted into private-regarding payoffs*. From this comes the characteristic of the corrupt state as an 'extractive state', 'neopatriomonal state', 'kleptocracy', i.e. the state that steals. This is a useful conceptualisation, but for our purposes it is equally important to have a look at who the “corrupters” are – who offers the

² International assistance to Bosnia and Herzegovina from 1996 to 2003 is estimated to have amounted to over US\$ 5 billion See World Bank CAS 2004 at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/08/24/000012009_20040824095015/Rendere d/PDF/291960BA.pdf

³ Ibid.

bribe, why and how is it done, and what the advantages to be gained are. This analysis leads us to introduce the notion of “the criminalized state”, a concept which we will try to give credence to in this report.

This study has three parts. Part one will look into the specifics of corruption in the Bosnian context, including the background causes of the problem. It will also analyze how these background factors shape current patterns and mechanisms of corruption in the most affected sectors. Part two will map the most important responses to the problem by the international community and national authorities to date. Extrapolating from this analysis, part three will provide recommendations to Sida on possible directions of how best to address corruption in its next Country Strategy for Development Co-operation 2006 – 2010.

This is a qualitative, not a quantitative analysis. The prime data for the report is material collected during two field missions, through desk review, through structured questions to relevant stakeholders by e-mail, and from the authors’ prior work experience on anti-corruption programming in BiH and in the wider region. Quantitative data will be used where available; yet, there is a scarcity of such data, and particularly of hard data not based on perceptions. The majority of the data will be coming from Transparency International’s Corruption Perception Surveys and will mainly be used to illustrate points. And while perceptions are important for policy makers, politicians and donors, the authors also caution against and will not draw conclusions from weak perception data⁴.

2.1 Sida policy on AC

Corruption has been identified as a major impediment for reaching Sida’s development goals of poverty reduction, economic development, and the building of constitutionally based democratic societies. Anti-corruption concerns had therefore been defined as one of three strategic priorities for the 2005-2007 period, and shall be streamlined into every aspect of the agency’s operations:

- within its own organization
- within projects and programs supported by Sida
- through strategic activities against corruption in partner countries
- through participation at the global level and in international cooperation

This includes the development of country strategies with risk analysis on corruption⁵. These analyses ought to be sector based and emphasis should be put on the respective country’s administrative system, include considerations on how political competition is financed, and analyze the anti-corruption section of the Poverty Reduction Strategy Paper (PRSP) to seek out the level of political will to fight corruption. Possible interventions should broadly follow Sida’s strategic areas of interest:

- civil society and media organizations
- general transparency measures
- good governance, including public financial management
- institution building, with an emphasis on the judicial system

⁴ There is confusion on key concepts like gift giving – should it be included in a definition of corruption and is it damaging. BiH is identified as one of the countries with a strong tradition for gift-giving, and many Bosnians feel that giving gifts is not corruption. In such circumstances those involved and even some observers would point to the positive traits of this practice and its historical significance. We would strongly argue against such cultural relativism as it excuses corrupt practices. For further reading on perceptions studies see: <http://www.tiri.org/documents/boundaries.pdf>

⁵ Sida, Sidas antikorrupsionsregel, handledning Avdelning for Policy och Metod.

This evaluation follows this track and makes suggestions for reform efforts which are broadly consistent with Sida's overall priorities.

3. Corruption in Bosnia and Herzegovina

3.1 Horizontal Issues – Root Causes and Effects

In Transparency International's 2004 Corruption Perception Index (CPI), BiH scored of 3.1 out of 10 and ranked 82nd on a descending scale of 145 countries reviewed. To put this result in a regional perspective: in the same CPI, Slovenia ranked 31st with a score of 6; Bulgaria was 54th with a score of 4.1, and Croatia 67th with a score of 3.5. Corruption is perceived to be worse in Macedonia and Serbia, which ranked equal at 97th with a score of 2.7 and in Albania which ranked 108th with a score of 2.5. With a score of 3.1, BiH is just marginally above the threshold score of 3 at or below which corruption is being classified as rampant⁶. There is no overall trend indicating that the overall level of corruption is going either direction. And if BiH had improved in the rankings that still could simply be down to the problem gotten worse in other places. On the pattern of corruption and its regional distribution the perceptions study indicate that some forms are getting better in the RS, while at the same time dramatically worsening in the Federation, and vice versa

The CPI also broke perceptions of corruption down into the 10 most corrupt sectors. These were in descending order: 1. political parties, 2. the customs administration, 3. the police, 4. the judiciary, 5. state-owned companies, 6. the BiH presidency, 7. municipal administrations, 8. private companies, 9. the health care system, 10. the FBiH/RS governments⁷.

International experts estimate that losses to the state budget as a result of corruption are at US\$ 1 billion (1, 5 billion KM) annually⁸. Bosnian citizens perceive corruption to be the second biggest problem facing the country⁹. And while respondents make the link between poverty and corruption, they make it often in reverse order: corruption is by many seen as a result of poverty, not necessarily as the *cause* of it¹⁰. While we accept that poverty has an impact on the levels of petty corruption, the root causes to the present high levels of grand corruption should be sought elsewhere. In this section we seek to reconstruct the different historical dynamics which have led BiH to its current corruption levels, and indicate what its present day manifestations are.

The Legacy of the Yugoslav State - The Building Blocks of a Corrupt System

The Yugoslav state was not without administrative corruption before the war. Ordinary citizens would regularly solicit corrupt transactions in order to speed up the workings of a bureaucracy which had few incentives for efficient operations. Still, it was the command economy, restrictions in trade, scarcity of resources, and ultimately mismanagement, which forced many companies to rely on an ever expanding grey and black market. With it came the rise in corruption of all sorts which ultimately tainted the law-enforcement agencies. Even though the police, military, customs and secret service officials were among a privileged group, the economic downturn was felt by all. Among the involved parties, the intelligence service was most active, as it controlled the smuggling

⁶ See for the Corruption Perception Index and the methodology used www.transparency.org/cpi/2004/cip2004.en.html

⁷ Corruption Perception Study Bosnia and Herzegovina 2004; Banja Luka 2004, p. 69.

⁸ PDHR Donald Hays at the 1st Anniversary of the Signing of the UN Convention against Corruption, see <http://www.ti-bih.org/documents/16-12-2004/Oslobodenje-10.12.04.jpg> Nobody has precisely estimated the losses at entity and lower levels.

⁹ The biggest problem is unemployment. See Transparency International 2004 Corruption Perception Study.

¹⁰ Ibid.

of arms, cigarettes, people, drugs and other goods which produced hard currency for operations abroad. It is also important to note that even during pre-war Yugoslav times the secret police were using thugs and criminals as sub-contractors in running various smuggling schemes and doing other biddings. It is fair to say that opportunity made the thief and all indications are that abuses were more severe by officials in senior positions.

The Legacy of the War I: The Rise of the Criminalized State

Many observers describe the war in BiH as fought on ethnic and identity grounds, with animosities perceived as being age-old and stable. In line with Peter Andreas' work on the *Clandestine Political Economy of War and Peace in Bosnia* we argue that the focus on ethnic hatred obscures the profit making motives behind the war, its prolongation and the postwar criminalized dispensation¹¹. This is consistent with the far reaching cross ethnic collusion between political elites and their criminal networks during and after the war. Our intention is not to take politics out of the equation, but rather to supplement the picture with considerations of greed.

The war in the former Yugoslavia came at the time when the former Republics had not yet shed their communist past. The country had weak democratic values and institutions, low economic development and non-transparent decision-making. The Sarajevo government was unprepared for war, both militarily and financially, and had to resort to extraordinary measures to protect the newfound national independence. Bosnian Serbs, on the other hand, had successfully armed in the prewar period with the help of the Yugoslav State Security (SDB). The arms were deployed using the SDS local chapters in 1990 and 1991, and at the outbreak of the war the Serbs were confident that they would win a swift and decisive victory.

Under great danger of being overrun by the Bosnian Serb Army, the Sarajevo government had to circumvent the embargo regime in order to arm its weak army and security forces in the only way possible – through the use of established and newly created smuggling channels. The Sarajevo government was also highly dependent on criminal combatants in the early stages of the war to fend off a much better equipped and manned Bosnian Serb army. The smuggling operations were conducted by groups in the army and secret police in cooperation with criminal networks. But the political elites not only subcontracted the smuggling activities of arms, fuel etc. which were needed for resisting the Bosnian Serb army, but also allowed these groups to engage in purely criminal activities such as the trafficking of women and drugs, looting and war profiteering.

The defense of Sarajevo gives a telling picture of the situation. The major criminals of the city spearheaded its defense in the early stages of the war, while at the same time running an extensive black market smuggling operation. Later, these elements became less important for defense purposes but carried on the smuggling operations, often in cooperation with Serb networks across the frontlines, an indication that criminal ties transcended ethnic divisions. It is also important to note that as the war developed, BiH got substantial military help and financial assistance from far flung relief agencies (some were fronts for intelligence services in Muslim countries) and experienced an influx of foreign fighters. Some of the 1000 humanitarian aid groups that operated in the city were doubles for smuggling operations.

Greed and considerations for national survival went hand in hand in the Bosnian war, a legacy that has shaped post-war reconstruction and nation building. Out of the war emerged a criminal elite which had close ties to the nationalist political parties. While elites in other transitional countries had taken years to establish, the transition in BiH happened overnight. And while the nomenclature

¹¹ See: Peter Andreas: *The Clandestine Political Economy of War and Peace in Bosnia*. In: *International Studies Quarterly*, 2004 No 48.

elsewhere turned political capital into economic capital, the accumulation of wealth that took place during the war in BiH was very effectively turned into political capital¹².

The emergency measures brought about by the war were not seen as harmful, but rather as legitimate, and the actors involved are seen as heroes and a source of national pride. Party leaders not only tolerated but encouraged and protected those involved throughout the war, and still do. Here we present the CVs of two prominent figures which illustrate how the political class emerged from the lawlessness of the conflict years.

*Ante Jelavic (*1963) founded the Croatian Defence Council (HVO - the army of Croats in BiH), in 1991. From 1995 to 2001, he was President of the BiH branch of the Croatian Democratic Union (HDZ). In the meantime, he also held office as the Federation Entity Defence Minister. Jelavic was Chairman of the Presidency from 1999 until 2000. In March 2001, Jelavic - who had attempted to form a third separate entity on the Croat-majority territories of the Federation - was dismissed from his position as the Croat member of the tripartite Bosnian presidency and chairman of the HDZ by the High Representative. As of 2003, Jelavic is denied entry to the US¹³.*

He was involved in a huge financial scandal around Hercegovacka Banka, which was founded in 1997, when Jelavic was Federation Defence Minister. Initially, the Croatian Defence Council was the major shareholder in the bank. Several hundred million dollars are said to have been illegally channelled to the HDZ through the bank. Jelavic himself had been granted large property loans by Hercegovacka Banka. Since 2001, when the prosecution started its investigation, until early 2004, Jelavic testified three times to the Court of BiH in connection with the Hercegovacka Banka scandal. Jelavic was arrested on 23 January 2004 on suspicion of links to organized crime and was indicted by the State Prosecutor of BiH on 13 May 2004¹⁴.

*Hasan Cengic (*19 57) was one of the founders of the SDA. During the war, he was allegedly in charge of raising money for the purchase of arms for the Army of Bosnia and Herzegovina; he is also said to have been the power behind the Bosnian Muslim police and to having been in control of all financial donations coming from Islamic countries (mainly Saudi Arabia, Sudan, Pakistan, Brunei and Malaysia) during the war. These donations are said to have been channelled through the Islamic charity 'Third World Relief Agency'.*

During the war, Cengic became Deputy Defence Minister of the Federation BiH in 1995, and was considered to be the BiH Army's Logistic Chief. At the insistence of the US administration, Cengic was released from his duties as Deputy Defence Minister in 1996. He remains a senior member of the SDA and MP in the Federation Parliament. As of May 2003, Cengic is denied entry to the US¹⁵.

The BiH State Prosecution is investigating against Cengic on charges of abuse of office and illegal arms trade and on suspicions of embezzlement of allegedly at least US\$8 million of donations for personal gain, and of misappropriation of humanitarian donations for the purchase of weapons¹⁶.

These two examples show how fortunes made during the war have been controlled by the criminalized nationalistic political parties. They also point to the fact that embargos introduced in war zones can criminalize the political economy of the conflict and force political leaders to forge strong ties with criminal groups which are difficult to shred in the post-war dispensation. BiH is a prime example of such turn of events, and the often deplored lack of ownership for reforms in BiH is a logical consequence of this situation: Politicians turned criminals will not instigate anti-corruption reform which will eliminate their current power base and their illegitimate sources of income.

¹² Ibid.

¹³ See Executive Order 13304 by the US President of 28 May 2003 at <http://www.ustreas.gov/offices/enforcement/ofac/actions/20030529.html>

¹⁴ Information compiled on the basis of the following internet publications: <http://www.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=1&NrArticle=11490>; <http://www.eudelyug.org/en/documents/08-03-2001-patten-jelavic-speeche.htm>

¹⁵ See Executive Order 13304 by the US President of 28 May 2003 at <http://www.ustreas.gov/offices/enforcement/ofac/actions/20030529.html>

¹⁶ <http://www.beta.co.yu/korupcija/eng/cist2.asp?ci=1159920>.

Politicians in BiH are perceived by the public as holding office in pursuit of short-term personal gains and benefits. Politicians are also aware of how they are perceived by the public. As accountability to the electorate is not a deep-rooted concept, many do not care. This is principally true on the national level. On the local or municipal level – where politicians are closer to the people – they are keen to point out what distinguishes them from the ruling elite. Most meetings at the local or district level will open with the local politician apologetically introducing himself to an international interlocutor with the sentence: ‘I am not a politician.’ (‘Ja nisam politicar’). The point being that they hold themselves to be decent and non-corrupt. These low public expectations of politicians paradoxically reduce the pressure for change. If politicians are seen as a flawed group, rather than individuals, then the public is less likely to believe that changing individuals will address the problem.

The Legacy of the War II – the Politicized Public Sector

During the war, approximately 2 million people – almost half of the population of the country – became refugees or were internally displaced. Specialists and experienced managers often left for abroad, and have not returned to BiH (a brain drain that continues today with 62% of young people estimated wanting to emigrate¹⁷). These people’s pre-war posts in the judiciary, enforcement agencies, public administration and executive boards of public utility companies were re-distributed by the nationalist politicians to members of the ethnic majority group, who were often displaced persons themselves. Entire administrative structures were newly created during the war, and appointments to these newly created jobs were made by political allegiances. The pre-war Yugoslav public sector had already been highly politicized. The war now turned this into a politicization based on the ethnic majority principle.

The public sector, including a powerful, resilient bureaucracy, was pre-war Yugoslavia’s dominant employer. This public sector became decentralized during the war, but remained powerful. The public sector in general and the public administration in particular, provide most of today’s employment in BiH. It is still being manipulated and exploited by the leading nationalist parties. This politicized public sector is in itself corrupt and provides a framework for more corruption to occur.

The Legacy of the War III – Complicated Power-Structure and Fragmented Administration facilitate Corruption

The Dayton Peace Agreement also sanctioned a complicated power structure, providing for an initially very weak state level government, and two entity level governments, each of which are divided into other sub-layers: in the Federation 10 powerful Cantons ruled by the respective Croat or Bošnjak nationalist parties and in the Republika Srpska 26 opštinas; there is additionally the autonomous District of Brcko with its own administration and jurisdiction.

This bloated public sector accounts for 54% of the annual GDP¹⁸ - more than in any other European country. The different layers result in confusion over legislation and competencies. They make it difficult for citizens to hold government structures accountable, as there is no clarity on the areas or services for which they are responsible. This facilitates the abuse of office and the diversion of public funds.

¹⁷ Estimate according to UNDP. See http://meero.worldvision.org/issue_details.php?issueID=51.

¹⁸ See World Bank CAS 2004 at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/08/24/000012009_20040824095015/Rendored/PDF/291960BA.pdf

The jungle of frequently conflicting legislation and unclear division of competences also contributes to citizens' distrust of the state. It can create the impression of a corrupt system, even when it often is red tape, bureaucracy and mismanagement that are blocking the delivery of services rather than actual corruption. It also makes for a weak state unable to exercise its authority effectively even when it tries. This creates parallel structures used by citizens as the only way to make things work. And these parallel structures are often corrupt and criminal.

The Legacy of the Yugoslav Bureaucracy - The Lack of Key Concepts of Democratic Governance

Government in BiH is not yet rooted in the principles of democratic governance: transparency, accountability to the citizen, stakeholder involvement and consultation in policy making. Policies are drafted in absence of any knowledge or evidence about the real situation on the ground. There is no tradition of consulting – or even informing – the citizen in the development of policy. The administration thinks it knows what is best for citizens¹⁹. As a result, very much like in the pre-war Yugoslav period, the bureaucracy appears to exist largely detached from the society it is supposed to serve, and mainly for itself.

The concept of accountability has in fact been manipulated to support nationalist policies. Politicians routinely explain their (disruptive) actions with reference to what their electorate would or would not accept (e.g. on ICTY). But practical issues such as the regulation on privatization or public utilities are rarely addressed in this manner or, indeed, exposed to the public. There has been a distortion of the debate. By focusing it on the battle between ethnic groups, politicians are no longer accountable for the legality or the efficiency of the system²⁰.

And where in-transparent policy making is being confronted by NGO's, the administration – instead of seizing the opportunity to hear about citizens' concerns - goes on the defensive. It disputes the rights of anybody outside the administration to criticize it, on the grounds that people do not understand. The government is still far from exercising a pro-active approach to communicate government policies to the public to win its support, mainly, because it does not feel it needs to. And this lack of communication and clarity on why certain policies are being adopted perpetuates the impression of an impenetrable, corrupt system.

Lack of Interest Groups Pressuring for Change

The lack of a sense of responsibility and ownership of Bosnians for their country's own affairs dates back to the pre-war period, and even further. It remains one of the biggest obstacles to moving BiH ahead. A functioning democracy needs to be confronted by and accountable to the public, represented through different interest groups pressuring for change. Corrupt politicians need to be ousted by an alert electorate that will refuse to give their votes to the same leaders again, if they feel that their interests are insufficiently represented.

The international community's funding has created an extraordinary amount of NGOs. Implementing partners for international donors have provided thousands of jobs in the aftermath of

¹⁹ See recent report by the European Stability Initiative 'Governance and Democracy in Bosnia and Herzegovina: Post-Industrial Society and the Authoritarian Temptation', Berlin-Sarajevo 2004. www.esiweb.org

²⁰ See, for example, the reaction of the Serb member of the Bosnian tripartite presidency, Borislav Paravac, to the restructuring of the Bosnian police in the beginning of 2005. Paravac in his statement predicted 'dissatisfaction from citizens' with the proposals, which aim at establishing a police force sub-ordinated to the State-, not the entity level. See Dnevni List, p. 4, 2 January 2005.

the war, and thereby ensured income to many families. But international funding may also have contributed to slowing down the emergence of a genuine, self-sustaining civil society. Few NGOs that were created in direct response to international funding would be sustainable if the financing was withdrawn. And few NGO's have lobbied for indigenous causes on their own accord, without being backed by funding.

The most visible pressure groups that exist in BiH today are possibly the trade unions (advocating worker's interest, but also the return to or conservation of an unsustainable economic model based on the better days of the pre-war era); the war veterans and widows; and the families of fallen soldiers. Each group is highly politicized and manipulated for nationalist policies, but each has some influence. Probably the most powerful pressure group is the public administration itself: a strong inertial force.

Yet there are also small signs that give cautious reason for hope. Students in Tuzla are reported to be protesting against the low quality of their education and the corruption in the higher education sector. The 'Alternative Council of Ministers' (Alternativno Vijece Ministara) – a kind of shadow government and made up of leading Bosnian intellectuals, artists and academics is now exploring ways to register for the forthcoming elections and thus to directly impact on policy making in BiH today.

3.2 Types of Corruption in Bosnia and Herzegovina

This chapter identifies some of the most frequent types of corruption in BiH and the institutions which are most affected.

Political Parties

The Dayton Peace Agreement with its multilayered constitutional setup cemented government along ethnic lines. The autonomy provided to the entities gave political parties control over all means necessary to run a well coordinated criminalized economy. This fact questions whether it is correct to call these organizations political parties. On the one hand, they meet the minimalist criteria of being an *organized group standing for public office*. On the other hand, political platforms seem to be weak or non-existent, representation seems to be geographically limited, the membership base is low, and internal democracy is weak. The parties are close to dormant in-between elections, only to arise in time to attract sufficient votes based on a nationalist agenda. The opposition parties are not perceived to be any better on these parameters, leading to the conclusion that all features of mature political organizations are missing.

Political parties control state assets, licensing, housing policy (an issue that is of exceptional importance in BiH), appointments to public offices and to management and executive functions of state owned companies, privatization processes, tax collection, public utilities, customs, the security sector etc. Still today, anyone wanting to move up the social or economic ladder within his or her ethnic group has to have support from one or more of the political parties and the wider networks that support the status quo. This nepotistic system is exceptionally stable even with the high turnover of officials given the interventions of the High Representative.

According to polls, some 60% of Bosnians perceive that *any* pre-election contributions to political parties should be regarded as corruption, indicating that the population has some way to go to fully understand the concept of corruption – and of political parties and their role and functioning in a

democracy²¹. Nonetheless, when the same polls show that political parties are perceived by the public as the most corrupt structures in the country, these perceptions are highly relevant, as the mistrust in political parties and government grows and results in decreased voter turnout at elections. The nepotistic practice of appointments further undermines democracy, as officials are seen to have their primary allegiance to the political parties. The parties on the other hand do not take responsibility for the problems at local level, have no strategies to rectify the problems, and feel no need to communicate with the communities. The situation is even worse in multiethnic areas, as nationalist parties drive a campaign of nationalist exclusiveness whereby governing parties give sub-standard services to these communities²².

At the formal level, several laws regulate the operations of parties. The *Law on Political Organizations*, *Law on Party Financing*, the *Law on Conflict of Interest* and the *Election Law* make up the framework which regulates money in politics, including disclosure rules and spending limitations during elections. The overall framework is sound but implementation is weak and one of the institutions set up to oversee the regularity of the flow of money during elections – the Election Commission – is seriously understaffed. This would suggest that the funding of political parties needs a serious rethink in the Bosnian context.

The work of the political parties in Parliament is another problematic area. Nowhere has this been so clearly manifested as in the debacle over the Law on Pardon.

In September 2004, the Bosnian government and Parliament passed a Law on Pardon for persons convicted or standing trial. The power to give pardon was delegated to the Bosnian Presidency which would have full discretion to pardon anyone, regardless of the crime committed. It did not establish clear provisions of checks and balances from the judicial branch (i.e. the courts and the Ministries of Justice); nor did it have any provisions that would have made it compulsory that pardons granted by the chairman of the presidency be made public. The law was passed very quickly, without any objections from MP's and without the knowing of the International Community. The High Representative even complained that the media failed to report the passage of the law. The first person to be cleared from all charges was MP Munip Jusufovic who had been sentenced to a 10 months prison term. Within a month six pardon requests had reached the Presidency²³. High Representative Ashdown used his Bonn powers to impose legislation to invalidate the law and stated "Some people are getting increasingly desperate in their pursuit of escape hatches comes as no surprise. That BiH's democratic institutions should be assisting them is nothing short of scandalous. Today the scandal stops"²⁴.

The Law on Pardon showed that Bosnian political parties and politicians are very well capable of pushing legislation through - when it interests and affects them. The Law passed a complex procedure in record time - while other legislation takes months, if not years, to get passed, or has to be imposed by the International Community.

Public Utilities

Public utilities provided and provide the perfect opportunity for state plunder.

In March 2003, the OHR published the results of an international audit into public electricity companies in BiH. The audit found that Elektroprivreda Republike Srpske 'was losing KM 166 million annually in potential earnings because of mismanagement, conflicts of interest, theft and neglect – nearly half a million KM a day'²⁵. The High Representative sacked the director of Elektroprivreda, who had allowed these abuses to happen both in his previous capacity as Minister for Energy of the RS, and once he become an executive of Elektroprivreda in a breach of the Law

²¹ Corruption Perception Study Bosnia and Herzegovina 2004; Banja Luka 2004, p. 20.

²² Fadil Šero: Managing Political Parties; UK South East Europe Forum, British Council year?

²³ See Ashdown vs. the Bosnian Presidency, Beta newsagency, Sarajevo 18.12.2004

²⁴ Internal Sida memo.

²⁵ http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=29337

on Conflict of Interest. The terms of his appointment should have prohibited him from taking up any position in a public company so shortly after leaving his ministerial post. In the press release surrounding the publication of the auditors' reports into the public electricity companies, it was also pointed out that: "The abuses so damningly set out in the Special Auditors' report on Elektroprivreda RS can be seen to a greater or lesser extent in all BiH's major public corporations. These abuses explain why the restructuring of 'strategic companies' in BiH has been delayed. It is completely unacceptable that the citizens of BiH are paying the price for this, in terms of poor services, high prices, lost public revenue, and millions of KM ending up in the hands of criminals."²⁶

There are currently three electricity providers in BiH, essentially providing electricity along the ethnic divide – the Sarajevo-based Elektroprivreda, the Mostar-based Elektroprivreda and Elektroprivreda Republike Srpske.

The international audit found that the Sarajevo-based Elektroprivreda's 'income would rise by at least 50 Million KM per year if it resolved endemic inefficiencies. The usefulness of the company's new headquarters building in Sarajevo, which has already cost 15 Million KM, and will cost another 12 to 15 Million KM to complete, is questionable...A...former general manager, Meho Obradovic, is alleged to have funded FC Sarajevo through loans – worth around 1 Million KM in 2000, and benefited from an irregular housing loan from Elektroprivreda Sarajevo.²⁷ The audit also pointed out that there were shortcomings in the credibility of reading of electricity meters.

For all three audits, there were suggestions that tendering contracts were not following any established or transparent procedures.

The fact that in December 2004, the High Representative issued an order for special audits to be conducted in six public companies in the Republika Srpska, including the RS Telekom and Postal Services, the RS Forestry company and the electricity supplier Elektroprivreda RS suggests that the situation might not have significantly changed since 2003.

Privatization

When the privatization process started in 1997, it was seen as one of the crucial elements for economic recovery and growth, both pre-conditions for the survival of BiH as a state, and, consequently, the success of the Dayton Peace Agreement. Privatization, it was argued, would pave the way to a de-politicized economic life. An active economy would ultimately also lead to increased interaction between the different ethnic communities, and thus further the re-establishment of BiH as a multi-ethnic society.

When approaching the privatization of key state-owned companies, there were broadly two strands of arguments. On the one hand, it was argued²⁸ that state-owned enterprises should be privatized as quickly as possible, regardless of whether institutional structures (such as the existence of an efficient tax-collection system or a functioning banking sector) to underpin the process, or corporate governance capacities to responsibly manage assets existed. As inefficient and often defunct state-owned companies contributed to losses to the state budget, the priority had to be to get these companies off the budget as quickly as possible. A second view argued for a more cautious approach, advocating wider institutional and economic reforms before embarking on a large-scale privatization process.

So far, 65% of Small- and Medium-Size Enterprises (SME's) in the Federation, and 53% in the RS have been privatized. By contrast, only 32% of the large-scale enterprises in the Federation, and

²⁶ See http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=29337

²⁷ http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=29337

²⁸ Primarily by USAID.

22%²⁹ of those in the Republika Srpska have been privatized. These account for 6.8% and 19% of the total capital of large scale enterprises in the Federation and the RS, respectively. This leads to the conclusion that there is still no genuine political support from the Bosnian leadership to move the privatization process forward. This is most likely because privatization of these assets would deprive them of the control and opportunities for siphoning off funds for their own benefit. At its current pace, the privatization process remains one of the biggest obstacles to the economic recovery of the country.

The regular reports of the Federation Privatization Agency (Upravni Odbor Agencije za Privatizaciju u Federaciju BiH) openly point to the problems in the privatization process. For example, its report of the 22 June 2004 session of the Executive Board says that:

'... the responsible ministries have done very little in definition of particular regulations on inflowing of private capital and on the way how to manage this sector. Also, it refers to determination of responsibility in development and managing of infrastructure. Some problems relating to preparing of privatization would have been already solved if the obstacles which slowed down the process, on which the Agency drew the attention, had been removed. It is obvious that we are far away of any privatization arrangement in this Sector. (The eventual exception may be telecom companies). The future engagement of the Agency may be established only if the responsible ministries and the Government FBiH activities are included in order to create indispensable conditions to inflow a private capital in this sector.'

The sectors affected are the electro-energy, water, forestry, gas and telecommunications sector. - The same report points out that a number of previous tenders had to be revoked due to parties filing complaints about irregularities in the procedures to the Supreme Court. In the case of the privatization of the company NATRON Maglaj, the report even acknowledges flaws in the procedure as it states:

*'It may be noted that this procedure is not transparent.'*³⁰

This situation is further complicated by the fact that the very same people that currently control assets are also the ones that are actually in a position to participate in the bidding process for companies that promise to do well on the market, since they alone have sufficient economic power – accumulated during the war – to do so. This leads to a situation where, theoretically, they are in a position to sell assets that they currently control to themselves, thereby consolidating and legalizing their economic power and influence.

The formal responsibility for privatization lies at the entity level with the Republika Srpska Agency for Privatization and Development and the Federation Privatization Agency. I.e., there is no single, State-wide privatization agency. In the Federation, there are additionally 10 privatization agencies at the cantonal level which are charged with privatizing enterprises located in their respective cantons, which in turn are held by the respective nationalist parties. In other words, privatization so far has taken place along ethnic lines.

However, as the box above shows, the institutional arrangements are such that the agencies' work largely depends on the regulatory work of the line ministries, leaving them often in a state of limbo, while at the same time causing substantial costs. According to the weekly DANI, by September 2004, the income of the Federation Privatization Agency had been KM 183.525,63, out of a forecast of KM 2.5 Million, or the equivalent of 7% of projected intake. At the same time, the agency had expenditures of KM 1.58 Million, or 8 times more than its intakes³¹.

Where privatization has taken place, it was indeed tainted by allegations of corruption. A major problem is that managers provided the documentation needed for the privatization, crucially including estimates of the worth of the company. But these managers were also themselves entitled to participate in the bidding process – a clear conflict of interest. In a number of cases, this led to

²⁹ See WB CAS 2004 at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/08/24/000012009_20040824095015/Rendere d/PDF/291960BA.pdf

³⁰ Quoted from the FBiH Privatization agency's English translation of the report at <http://www.apf.com.ba/info/izvj/1/?cid=364,1,1>

³¹ DANI magazine, 24 September 2004, p. 7

companies being sold under value to former managers and shareholders, thus depriving the state budget of necessary revenues.

When BiH opted for a voucher privatization, it was intended that this would rapidly transfer state-owned into privately owned property. It was also thought that it would reduce citizens' claims³² to the state, by transforming those claims into vouchers that could be used to buy socially-owned apartments³³ or shares in enterprises to be privatized. The issuing of vouchers was a severely corrupt process in at least two ways. Firstly, authorities of all three sides adopted an arbitrary approach to who was entitled to these vouchers, favoring certain groups specifically loyal to the nationalist leadership (such as war veterans, families of fallen soldiers etc.). As a result, a disproportionately high percentage of vouchers was issued to the respective ethnic majority group, which could be seen as an attempt to artificially increase this majority group's share in a given company in order to avoid another ethnic group gaining control over companies³⁴.

Secondly, the issuing of a massive amount of vouchers – largely over-inflated in nominal value compared to their real market value – created a market for trading in these vouchers. Those who had money and who had insider knowledge, i.e. again members of the nationalist elites, 'bought' these vouchers from poor citizens for a fraction of their face values³⁵. This, in turn, provided them with the opportunity to use these certificates in the privatization of enterprises at their full face value.

This was, for example, the case in the sale of the Holiday Inn, where the tender offer of KM 5 Million was supplemented by KM 10 Million worth of vouchers that had been bought cheaply from citizens³⁶.

There has also been widespread criticism of the ineptness of the Privatization Agencies overseeing the regularity of the tender procedures and compliance with the privatization contracts, which stipulate, for example, provisions on staff etc. As these obligations seem to have been systematically violated, and as more and more details of corruption in the privatization emerge, demands for a revision of the process have become louder. For example, the Federation trade unions are putting pressure on the House of Peoples of the Federation Parliament to adopt a law on the revision of privatization, which has been with that chamber for consideration since May 2003. For the trade unions, a revision is a pre-condition for instilling some trust in the institutions and the rule of law.³⁷

There is wide-spread skepticism as to the usefulness of such a revision. Firstly, it is argued that reviewing awarded contracts would deter potential foreign investors, who would be less likely to participate in any future tenders if there was a danger that any such a deal could be revoked at a later stage. Secondly, there is doubt about how realistic the conduct of a review really could be, given the costliness of such an undertaking, and that such a review would be the responsibility of the same institutions that were in charge of overseeing the compliance with the existing rules in the first place. There is also concern over the capacity of the courts and the state prosecution to deal

³² Such claims might have been originating in frozen foreign currency accounts, wage arrears etc.

³³ In the Federation.

³⁴ See Timothy Donais: The Politics of Privatization in Post-Dayton BiH. In: Southeast European Politics, June 2002, Vol. III, No. 1, pp. 3-19.

³⁵ Both Donais (previous footnote) and other sources say for as little as 3% of their nominal value (see Mass Privatization in Bosnia and Herzegovina, AIM Sarajevo, 16 December 2000: <http://www.aimpress.ch/dyn/trae/archive/data/200012/01230-002-trae-sar.htm>)

³⁶ See Timothy Donais: The Politics of Privatization in Post-Dayton Bosnia. In: Southeast European Politics, June 2002, Vol. III, No. 1, pp. 3-19. and

http://www.tiri.org/documents/press_releases/20_jan_05/PWR_BosniaHerz_Devine.pdf

³⁷ See <http://www.beta.co.yu/korupcija/cist2.asp?ci=1139033>: 'Sevda protiv Vjetrenjaca' ('Sevda against Windmills')

with such cases, partly because there is a lack of competence for this type of cases. And a revision of the privatization process would not be able to address the fact that a substantial amount of assets and enterprises had de-facto been privatized already before the privatization process officially started.

There is, however, a consensus that wherever irregularities have taken place, investigations should be carried out. Substantial financial fines could be applied to companies that have been found to violate the rules. Also, special taxation and substantive penalties could be applied to those who have not fulfilled provisions in the privatization contract and who have won those contracts on speculations. Yet, the major challenge would seem to be, as elsewhere, the effective enforcement of such sanctions and penalties³⁸.

Corruption in the Customs

According to Transparency International's 2004 Corruption Perception Study of BiH, respondents ranked the customs administration as the second most corrupt institution in the country (after political parties).

Appointments in the customs service - as indeed in all financial services – until now ranged among the most lucrative jobs, as they were essentially controlling cash transactions. Appointments are said to have been made along strict political allegiances, with the appointee 'reimbursing' his appointer in different ways, either through an up-front payment upon appointment, the costs of which would be 'recuperated' through extorting illegal payments at the border, or through an agreement with his political master on a monthly 'share' of the cash taken in. Corruption in the customs has been widespread in both entities, although maybe more 'efficiently' organized in the RS, with a stronger connection between the Border Crossing Points and the political leadership.

³⁸ See <http://www.beta.co.yu/korupcija/cist2.asp?ci=1139033>: 'Sevda protiv Vjetrenjaca' ('Sevda against Windmills').

The linkages between senior politicians and corruption and organized crime and the techniques applied can be illustrated on the example of Goran Popovic, a high-ranking member of the nationalist SDS party. In 2001, then RS Prime Minister Ivanic appointed him as Head of the RS Customs Services. In May 2002, CAFAO and OHR disclosed a corruption scandal that brought down the then RS Finance Minister Milenko Vracar and subsequently led to Popovic's resignation from his office in the customs³⁹; 27 customs officers were also suspended from office. There were widespread allegations that the scam had been known to other high-ranking figures in the RS government, namely Dragan Cavic, then RS vice-president and deputy leader of the SDS and Dragan Kalinic, then RS parliament speaker and deputy leader of the SDS. It was also alleged that Ivanic himself had known about the scam.

Elements of the scam – through which an estimate of 30 Million KM was misappropriated - involved:

- *the running of a secret customs cartel of 27 customs officers lead by the Head of the RS Customs Department for Fighting Smuggling in 'cooperation' with importing companies;*
- *customs officers under-declaring and invoicing the value of imported goods (textiles) by as much as 3 times, in return for money;*
- *junior customs officers paying an amount up to 4,000 KM, but at least 300 KM, for each officer per consignment while the remainder was shared among the more senior officers; additional bribing of local police and financial inspectors with 100 to 300 KM each before the goods reached the market;*
- *extortion of payments from the import companies by threatening companies to be removed from business;*
- *cross-entity 'co-operation' with company owners from the Federation;*
- *forgery of customs service stamps for paying duties and taxes.*

It was alleged that part of the money was used to finance the SDS's political activities, including pre-election campaigns, and to pay for security arrangements for indicted war criminal Radovan Karadzic, the war-time leader of the SDS⁴⁰. When, as a consequence, Popovic eventually resigned from the post of Head of RS Customs, he was appointed Head of the SDS in Banja Luka, and Member of the Main Board of the SDS. In 2004, the High Representative removed him from this position and any 'other public and party position he currently holds', linking him directly to the failure of the RS authorities to comply with the constitutional obligations to cooperate with the International War Crimes Tribunal for the Former Yugoslavia (ICTY) in the Hague.

The Nexus between Organized Crime and Corruption

The problems of corruption and organized crime are regional, intrinsically connected and deeply entrenched. It has become evident that the corruption generated by organized crime has been the most important obstacle to a sound democratization process and to the establishment of a successfully working market economy. Smuggling of goods and the de facto privatization of public tasks has had an eroding effect on the Bosnian economy, as customs, duties and taxes are not collected to a satisfactory degree. On the one hand, it has pushed lawful investors and small business owners out of the market, or worse, has led them to engage with the grey/black economy. Ordinary citizens, on the other hand, have been content with the trade, as smuggled goods have sold for lower prices in the market. In a bizarre way, smuggling and the grey economy has been a safety valve for many unemployed, but the costs far outweigh the benefits.

Criminal networks are estimated as being able to traffic as many as 200,000 women and children through the Balkans every year, many of them through BiH.⁴¹ Interpol estimates that about seventy per cent of the heroin seized in Western Europe transited through the Balkans route. A range of other commodities, like cigarettes, alcohol, arms, pornography, forged goods, drugs, works of art, hi-tech items, stolen cars and much more pass through BiH each year. In effect, all these activities create an enormous demand for corrupt transactions, which becomes manifest when the informal economy meets formal political and administrative structures.

³⁹ http://www.bosnia.org.uk/bosrep/report_format.cfm?articleid=879&reportid=155

⁴⁰ http://www.iwpr.net/index.pl?archive/bcr2/bcr2_20020614_2_eng.txt

⁴¹ See International Organization for Migration, 'Victims of Trafficking in the Balkans: A study of trafficking in women and children for sexual exploitation to, through and from the Balkan region', (2001); and intervention by Javier Solana, EU High Representative for Common Foreign and Security Policy, at the London Conference on organized crime in South Eastern Europe, 25 November 2002.

As a result, the whole Balkans have become somewhat of a gangsters' paradise, where criminals will stop at nothing to advance their interests. This includes trading and cooperating with criminals from other ethnic groups or nationalities. In cases where the final destination is a Schengen country, the trade often involves nationals from these countries or Bosnians with permanent residence outside the country. IWPR notes in a recent report that Eastern areas of RS are the manufacturing center for narcotics, as seen by large imports of chemicals. Other groups in eastern RS have specialized in car theft; here senior police officers and government officials are involved⁴².

In April 2003, the then Serb Member of the rotating tri-partite Bosnian presidency and senior SDS politician Mirko Šarović stepped down, thereby pre-empting his being sacked by the High Representative, in connection with the Orao arms export scandal, in which investigations pointed to him as the main political culprit.

Orao, an aircraft engineering factory near Bijeljina was found to be producing and smuggling – via middlemen in Serbia – military aircraft engines and spare parts to Iraq in violation of the UN arms embargo. Šarović was found to have known about the scheme and to have failed to do anything about it⁴³

The porous borders are ideal for these purposes. Through appointments along ethnic and kinship lines nationally and through making alliances across borders, organized crime has been able to exploit the lack of coordination by law enforcement authorities in neighboring countries, interfere in judicial processes and solicit political protection for their activities. By using threats and bribes, border guards and customs officials have been easy to recruit in countries where the victims of human trafficking and contraband originate and are transported to. Grease money is used to expedite processing, bribes to cover up violations of customs laws and for operating the different channels.

The structure of the criminal activity in BiH is unlike that of Albania or some West-African countries, where one government controlled pyramid shape network controls all criminal activity. Rather, in BiH a series of ethnic and geographically based criminal groups are active and solicit corrupt transactions at all levels and from different professional groups. It is believed that these more formalized groups are controlled by a handful of powerful non-public figures with strong political links within each ethnic group.

The competing groups will not shy away from intimidation, brute force or killing to protect their business. The IWPR report that the Bosnian deputy police minister Jozo Leutar was killed by a car bomb in March 1998. It is believed the assassins were part of an organised crime ring – linked to senior Bosnian politicians – which Leutar was investigating⁴⁴. A rise in mafia-related killings have left people feeling unsafe – and with the current rate of a contracted killing reported at being around 10 000KM, anyone contemplating investigating these elements will have to consider the personal and professional risks involved.

The different illegal undertakings create enormous amounts of revenue which is being refinanced and laundered in a number of ways. Some revenue finds its way into the banking system. There are currently 23 active banks and an estimated €500-600 million leave the country through a scam where the money is used to buy goods abroad that are imported back with fictitiously low invoices. The Central Bank has little control, and the police is still divided between the two entities – money is therefore very difficult to trace. Other ways of disposing illegal cash is through investments in national companies. Some proceeds are used to buy real estate or luxury goods, or are funneled through faulty privatization processes or fictitious companies. It is estimated that little ends up in

⁴² IWPR. Balkan Crises Report, Investigation: Will Europe take on Bosnia's Mafia?

⁴³ <http://users.tyenet.com/kozlic/iraqscan.htm>

⁴⁴ IWPR. Balkan Crises Report, Investigation: Will Europe take on Bosnia's Mafia?

banks in Western Europe, due to the problems of the money being traced, but regional financial institutions are used, and then the money follows ethnic lines. Part of the money is also used to maintain the corrupt network, so bribes are given to individual politicians, political parties, trade unions, judges, intelligence agents, thugs, war veterans and anyone who can be used to maintain the system. There is also a clear link between the proceeds of organized crime and war criminals like Radovan Karadžić.

In the post-war period, criminal elements were left to consolidate their position. Their activities were also indirectly facilitated by the absence of a legislative framework. We have also shown how organized crime has flourished in corrupt administrative structures like the ones we find in BiH. Earlier, we introduced the concept of the *criminalized state* to show the linkages between nationalist political parties and organized crime. In the *criminalized state* politicians and criminals from different ethnic groups cooperate, and we see that their obstructionist tactics normally associated with the passing and implementation of laws are, in fact, a theater.

In the last few years, these facts have become increasingly evident to members of the international community in BiH. Corruption is blamed for the lack of progress on many of the indicators that donors use to assess progress. Unfortunately, the problem of organized crime and corruption were not the highest priorities in the first post-war period, as donors were preoccupied with other demanding issues like the return of refugees. While self-containment resulted in delays in efforts to enhance cooperation both internally and across the borders to match that of the criminals, corruption is now receiving increasing international attention.

Many specialized units have been established, new laws are written, penalties increased, international cooperation improved and reforms of working conditions have been undertaken, etc. Even so, all the major advances have been heavily supported and even pushed forward by the international community. The question remains whether any of the advances made so far will be sustained if the international community chooses to leave the problem to national actors. At every stage, the IC will have to rely on partners who are already implicated in generating enormous profits from illegitimate activities.

Corruption in the Police and other Enforcement Structures

According to the 2004 Transparency International Corruption Perception Study, the police are perceived by respondents to be the third most corrupt institution, and a perception study by the Bosnian office of UNDP for the third quarter of 2004 confirmed that citizens' trust in the police is further decreasing⁴⁵. According to the TI study, 10,3% of RS respondents perceived the police as the most corrupt institution, compared to 5,8% of respondents from the Federation. More than half of all respondents believed that all police officers are corrupt⁴⁶. This contrasts with 14,5% of respondents who reported having actually been asked for a bribe by the police (with the average amount of the bribe being 30,50 KM).

The average citizen of BiH is most likely to be in touch with the police at the *traffic police level*. This provides the greatest opportunity for any illegal transaction between the citizen and the policeman to take place. In particular in the case of so-called 'mandatory sanctions' – for example for overstepping the speed limit by more than 10 km/h – often, a negotiation between the driver and the police officer takes place: the driver offers to pay a lower amount than that foreseen for the infraction, and in return does not insist on an invoice, which the officer would otherwise have to

⁴⁵ See UNDP Early Warning System July - September 2004, <http://www.undp.ba/index.aspx?PID=14>

⁴⁶ See Corruption Perception Study Bosnia and Herzegovina 2004, Transparency International BiH, Banja Luka/Sarajevo 2004; p. 74.

issue. Often, it is the driver that is initiating the corrupt transaction, while the police officer is all too willing to accept the bribe rather than to enforce the sanctions system.

But there are more serious facets to the corruption of the police and other enforcement agencies in BiH. Involvement in organized crime is one of them. Forced prostitution and human trafficking can flourish only if the local police are paid to ignore the problem, or if they are intimidated into not investigating it. The problem, international observers agree, lies not with the inability of the local police to deal efficiently with the issues, but rather with the forces who exert influence over it. Police actions (or inactions) become arbitrary and selective, and serve political interest groups, and not the citizens.

Special Police Units from Banja Luka carried out an operation in late 2004 in the Herzegovinian town of Trebinje, cracking down on a group illegally trading in stolen cars.

The local, Trebinje-based, police was apparently in the know about the scheme. Police officers either received kickbacks from the deals or were forced to turn a blind eye.

On the other hand, BL police was very well able to gather the relevant evidence against this gang and to successfully carry out an operation that took the Trebinje police – which was implicated in the scheme – and the criminals by surprise. The operation resulted in the arrest and indictment of six members of the group by the BiH Prosecutor's Office Special Department for Organised Crime⁴⁷

A further aspect is the damage to the reputation of the police as perceived by the public as well as to the morale inside the police done by revelations of corruption in the upper ranks of the police.

The arrest and indictment in February 2004 of Asim Fazlic, at the time deputy head of the Bosnian branch of Interpol is a case in point. Fazlic was arrested on suspicions of misuse of office and of official powers, as well as for accepting bribes and conducting illicit mediation. There were further reasonable suspicions that he had committed the crimes of divulging official secrets, accepting gifts and other forms of benefit⁴⁸.

Corruption in the Judiciary

As in other sectors of society, the war caused the exodus of many established judges and staff. These gaps were filled during the war with political appointees of the 'right' ethnic group, often without the professional pre-requisites for the job. Although the judiciary might not have been 'independent' even in Yugoslav times, the war created a highly politicized system, with strong alliances to the respective nationalist elites.

During its work from 1998 to 2000, the Judicial System Assessment Program (JSAP) run under the auspices of the UN Mission to Bosnia and Herzegovina (UNMBiH) found that 'judges were not independent, did not consider themselves independent and were not treated as such by other institutions. Influence was exercised over the judiciary in a surprisingly blatant manner by local political figures⁴⁹.' Reasons for this were to be found in the appointment and funding procedures for courts.

'This in itself was not unexpected, but JSAP also showed how the internal organization of the courts worked to perpetuate the lack of independence whenever political authorities saw that influence needed to be exercised, for example through the office of the court president. Court presidents in BiH had powers to influence judicial matters well in excess of their counterparts in other countries. For example, given a politically sensitive case, a BiH court president could allocate it to the "right"

⁴⁷ Nezavisne Novine 12 November 2004, p.5.

⁴⁸ Quoted at <http://www.nato.int/sfor/media/2004/ms040207.htm>

⁴⁹ See Final Report of the Independent Judicial Commission (IJC), November 2004 p. 4

judge and might even reassign it before completion, based upon what he learned about its possible outcome.⁵⁰

JSAP also found that the attitude of most of the judges reflected that of the institution they were operating in – accountable only to itself, and working according to its own performance indicators, which lacked any relevance to the public interest. Judges were happy to blame outside factors for delays in the resolution of cases. Ways of avoiding decision-making include adjournment of cases, calling for more witnesses and often unnecessary expert testimonies, going on holiday or sick leave or committing procedural errors fully aware that this would trigger an appeal. Other such outside factors were cited to be the lack of a sufficient number of judges and staff, although this claim could be disproved by mere statistics⁵¹.

While monitoring trials country-wide, OSCE observed widespread arbitrariness in the way that judges dealt and deal with cases. For example, war criminals that are less well connected have been and are tried very efficiently. But the trials of those that are better connected have been persistently stalled and postponed. Political influence can also be felt when witnesses withdraw, or when there is a sudden amnesia of witnesses during the court hearing. This is exacerbated by the absence of security and safety measures in the courts (for example lack of video or recording equipment), giving room to a range of problems such as threats of physical violence against witnesses or the ‘disappearance’ of crucial documents for the case. Again, just as in the police and enforcement agencies, ineptness or incompetence do not seem to be the prime reason for the non-functioning/arbitrariness of the judiciary. JSAP concluded that the difference between the spirit of the law and its interpretation and application in practice was generally worse than could have been assumed previous to the assessments.

It is not surprising, then, that in the TI 2004 Corruption Perception Study, the judiciary was perceived to be the fourth most corrupt institution in BiH (after political parties, the customs administration and the police). These judicial weaknesses weigh disproportionately on the poor. The perception of a corrupt judiciary discourages recourse to legal action. The poor and weak are, thus, discouraged from their rights against the rich and powerful.

Corruption in the Public Sector Service Delivery

Corruption in the delivery of public sector services is particularly interesting from the perspective of poverty reduction. The health and education systems, in particular, are areas which the average citizen cannot ‘opt out’ of. Corrupt officials take advantage of this dependency on the monopoly they hold.

Public sector services are also an area where the distinction between mismanagement and corruption often becomes confused, and where therefore, the opportunities for the system to be perceived as corrupt are many.

Corruption in the Health System

The situation in the health sector is complex. Although it remains very difficult to determine with any certainty the range and the extent of corruption in this field - there has not been any systematic data collection on corruption in the BiH health sector - it certainly exists on several levels. Corrupt practices can be detected at the systemic level, i.e. large-scale theft of public money, but also in the three major segments of the health sector, i.e. primary and secondary/hospital care, and the health administration.

⁵⁰ Ibid.

⁵¹ Ibid.

Corruption at the systemic level is primarily due to the specificity of the structure of the BiH health care system. The absence of a uniform health care system and a common health policy at State level increases opportunities for abuse. And in the health sector in particular, incompetence, neglect and mismanagement on the one hand, and corruption on the other hand, facilitate one another.

For example, informal payments by patients to doctors or medical staff are frequently explained or justified by pointing to their extremely low salaries. Yet, the poor quality of records and the absence of an internal audit function within the health insurance funds and health care institutions themselves make it impossible for auditors to establish in which manner and to what purposes the money that is being allocated⁵² to the 13 health insurance funds, 13 Ministries of Health and 264 health institutions with 36.500 medical and non-medical staff is actually spent⁵³. The system's fragmentation hinders the collection of data, as does the absence of a common system of controlling expenses. Each fund and each health center or institution has its own records and there is no exchange of information between them. It is therefore impossible to establish where leakages and abuse occur.

In 2003, 987 million KM were invested in the BiH health care system. But the majority of health funds are still claiming millions of KM that various public and private institutions were supposed to pay into their accounts. Tight controls of the budget are non-existent, and different financial reports lack precision. For instance, the Government of RS claims that it owes 18 million KM to the RS Health Fund, whereas the Health Fund is asking the Government to pay 58 million KM of debt. It is very difficult to decipher, let alone to break, the vicious circle of debts. For example, the financial report for the year 2003 stresses "the possibility" that the Cantons owe millions to the Solidarity Fund, but due to incomplete or false records kept in the Cantons no one can really determine how big this debt really is⁵⁴.

In this way, the health care system is permanently kept in a state of crisis, unable to pay decent wages to the staff (or to maintain basic material supplies), who, in turn, takes matters into its own hands by demanding informal payments. Neither demander nor supplier of the bribe will report on it, since according to BiH Criminal Law supplying or demanding bribes is a criminal act, which can lead to up to five years in prison; and practitioners involved in such actions can lose their work permit. In this way, these payments to doctors and medical staff are not taxed, and revenues for the state are again lost.

The lack of government oversight of the system combined with the absence of common benchmarks facilitates the growth of corrupt practices. With no effective government enforcement of standards and performance, the patient's recourse is often a direct payment in order to ensure more responsive treatment and, hopefully, a better quality of service.

In an attempt to get an idea of the real extent of the problem, at the end of 2004 the Center for Investigative Journalism carried out an in-depth investigation under the title 'The Health Care System on Life Support' (Zdravstvo na aparatima), by talking to doctors, hospital staff and patients. The research showed that a large number of patients appeared to be engaging in bribing medical staff, both before and after a medical intervention. The bribe ranged from 100 KM to 2500 KM. Doctors received an estimated 120 Million KM in bribes or gifts a year. Yet, very few criminal charges had been filed against either doctors/medical staff, or patients. Only in recent months have four charges been brought against doctors in Sarajevo, Zenica and Prijedor, respectively. These cases are now being investigated by either the police or the State Prosecutor⁵⁵.

⁵² The centralized health system in the RS is acting through eight branches which spent 235 million KM in 2003; the fully decentralized system in the Federation of BiH consisting of ten independent Canton services spent 712 million KM in the same period of time, whereas the Health Ministry of Brcko district spent 40 million KM. Nezavisne Novine 10 December 2004.

⁵³ <http://www.cin.ba/my-docs/?cid=136,2,1>

⁵⁴ Ibid.

⁵⁵ Nezavisne Novine 10 December 2004.

Although very little concrete data is available, large bribes seem to change hands particularly when major or specialized surgery and expensive diagnostics are in question, or when interventions are perceived by patients as “life saving”. An additional risk lies in the abuse of the “principal-agent relationship”⁵⁶: patients often do not actually know what kind of treatment they need, and are ready to trust and accept any advice or decision from their practitioner. And as readiness to opt for surgery is high, and patients’ acceptance of it, too, there is ample scope to ‘recommend’ surgery, even where it is not absolutely necessary.

Although corruption in the primary and secondary health care sector tends to be identified with bribery or “cash in an envelope” for expedited treatment, there are other corrupt practices that are worth mentioning. A practice dating back to Yugoslav times is that specialists employed full time at public hospitals are also entitled to work privately. Lack of controls means that a “private” patient in the afternoon can become a “public” (i.e. insurance-covered) patient the next morning for a specific type of intervention at the hospital. Or the doctor gets paid privately while using his official working hours and public facilities, as well as making arrangements for cash for his private patients to avoid waiting lists in public hospitals.

There are also substantial opportunities for illegal practices in contacts with the pharmaceutical industry, given that there are no regulations in terms of choice of pharmaceutical material suppliers.

A former director of the RS Clinical Center signed a contract on the supply of medicine with his own brother, owner of the medical equipment company “Farmaproma” from Banja Luka⁵⁷.

And further, due to weak and conflicting regulations on public procurement, the purchase of medical equipment and supplies for ambulances and hospitals also offered scope for abuse.

Zoran Lipovac, RS state prosecutor, has brought charges against the former head of the Clinical Center in Banja Luka, Risto Kozomara, who purchased medical equipment without the requested tender procedure. The equipment was allegedly purchased for 62.000 KM more than its market price⁵⁸.

Although there are no reliable records of corrupt transactions or of ‘prices’ for certain services it is likely that at least some of these rumors are well-founded. There is a clear impact on the poor, because a small minority of people can afford to pay bribes to have access to services, while the poor are unable to do so.

Corruption in the Education System

The education sector is interesting in that in Transparency International’s 2004 Corruption Perception Study, it ranks among one of the less corrupt sectors. But corruption is also much discussed, in particular as it concerns the higher education sector; and the attainment of diploma or other certificates.

Structural weaknesses may contribute to the blurring of the distinction between bad management and corruption. For example, faculties in BiH enjoy wide-ranging autonomies, including for the allocation of their budgets. At the same time, as there is hardly any competition between higher education institutions (due to their very limited number, and the impossibilities of students transferring from one institution to another), faculties are marked by the absence of accountability to their students. An extraordinary student of German at the faculty for Philosophy at Sarajevo

⁵⁶ Also referred to as ‘physician-patient-asymmetry’ in the terminology used by the World Health Organisation (WHO).

⁵⁷ Nezavisne Novine 10 December 2004

⁵⁸ Nezavisne Novine 10 December 2004

University will, for example, pay 1.500 KM in ‘tuition’ fees per year, plus approximately 300 KM in various other fees (for use of the library etc.). Yet, it is not clear how this money is eventually used and there is no clear explanation of what service will be provided in return.

In June 2004, Transparency International BiH conducted a survey on perceptions of corruption with the students of Banja Luka University, based on a representative sample of 299 students from all faculties at the University.

The results of the survey show that 63% of the students believe that corruption is widespread at the University. According to the students, the most common forms of corruption are bribery in the enrolment process, nepotism during examinations, as well as the forcing of students to purchase obligatory literature and textbooks, often authored by the respective faculty staff itself. 11.4% of the polled students had been directly involved in cases of corruption, while more than half (56.5%) had heard about corruption cases from their colleagues

Probably the most alarming finding was that 42.1% of the students declared that they would not take any action if a bribe was demanded from them, 16.4% would report the case to Transparency International, 12.4% would report the case to the competent Government Ministry, 11.7% would go to the media, 6% would report it to the Students Association, 5.7% to the Deans Office, only 3.7% would call the Police. (Perhaps reassuringly, only 2% said that they would actually pay the bribe.)

Another cause for concern is the fact that more than half of the polled students (53.2%) would take no action if they learned about a concrete case of corruption at the University. None of the faculties received positive marks regarding corruption, and the survey shows that the Faculties of Medicine, Engineering and Law are perceived to be the most corrupt.

The Rector of the Banja Luka University said that he had no information on alleged cases of corruption and bribery. He insisted that the higher education reforms should provide the instruments for prevention of such phenomena⁵⁹.

⁵⁹ OneWorld, 14 December 2004 and Transparency International at <http://admin.corisweb.org/index.php?fuseaction=news.view&id=116042&src=pub>

In October and November 2004, the Citizens' Forum (Gradansko Vijeće), a Tuzla-based NGO, conducted a larger survey to determine students', professors' and university staff's views on the alleged presence of corruption at Tuzla University. The results of the survey, the idea and initiative for which had come from the students themselves, were presented in Tuzla on 26 January 2005.

The questionnaire was answered by 946 students and 67 teachers and other staff from all faculties at the University. The results show that more than half of all students (52.2%) are convinced that corruption at Tuzla University exists. One third of all students (29.5%) are not certain, but have heard of its existence; over four fifths (81.7%) of all students do not exclude the existence of corruptive practices in their faculties. Only one fourth of the university staff claims with certainty that corruption exists (23.9%). On the other hand, only 16.4% of staff believe that corruption does not exist at their faculty.

The students consider that the most common form of corruption is bribery during examinations (i.e. giving money in order to pass an exam), whereas teachers also speak about nepotism and cronyism. Only 8.5% of the students and 19.4% of the teachers consider the marking of students' examinations as being completely unbiased and fair. 50.8% of the students and 68.7% of the teachers think that the evaluation is partially fair, whereas 22.4% of the students and 7.5% of the teachers believe that it is mainly unfair. 5% of the students claim that it is completely unfair.

However, the most alarming finding is that more than every tenth student (i.e. 11.1% of all students) has at least once been in the situation of passing an examination after having given money or extended some favour to the faculty staff.⁶⁰ The survey shows that the most corrupt are the Faculty of Physical Education and Sport (where 25% of students say that they have been directly involved in corruption), the Faculty of Technology (15.4% of students), the Faculty of Economics (13.1%), and the Faculty of Philosophy (12.5%).⁶¹

Almost 25% of all male university staff strongly believe that there is no corruption in their faculties. This belief is, however, shared by only 4% of the female staff. More female students report that they have personally been exposed to unfair marking of their papers or examinations (55.9%) than their male colleagues (47.3%). Male students have more often been in the situation of giving money in order to pass an exam than their female counterparts (12.6% vs. 9.9%)⁶².

The university authorities have always denied the existence of corruption in their institution.

Corruption in the Business Registration Process

It currently takes an average of 59 days to register a business in BiH, and 12 steps have to be followed. These steps are, according to the World Bank Study on 'Doing Business in Bosnia 2004': 1. Notarization of the founding act; 2. Obtainment of a statement from a commercial bank; 3. Obtainment of a statement from the tax authorities; 4. Application for court registration with the respective court; 5. Purchase of a company stamp; 6. Application for pension and invalidity insurance; 7. Application to the competent municipality; 8. Application for utilization permit; 9. Application for a company ID number; 10. Opening of a company account; 11. Adoption and publishing of a rule book on matters of salary; 12. Enrolment of employees in health and pension insurances.

Each of these steps represents an opportunity for corruption, as at each interface between the businessman-to-be and the administration, there is the possibility of a bribe being extracted to accelerate the procedure, or to perform it at all. As a result, potential entrepreneurs are discouraged from opening legal businesses and instead chose the grey economy, thus avoiding paying taxes that would be fed into the state budget.

⁶⁰ <http://www.forumtz.com/bos/dokumentizadown/Analiza.doc>

⁶¹ Oslobodenje, 29 January 2005

⁶² <http://www.forumtz.com/bos/dokumentizadown/Analiza.doc>

Corruption in Public Procurement

Bosnia and Herzegovina is spending between 600 and 800 million KM annually on public procurement contracts on all levels of government⁶³. The 2002 World Bank Country Procurement Assessment Review (CPAR) found that before the adoption of new procurement legislation in 2004, there was wide scope for abusive practices through, for example, vague stipulations of the terms of tender and through excessive discretionary powers for officials in the tender evaluation stage. Tenders were also issued at such short notice that potential bidders had no time to compile the requested documentation. The lack of stringent regulations resulted in the official threshold of 50,000 KM for competitive tenders being broken down into smaller amounts to avoid going to an open tender, and orders linked to the public official or ready to pay kick-backs. As a result, the World Bank study found, the private sector had a very 'low level of confidence in the conduct of public tenders, complaining about excessive demands for bribes made by public officials, about [...] bids being rejected on frivolous grounds and about a pervasive lack of transparency in the bid evaluation process. Many believe[d] that the winners of public tenders [were] determined in advance and simply choose not to submit a bid.'⁶⁴

The Bosmal case

Bosmal, a Malaysian – Bosnian company that is currently building what is said to be 'the tallest building in the Balkans' in the Sarajevo district of Hrasno (and which is over three years late with the completion of that building), was commissioned by the BiH government to carry out a feasibility study for the construction of a highway through the country. The value of the construction contract is estimated to be between 2 and 3 billion US Dollars. At the same time, it was clear that Bosmal itself would also be interested in bidding for this contract. Despite criticism from the international community in Bosnia, in particular from the World Bank⁶⁵, this arrangement – which constitutes a clear conflict of interest, was upheld. A decision on the award of the contract has not yet been made.

Corruption in the Presidency

In 2004, the State Audit Office looked into the financial transactions of 33 state institutions for the previous year. One of the reports looked into the finances of the Bosnian tripartite-presidency and found, inter alia, that luxury cars, hospitality expenses and business suits accounted for 6 million KM in 2003 (€3 million). The then member of the presidency Dragan Covic, for example, purchased a car worth 100,000 KM (€50,000)⁶⁶. The politicians in question blamed the situation on the absence of stringent regulations on public procurement at the time. It also demonstrated a remarkable 'help-yourself' attitude by the highest-ranking politicians in BiH and their apparent absence of any moral dilemmas when spending public money⁶⁷.

Corruption and the Media

Reporting about corruption is common throughout the Bosnian media, and particularly so in the print media, probably due to the way in which corruption lends itself to be covered in this type of

⁶³ <http://www.delbih.cec.eu.int/en/worddocuments/word245.htm>

⁶⁴ <http://www->

wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2002/08/02/000094946_02071904030296/Rendere d/PDF/multi0page.pdf, p. iii.

⁶⁵ See interview with outgoing Resident representative of the WB J. Ingram, 6 August 2003 at

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/BOSNIAHERZEXTN/0,,contentMDK:20199409~pagePK:141137~piPK:141127~theSitePK:362026,00.html>

⁶⁶ See 'Bosnia's High-Spending Leaders Blow Hole in Budget' by Renata Radic at <http://www.tharwaproject.com/English/Aff-Sec/IWPR/BCR%20511/Radic.htm>

⁶⁷ On 10 March 2005, the BiH Court confirmed the indictment of Covic on charges of abuse of power, corruption and organized crime. The charges date back to Covic's time as the Federation Finance minister (2000 – 2003), during which he allegedly accepted bribes from businessmen that had also been indicted for organized crime and corruption. See RFE/RL News, 11 March 2005.

media. The weeklies Dani and Slobodna Bosna regularly carry scandals on corruption and organized crime as a substantial part of their content. Of the dailies, Dnevni Avaz – a paper that is closely associated with the political party SDA (Stranka Demokratske Akcije – the Democratic Action Party) and has the highest circulation countrywide⁶⁸, gives the greatest coverage of corruption issues. Yet arguably, it does so in a more selective way - in order to attack political opponents, particularly the SDP (Socijaldemokratska Partija – Social-Democratic Party), and the SDP's leader Zlatko Lagumdžija in particular. Dnevni Avaz also regularly carries articles accusing members of the business community that do not cooperate with the paper of corruption⁶⁹.

The Bosnian Helsinki Committee for Human Rights notes in its 2004 'Report on the Status of Human Rights': '... in the case of weekly and biweekly papers the most obvious [violation of the Code of Ethics] is the usage of anonymous sources, mixing of comments, assumptions and facts as well as the violation of editorial responsibility and violation of generally accepted social standards of decency. [...] We must state that a great deal of [...] complaints resulted from insufficiently professional approach of some journalists and editors, and as far as the printed mass media are concerned, also from the lack of functioning of self-regulation, that is from the failure to abide by the Code of Ethics. [...] In relation to the coverage of court processes, the mass media sometimes also do not respect even the basic principles and regulations established by the European Convention on Protection of Human Rights [...]. Among the principles that are [...] violated is [...] the right to a fair trial (assumption of innocence [...]). It is inadmissible to give space to some politicians to publicly comment on court processes that are underway.'⁷⁰

However, polls suggest that 40% of the population does not actually read papers⁷¹, but instead relies on radio and television, in particular in rural areas. This is, at least partly, because for much of the population buying papers and magazines on a regular basis is simply too expensive⁷².

The Federal Television TV FBiH (Televizija Federacije Bosne i Hercegovine) runs 60 Minuta ('60 Minutes'), a weekly program dealing primarily with corruption and organized crime. The Bosnian chapter of Transparency International awarded the program's lead journalist, Bakir Hadžiomerović, the 2004 Award for Journalistic Integrity⁷³.

However, the tone in which '60 Minutes' and other media report corruption is part of the problem in BiH. Corruption allegations are half-proven or not proven at all (leading to a high number of libel cases against journalists). Mutual accusations of political partiality abound⁷⁴. The overall tone of reporting is sensationalist, highly emotional and often hugely exaggerated.

An independent, professional media could play an important role in encouraging public pressure for action.

⁶⁸ <http://www.bhdani.com/arhiva/163/t16315.htm>

⁶⁹ Dnevni Avaz also holds a monopoly on the printing of media by owning the only printing house – 'Okolo' - in the Federation.

⁷⁰ http://www.ohr.int/ohr-dept/media-d/med-recon/agreements/default.asp?content_id=385

⁷¹ According to a poll carried out by Mediaplan Sarajevo

⁷² Slobodna Bosna and Dani both cost 3 KM, while Dnevni Avaz costs 0,70KM and Nezavisne Novine (the Banja Luka based and USAID funded Independent Newspaper) – 1 KM.

⁷³ <http://www.ti-bih.org/documents/16-12-2004/Nezavisne%20novine%2010.12.04.jpg>

⁷⁴ The most frequent allegation against 60 Minuta is, for example, to be the SDP's mouthpiece.

3.3 Corruption and the Presence of the International Community⁷⁵

International Presence vs. Local Ownership

The post-war presence and the invasive policy-making authority of the international community have contributed to a loss of ownership of the Bosnians for the challenges ahead. Politicians, but also intellectuals, NGOs and ordinary citizens do not feel responsible for their country. Answers and ready-made solutions are being sought from outside, and failures are blamed on outside action, too.

Given the *quality* of the politicians currently in power, it is hardly surprising that the High Representative made increasing use of the Bonn-authorities since they were vested in his office in 1997. These powers allow him to dismiss any politicians or officials if they are seen to obstruct the implementation of the Dayton Peace Agreement. The High Representative's powers are often the only way to remove corrupt and obstructionist politicians. However, these powers have also created a serious dilemma when it comes to the development of any sense of ownership, a concept that the High Representative's office and the wider international community in BiH have been keen to promote. If the High Representative ultimately has the authority to dismiss elected politicians, these politicians – and more importantly, their electorates, will be less likely to develop ownership. But without ownership, there will be no development of a long-term perspective of politicians capable of leading the country closer towards that vision and of an electorate sufficiently informed and motivated to support them. Crucially, the lack of ownership also raises concerns as to the sustainability of reforms.

Corruption and International Aid in the Post-war Reconstruction Process

Rumors about corruption of international aid abound. Bosnian interlocutors will often be drawn to statements like '...billions have been misappropriated.' This sentiment is likely to echo a deep seated frustration by many Bosnians as to the pace and quality of the reform process. With approximately US\$ 5 billion in international assistance allocated to Bosnia and Herzegovina since the end of the conflict in 1995, and with the bleak situation the country is in nine years after the signature of the Dayton Peace Agreement, many believe that this money has not gone where it was destined to go. But while corruption has occurred (see below), statements like this also testify the vague understanding that Bosnians have about the nature of the aid and assistance and the mechanisms of its delivery.

Estimates of the direct losses of international funding through corruption vary. The problem was widely discussed following a July 1999 *New York Times* article which estimated the figure to be as high as US \$1 billion.⁷⁶ The newspaper later conceded that this figure was probably exaggerated.⁷⁷ But all individuals working on the ground recognized that there were regular problems with the diversion of international funding.

Reconstruction aid was in its initial phase vulnerable to being misdirected in several ways. Nationalist, and in many cases criminal, politicians who had become the *key* interlocutors for the

⁷⁵ See case study on BiH by V. Devine in 'Corruption in Post-war reconstruction – Confronting the vicious Cycle', Tiri and the Lebanese Transparency Organization with support from UNDP, January 2005 at www.tiri.org

⁷⁶ Chris Hedges, 'Leaders in Bosnia Are Said to Steal Up to US \$1 Billion', *The New York Times*, 17 August 1999. See www.cdsp.neu.edu/info/students/marko/nythedges.

⁷⁷ See Danilo Vukovic, 'Corruption in Bosnia and Herzegovina', April 2001, on www.seldi.net/BiH.htm

international community and their *principal* entry points into local communities often controlled the local market, i.e. the potential suppliers of goods and services. So, for example:

- International agencies could be forced into contracting cronies of the local elite at inflated prices, as other potential bidders were threatened or blackmailed *not* to participate in the tendering process for reconstruction contracts. International agencies could be powerless to stop this.
- Sometimes a range of companies would be ‘allowed’ to bid, but it was widely suspected that the successful bidder would have to give a certain percentage of the overall contract value to local leaders. Again, international agencies could do little if they were determined to undertake the project.
- In other cases, corruption was subtler. NGOs that had received funding to rebuild houses in a municipality for returning minorities needed support and even legal permission from local leaders. These leaders might insist that in return for their support, the NGO would undertake a ‘balancing’ project, which they would select. Thus, as well as repairing returnee houses, NGOs could be coerced into, for example, improving local roads or even assisting local businesses. This had two negative effects: it *diverted* international funding from the *real* priorities, and strengthened the power of these corrupt local leaders because the majority population believed that they could deliver.

Direct assistance was perhaps even more vulnerable. Between 1996 and 1999, the World Bank, IMF, EU, US and a few others committed US\$ 407.4 million in budget support to the Federation and the Republika Srpska. However, for disbursement of these funds, the international community depended heavily on local politicians and administrative structures making it difficult to assess what happened to this money.⁷⁸ Even when the entities or the state provided details of how the money was spent (on teachers’ salaries for example), the international community found it difficult to independently verify the information⁷⁹.

There was also a more fundamental problem with direct budgetary support in BiH. The assistance provided by the international community substituted revenue lost to state and entity budgets through corrupt activities such as customs fraud and tax evasion. In some ways, the provision of direct budgetary support *hid* the problem created by corruption.

Corruption within the International Community

The international community in BiH had a particular responsibility to demonstrate the importance of accountability and the Rule of Law. In the first years after the war in particular:

- There were very few open recruitment procedures for international organizations and NGOs. Members of staff were mostly chosen on the basis of recommendations from friends and family already employed by these organizations.
- International staff (as opposed to seconded staff), too, were often selected not on the basis of their qualifications, but through connections they had to existing staff members.
- Internationals, in their diplomatically accredited vehicles, were regularly seen to speed or ignore other traffic regulations, and generally behaved as if they were above the law.
- There were few mechanisms in place to control the payment of items such as per diems inside international organizations.

⁷⁸ See Harold J. Johnson, testimony Statement at <http://www1.oecd.org/daf/spaicom/word/gaotestimony-19-07-99.doc>

⁷⁹ One recent example of such an independent verification is the Audit of the Federation Ministry for Social Policy, Displaced Persons and Refugees, which disclosed serious irregularities in the management and use of funds of that Ministry. See www.ohr.int/other-doc/spec-audit-rep/pdf/FMSP-special-audit-report.pdf.

These examples may seem petty, but the *messages* they send to a local community are very important. The international community can only expect its guidance to be followed by the local community if it leads by example with the highest standards of behavior.

There were also more sinister examples. In April 2002 the UN admitted in a letter that ‘eighteen officers of the International Police Task Force...faced repatriation for incidents of sexual misconduct’. No details were offered in this case, but it was common knowledge amongst the international community in Bosnia and Herzegovina that some of its members were clients of prostitutes suspected of being victims of human trafficking.⁸⁰ Such behavior by international organizations and individuals contributed to the deepening of public cynicism and contributed to undermining efforts to establish the rule of law.

Accusations of Arbitrariness and Double Standards

In recent years, several Bosnian and international organizations have questioned the powers given to the international community by the Dayton Agreement. They have accused the OHR in particular of arbitrary and unaccountable decision-making. The merits of the OHR’s powers and specific decisions are not a matter for discussion here. And the debate has often been sensationalized and distorted by the Bosnian media. It is important, however, that international organizations adopt and implement highest standards of internal governance – both to protect themselves from accusations and to set an example to the local communities.

⁸⁰ See Human Rights Watch, World Report 2003: Europe and Central Asia: Bosnia and Herzegovina. www.hrw.org/wr2k3/europe5

4. Responses

4.1 General context

Responses to corruption in BiH have to be seen in the wider context of the international community's and indigenous agenda for the future of the country. The immediate post-war period was characterized by efforts to stabilize Bosnia and Herzegovina and to reconstruct housing and infrastructure.

The current challenges are integration into Euro-Atlantic security structures, i.e., NATO's Partnership for Peace (PfP), and accession to the European Union. Progress is modest at best. Although the 2004 Istanbul NATO summit represented an opportunity to join the PfP, BiH failed to be admitted because of its poor record of co-operation with the Hague-based war crimes tribunal (ICTY) – a responsibility that lies specifically with the Republika Srpska's failure to apprehend even one single war criminal indicted in the period preceding the summit⁸¹.

Insufficient co-operation with ICTY is also the single biggest stumbling block for opening negotiations for a Stability and Association Agreement (SAA) with the European Union. Bosnia and Herzegovina had since 2000 been part of the Stabilization and Association Process (SAP), which ended with the fulfillment of 18 priorities laid down in a Roadmap; this process was concluded with the publishing in November 2003 of a Feasibility Study assessing the readiness of BiH to take its next steps towards European Integration⁸². In the study, the Bosnian authorities are recommended to take action to comply with existing conditionality (co-operation with the ICTY and fulfillment of the accession requirements of the Council of Europe⁸³), to deliver more effective government at State level, to build the rule of law, to proceed with economic reform and to strengthen institutional capacity.

If the Bosnian authorities convince the EU of their commitment to co-operate with the ICTY, SAA negotiations will follow. In practical terms, this means that BiH will benefit from pre-accession funding, which will be substantially higher than previous and current assistance programs (which in 2001 were € 131.78 million, in 2002 € 74.2 million, in 2003 € 80 million and in 2004 € 102 million⁸⁴). One of the short- and medium term challenges of the international community must therefore be to build up the Bosnian authorities' capacity to absorb this assistance and to administer it responsibly, pursuing seriously the reform-path set out by European Union accession criteria. This challenge is all the bigger in view of the successive withdrawal of the international community from the country over the coming years, and the likely phasing out of the Office of the High Representative before a firm deadline has been set for EU accession.

⁸¹ This situation has only remotely changed after the High Representative sacked a number of RS politicians and officials at the end of 2004 for their failure to cooperate with ICTY. In January 2005, Savo Todovic was the first indicted to turn himself in to the ICTY.

⁸² See http://europa.eu.int/comm/external_relations/see/news/ip03_1563.htm

⁸³ See Council of Europe report SG/Inf(2005)2 final 4 February 2005 - Bosnia and Herzegovina: Compliance with obligations and commitments and implementation of the post-accession co-operation programme at [http://www.coe.int/t/e/sg/Secretary-General/Information/Documents/Numerical/2005/SG-Inf\(2005\)2%20final%20Bosnia.asp#TopOfPage](http://www.coe.int/t/e/sg/Secretary-General/Information/Documents/Numerical/2005/SG-Inf(2005)2%20final%20Bosnia.asp#TopOfPage)

⁸⁴ See facts and figures at: http://europa.eu.int/comm/external_relations/see/bosnie_herze/index.htm#5

The EC has commissioned functional reviews of eight vertical sectors and one horizontal sector⁸⁵ on the basis of whose recommendations it will identify targeted reforms of the Bosnian public administration. Sida, together with DfID, has agreed to assist in the implementation of the recommendations of the reviews of the justice and economic sectors. Complementing EC funding, both donors have pledged support to public administration reform through funding of the Office of the Public Administration Reform Coordinator (PARC). Sida and DfID are trying to move towards implementing the concept of greater ownership. While they will exercise control over PARC (in particular through insistence on the establishment of clear rules for the office and the application of the new public procurement law for office-related purchases), the responsibility for use of the funds will be with the Coordinator.

There seems to be no firm commitment by the current Bosnian leadership to undertake the actions necessary for European Union membership. The rhetoric of politicians of all parties would suggest that EU accession is high on the agenda, tangible proof of commitment seems to be wanting. Few reforms would have happened without the pressure exerted on the Bosnian authorities by the international community. Nor would they have been possible without international funding.

Acknowledging that it is difficult to address corruption in isolation from the wider institutional and structural context in which it occurs, donors have mainly opted to embed corruption concerns into comprehensive sectoral reform efforts. So, compared to other transition countries, there have been few *explicit* anti-corruption programs and projects. However, reforms have targeted the overall establishment of the rule of law, including the reform or in most cases creation of a national legal framework and the restructuring of the judiciary and enforcement institutions at state, entity and cantonal/district levels. Additionally, economic reforms have implicitly addressed corruption.

4.2 Implicit responses

Efforts in Support of the Establishment of the Rule of Law

General

Immediately following the signing of the DPA at the end of 1995, international efforts were rather fragmented; however, co-ordination between the different multi-lateral and bi-lateral donors has since generally led to a more concerted effort in pushing for reforms to establish the rule of law. This objective is pursued in a multi-pronged approach through legislative reform or creation of legislation where there was none before, and institutional reform or establishment of institutions that would ensure the implementation of the new legislation in place.

The Office of the High Representative has lead this effort and has, until recently, provided a coordinating mechanism for the activities of EUPM, OSCE, CAFAO-EU, USAID, the US Department of Justice, HJPC, EC, UNDP, UNHCR, Unicef, Council of Europe and some bi-lateral donors and implementing agencies. Donor agencies such as Sida contribute to the effort by financing a number of programs or projects within the overall effort. Every three to four months, the European Commission's Delegation to BiH is co-chairing, together with EUPM, a co-ordination meeting with bi-lateral embassies on projects targeted at the police and organized crime.

⁸⁵ The 8 vertical sectors are agriculture, justice, police and border service, health, economy, education, return and environment. The horizontal review is looking at legislative processes and the IT sector.

The drive to reform has come mainly from the international community. This was undoubtedly necessary because of the lack of convincing commitment by local authorities to move these reforms forward. But the approach (push by the IC, imposition of legislation, international staffing in high-level state institutions etc.) has not been without criticism. For example, the Council of Europe had strong reservations vis-à-vis the re-appointment procedure of judges⁸⁶. The Bosnian Helsinki Committee for Human Rights has repeatedly voiced concerns over the paradox created by outside actors instituting the ‘independence’ of the judiciary, thereby infringing on the very independence they aim to create.

Police and other enforcement structures

The police in BiH have been the focus of attention and assistance programs since the signing of the DPA in late 1995. Initially under UN mandate, the International Police Task Force (IPTF) mentored, inspected and monitored the work of the local police. With view to the increasing role of the EU in the region, the mandate was handed over in 2003 to the European Union Police Mission (EUPM). Its mission statement says that ‘as a part of a broader rule of law approach [...]’ it will ‘establish sustainable policing arrangements under Bosnia and Herzegovina ownership in accordance with best European and international practices, and thereby raising current BiH police standards.’⁸⁷ Two of its four mission objectives directly pertain to the fight against corruption:

- a. The development of police independence and accountability through de-politicizing the police by safeguarding the operational autonomy of the Police Commissioners and the political functions of the Ministers, and the enhancement of recruitment, disciplinary and dismissal procedures;
- b. The fight against organized crime and corruption through establishment of police co-operation with neighboring countries, setting up of institutional relationships between the police and the state prosecution and courts, to strengthen investigative techniques, to restructure crime departments and to assign police powers to SIPA (see below)⁸⁸.

In support of its objectives, EUPM runs seven core programs: the Crime Police Program (developing investigation capacity in particular in the areas of major organized crime and human trafficking), the Criminal Justice Program (supporting the establishment of a modern Court Police), the Internal Affairs Program (setting up a BiH-wide reliable and transparent internal control system), the Police Administration Program, the Public Order and Security Program, the State Border Service Program (aiming at the establishment of a State-level, self-sustaining, professional, multi-ethnic Law Enforcement Agency for border control), and the State Information and Protection Agency program (aiming at the establishment of a State-level self-sustaining, professional and multi-ethnic Law Enforcement Agency to co-ordinate all crime fighting police capabilities)⁸⁹.

As EUPM has a monitoring and advisory function, its success relies heavily on the political will and support of the Bosnian authorities. A report says: ‘Political resistance is [...] likely to occur when addressing issues such as the relationship between political and police bodies; transparent procedures in recruitment and promotions; ethnic balance [...]’. And: ‘In this sense, EUPM will count on the closest support from OHR.’⁹⁰ Nine years into working with the local police, this

⁸⁶ OSCE equally had concerns about the reappointment process. While questioning (internally) the reappointment of certain judges, OSCE nevertheless decided that the independence of the reappointment body would be negatively affected if an international organization vetoed its decisions.

⁸⁷ See <http://www.eupm.org/stories/PPIOreview2003.pdf>

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

appears to be a rather bleak assessment. It is echoed by the findings of the EC-commissioned functional review of the police and state border service, which concludes that: '[...] the police forces of BiH are currently not prepared for a (European) future. The existing police activities do not properly address important problems such as organized crime, terrorism, [...] and victim care programs.'⁹¹

Referring to the findings in the functional review, the High Representative established by decision in July 2004 the *Police Restructuring Commission*. The Commission issued its recommendations in December 2004. They are based on three tenets: 1) the state-level has the sole competence and authorities to deal with police matters; 2) size, shape and location of the police are to be determined by technical criteria; 3) the police should be free from political influence. Although it has not yet been decided whether an Interior Ministry at State-level will be established or whether the authorities of the existing Ministry of Security will be widened, these are radical proposals for BiH, not least because their implementation will strengthen State-level institutions to the detriment of entity-level ones. And based on the premise that control over the police should be exerted by citizens, not politicians, the reform package also suggests the creation of police councils, involving citizens in annual planning of the police in their respective geographic area of responsibility.

Ministry of Justice (MoJ)

International actors responsible for the overall reform of the legislation and the judiciary (see below) have tried to closely involve the Ministries of Justice. However, in some way the international actors temporarily took over what are traditionally the roles of MoJs. This was due not least to the fact that there was a general lack of local political will to advance necessary reforms. With the attempt to establish the independence of the judiciary, there is now clearly a need for a re-definition of the MoJ's roles and mandates. In 2002, DfID carried out a review of the MoJs as part of their Strategy on Safety, Security and Access to Justice. The report recommended a strengthening of the legal capacity of MoJs and in particular their legislative drafting capacities. DfID is currently carrying out a project to assist MoJs in both entities and selected cantons to increase their capacities in policy making and of linking different elements of the justice sector.

Ministry of Security

The State-level Ministry of Security comprises the State Information and Protection Agency (SIPA), the State Border Service (SBS) and the National Contact Bureau of Interpol. SIPA was set up in 2004, after the Law on the establishment of a State-level Information and Protection Agency (SIPA) was adopted in 2002. SIPA's objectives are, inter alia, to tackle major and organized crime - such as terrorism, trafficking, drug smuggling and financial crime. The establishment of SIPA is the result of a wider reform effort to downsize and consolidate the Bosnian security sector and as a result, the two entity level intelligence agencies, OBS (RS) and FOSS (FBiH) were dismantled at the beginning of 2005.

SIPA is being supported through bi-lateral donors and the EC's CARDS program. Additional funding – approximately 40 million KM for 2005 – should come from the state budget; yet, no such allocation has been made yet. This has obviously an impact on the effectiveness of SIPA as a whole.

A special Witness Protection Department is expected to be established within the agency⁹², and EUPM is providing training on the subject. Further, a Financial Intelligence Unit has been established within SIPA for the prevention and investigation of money laundering.

⁹¹ <http://www.delbih.cec.eu.int/en/worddocuments/word262.htm>

⁹² <http://www.eupm.org/stories/Article15.htm>

Customs and Taxes

The Customs and Fiscal Assistance Office (CAFAO) was established in 1996 with funding from the EC to assist the Bosnian authorities in the implementation of customs related aspects of the Dayton Peace Agreement. CAFAO expanded its program in 1997 to include taxation. It is widely considered to have been the most successful attempt to crack down on organized crime and corruption and to highlight the damage it did to the reconstruction process⁹³.

Complying with the 2003 recommendations of the European Commission's Feasibility Study, the Bosnian authorities had by late 2004 adopted all Indirect Taxation Laws at State level, thereby abolishing sixteen entity and district level laws or decrees on indirect taxation. In January 2005, the Law on Value Added Tax was adopted, which also complies with EU standards. This means that now the 'same indirect tax rates, rules, enforcement regulations and payment system operate across the whole of BiH⁹⁴', thereby removing barriers to business development. This new legislative framework has, for example, resolved the problem of double taxation, which had been a major stumbling block to investment.

In 2003, a single Indirect Tax Authority (ITA – Uprava za indirektno oporezivanje/UIO)⁹⁵, including a single merged customs administration, has been established. The ITA is responsible for collecting and administering of all indirect taxes, including customs duties and value added tax. Revenues are administered through a newly established single revenue account (legislated by the Single Account Law which entered into force on 1 January 2005). Sweden is funding the post of the Chairman of the Governing Board of ITA⁹⁶.

When initiating the work leading to the adoption of the above mentioned reform package, the High Representative explicitly mentioned, among other objectives, that one of the Principles for Reform of Customs and Introduction of Value Added Tax (VAT) was to 'effectively tackle fraud and corruption'⁹⁷.

Already in 2004, the customs revenues collected through the ITA and the single customs authority had grown by 12% or approximately 50 million KM⁹⁸. Since neither purchasing power nor expenditure by citizens has increased, this rise in revenue is attributed to growing financial discipline resulting from stricter controls⁹⁹. For 2005, the ITA has predicted revenue of 1, 9 billion KM¹⁰⁰. Other reforms concerned the closure of economically unjustifiable customs offices; it is hoped that in this way, resources can be set free to ensure a better pay level across the customs administration. A further reform concerned the centralization of customs offices for certain types of goods in order to prevent arbitrariness and fraud. So was, for example, the clearance of customs for textiles centralized to 8 customs offices instead of being covered by all 120 offices.

The EU CARDS program is, through CAFAO, providing assistance to the ITA. This assistance addresses material needs of the ITA (computerization, equipment) and provides technical assistance aimed at making the Agency an efficient, modern and self-sustainable enforcement agency.

⁹³ http://europa.eu.int/comm/external_relations/see/actions/customs.pdf

⁹⁴ See OHR Economic Newsletter Vol. 8, Issue 1 January 2005.

⁹⁵ http://europa.eu.int/comm/external_relations/see/docs/com03_692_en.pdf

⁹⁶ http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=33994

⁹⁷ http://www.ohr.int/decisions/econdec/default.asp?content_id=29240

⁹⁸ <http://www.walter.ba/arhiva/br109/interviewcausevic.html>

⁹⁹ Oslobodjenje, 3 February 2005, p. 8 'Tužilaštvima prijavljene utaje od sto miliona maraka' ('Evasions of 100 million marks have been reported to the prosecution')

¹⁰⁰ http://www.oslobodjenje.com.ba/asp/showart.asp?art_id=43266

Assistance will be provided throughout 2005, although this assistance will be contracted out in the course of the year, most probably to one of the EU member states with sufficient capacity to do this.

Although scope for abuse remains (for example through non-enforcement of tax and duty collection from enterprises), these reforms look very promising. Through the introduction of a computerized registration system for vehicles and cargo, the possibilities for abuse and manipulation at the Border Crossing Points has been dramatically reduced. This does not, however, mean that smuggling will suddenly stop; rather, there will be increased attempts of criminals to use smaller roads to transport their goods, circumventing the official crossings. Here, much will depend on the work of the other parts of the Bosnian intelligence community, namely SIPA and the SBS; and the State Prosecution. CAFAO itself has pointed out that: ‘The Enforcement Sections have yet to demonstrate full self-sustainability, although, especially in the Federation, the confidence and ability of the authorities to fight large customs frauds and corruption is noticeably increasing. The sections still look for support from EU-CAFAO in standing up to political, managerial and judicial interference in investigations.’¹⁰¹

The prosecution in particular appears to be reluctant at best to investigate cases that have been put forward with intelligence provided by CAFAO and ITA – in 2004, the FBiH Tax Authority alone has forwarded 550 criminal charges to the prosecutors¹⁰². And while SIPA is a relatively new agency that might not yet have had time to become fully operational, there also seems to be a lack of coordination and understanding by those international actors that deal with SIPA’s and the SBS’s capacity building that financial crime connected to border crossing activities should be one of the major focuses of their activities and that there should be a cooperation with ITA on intelligence gathering, analysis and monitoring of progress.

Further concerns are the ongoing recruitment processes for ITA and the single customs administration, partly led by the Civil Service Agency. Now that the single account has been established (and the impression is that the Bosnian authorities did not fully grasp the extent to which this would affect the inflow of cash and their control over it), politicians are trying to reorganize their control over the system by influencing the staffing of the ITA; while senior staff (such as Assistant Directors) have been appointed in August 2004, recruitment of other personnel has been lagging behind. The international community has chosen not to interfere in this process, thereby losing some of the institutional memory of CAFAO, which could have prevented the appointment of people that were known to having obstructed the system, or which could have advised on the establishment of vetting procedures (currently, even officers whose files have been forwarded to the State Prosecutor can apply and be admitted to the service). This recruitment process yet again gives preferences to political allies to the detriment of skilled, competent experts who are left outside the system.

CAFAO does expect that pressure from the region, in particular neighboring countries, will facilitate progress. Equally, membership of the World Customs Organization (WCO), which BiH is expected to join this year, should facilitate improvements¹⁰³.

¹⁰¹ Quoted from comments on the Inter-Agency Rule of Law reform matrix, provided by OSCE during January 2005 field trip.

¹⁰² *Oslobodenje*, 3 February 2005, p. 8 ‘Tužilaštvima prijavljene utaje od sto miliona maraka’ (‘Evasions of 100 million marks have been reported to the prosecution’)

¹⁰³ Information given during interview with informant in BiH.

Legislative Reform and Reform of the Judiciary

Legislative Reform

A new Criminal Law and a new Criminal Procedure Law were imposed by the High Representative in early 2003. Both laws are crucial in that they provide the basis to fight corruption and organized crime in BiH. One of the criticisms of the new Criminal Procedure Law is that it allows for plea bargaining¹⁰⁴, which is seen by many as providing ample scope for abuse in the way sentences are issued.

Also in early 2003, the High Representative imposed a Witness Protection Program, consisting of a package of new legislation¹⁰⁵ and amendments¹⁰⁶ to existing legislation, with the aim of providing essential protection for vulnerable witnesses or those under threat during criminal proceedings. The program is to be implemented by SIPA, but progress is very slow indeed, due to a lack of manpower, training and resources.

The Council of Ministers adopted in 2003 an Action Plan to fight organized crime. It also adopted a package of 8 bills, including a bill to prevent money laundering.

A State-level Law on Conflict of Interest in Governmental Institutions was imposed by the High Representative in 2002¹⁰⁷. It contains a Code of Conduct for elected officials, executive officeholders and advisors in the exercise of their official duties and various provisions on incompatibility of public office with ‘serving on the management board, steering board, supervisory board, executive board, or acting in the capacity of an authorised person of a public enterprise’ and ‘serving on the management board or directorate, or as director, of a privatisation agency’¹⁰⁸. It also contains provisions on the acceptance of gifts (fixing the threshold for the acceptance of gifts that do not have to be reported at 20 KM), and on asset disclosure. Following the introduction of the law at State-level, the authorities were required to introduce legislation at entity level, regulating Conflict of Interest for the local levels of government. Although draft laws now exist, their quality is said to be poor, and there is a likelihood of the Election Commission – the body in charge of overseeing the implementation of the Law – making proposals for an entirely new law, which would embrace all levels of government. Effective implementation of the Law so far was also made difficult by the lack of adequate resources within the Election Commission¹⁰⁹. Transparency International – through grants from the Finnish government – has been active in the promotion and provision of training on the law since 2003¹¹⁰. Article 16 of the Civil Service Law regulates Conflict of Interest for civil servants¹¹¹.

A Law on Freedom of Access to Information, which entered into force in 2000, is intended, inter alia, to ‘acknowledge that information in control of public authorities is a valuable public resource

¹⁰⁴ ‘Plea bargaining - the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge.’ Quoted from:

<http://www.the3rdjudicialdistrict.com/glossary.htm>

¹⁰⁵ The Laws on Witness Protection and Judicial Police of BiH.

¹⁰⁶ Amendments to the existing Law on the Prosecutor's Office and the Law on the Court of BiH.

¹⁰⁷ See http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=8568

¹⁰⁸ See <http://www.ohr.int/ohr-dept/legal/oth-legist/doc/LAW-ON-CONFLICT-OF-INTEREST.doc>

¹⁰⁹ Information about the state of implementation of the Conflict of Interest Law for Elected Officials at www.izbori.ba

¹¹⁰ See <http://www.ti-bih.org/en-GB/Default.aspx?TabID=19>

¹¹¹ See <http://www.ads.gov.ba/en/laws/June%202002%20-%20Law%20on%20Civil%20Service.pdf>

and that public access to such information promotes greater transparency and accountability of those authorities, and is essential to the democratic process¹¹². At the end of 2004, Transparency International organized a repeat survey of the status of implementation of the Law on Freedom of Access to Information. Requests for information were sent to public agencies and institutions at all levels. TI concluded that no progress had been made since 2003, since 46% of all agencies missed the deadline of 15 days stipulated by the law, a worse result than in the previous survey¹¹³. No data is available on how often citizens have requested information under the Law.

A Law on Public Procurement – drafted in the framework of an EC program and part of the requirements of the EC feasibility study¹¹⁴ - was adopted in September 2004 by the Bosnian authorities and entered into force in November 2004. It provides uniform regulations across the country and is in line with EU and international standards. Secondary legislation is currently being drafted. The Public Procurement Agency (PPA) and the Procurement Review Body (PRB) will be in charge of monitoring the procurement process, gathering information and ensuring compliance with the provisions set out in the Law. While the existence of a firm legislative and regulatory framework for public procurement is a crucial precondition for reform in this area, there is also scope for scepticism, since officials that abused the previous system will be in charge of decisions on tenders under the new legislation. It is therefore paramount that both the PPA and the PRB receive sufficient support to act independently. Projects such as the Governance Accountability Project co-funded by Sida (see below) will now monitor how the Bosnian beneficiaries apply the provisions under the new legislation in practice.

Reform of the Judiciary

The OHR created a Judicial Reform Working Group in 1998. However, this group failed to provide overall coordination and guidance for all ongoing programs and projects in the area of judicial reform. Nor did OHR's 1999 Comprehensive Judicial Reform Strategy for Bosnia and Herzegovina deliver what its title promised.

In mid-1998, the Judicial System Assessment Program (JSAP) was launched under the auspices of the United Nations Mission in BiH (UNMiBH).

JSAP worked on analyzing and assessing the existing judicial system. It was followed, in January 2001, by the Independent Judicial Commission (IJC), which operated until March 2004 and was funded by a variety of international donors¹¹⁵. IJC was created to sustain judicial reform and to promote the rule of law, to guide and co-ordinate judicial reform activities within BiH and to advise and assist judicial, prosecutorial and related institutions; the IJC had specific authorization to ensure that Commissions and Councils complied with their legal obligations. Until mid-2002, the IJC reported directly to the High Representative, after that, to a newly appointed Deputy High Representative in charge of the Rule of Law. IJC coordinated its activities with the OHR Legal Reform Unit - which dealt with the drafting of procedural laws and other laws in the judicial reform sector - and the Criminal Institutions and Prosecutorial Reform Unit (CIPRU), a unit that came out of the OHR's Anti-Fraud Department. CIPRU is in charge of the restructuring of the prosecutorial

¹¹² See SIGMA, Public Administration Profile Bosnian and Herzegovina/State Level, Paris 2004, at http://www.sigmaweb.org/PDF/PAPROFILES/Balkans_04/SIGMAPAPROF_BiH_State_04E.pdf

¹¹³ See TI BiH 2004 Activity Report at <http://www.ekaan.com/tibih/Izvještaj%20%20TI%20BiH-a%20za%202004.%20godinu.pdf>

¹¹⁴ 'Technical assistance to the establishment of a Public Procurement Framework in Bosnia and Herzegovina/Phase II' by the European Union's Public Procurement Program for Bosnia and Herzegovina (EUPPP)

¹¹⁵ The IJC was primarily funded by the EC and the US; Norway also contributed substantial funds. A number of bi-lateral donors – including Sida – provided funding for various specific projects.

system, as well as the establishment of the Court and Prosecutor's Office and the restructuring of other institutions in the criminal justice system.

The IJC's two primary goals were the improvement of the independence of the judiciary and the improvement of the quality and efficiency of the judicial system. It aimed to achieve these objectives, *inter alia*, through the removal of unsuitable judges and prosecutors through a comprehensive review process; the establishment of a fair, objective and transparent appointment process for judges and prosecutors; the restructuring of the Commissions and Councils; the creation of adequate security for individual judges and prosecutors and for court buildings, and improved funding of the judiciary.

The re-appointment process, which replaced the previously introduced Comprehensive Review Process that was considered to have failed, was introduced in 2001, and required all judges and prosecutors to reapply for their posts in an open competition. It was argued that through screening of all applications according to a previously established procedure with set criteria, incompetent or partial judges or prosecutors could be filtered out of the system. The reappointment process was to be overseen by an appointment body which had international and national participation and which was to replace the existing Councils and Commissions (see HJPC below). By the end of March 2004, 878 appointments had been made and 73 vacancies had to be re-advertised because of the lack of suitable candidates or an insufficient number of candidates from the required ethnic group. Approximately 30% of the incumbent judges and prosecutors had not been reappointed in the process, although not necessarily because they had failed to pass the procedure, but because they either did not reapply, withdrew their application or had reached retirement age.

It is difficult to measure any immediate improvement in the quality of the work of judges and prosecutors. The IJC's final report believes that this process has been an 'effective vehicle for change', primarily because it introduced standard procedures that had to be undergone. That there was scope for abuse, i.e. the re-appointment of unsuitable candidates, is confirmed by the need for IJC intervention in a number of cases. The IJC also notes that there was considerable resistance and reluctance by politicians to accept this process, mainly because it meant that politicians lost control over it. '[...] while they understood the concept of judicial independence, it was not something to which they subscribed. The only way that a non-politicized appointment process based on merit could be achieved would be to take the process entirely out of the hands of the executive and legislature.'¹¹⁶

In order to improve future appointments and disciplinary measures, three High Judicial and Prosecutorial Councils (HJPC)¹¹⁷ were created, one for each entity and one for the state level that also covers Brcko. In May 2000, the High Representative imposed the HJPC Laws establishing the legislative and institutional framework within which the HJPCs could operate. In order to ensure impartiality and to provide a counterbalance to the local reluctance to assume ownership and to take unpopular decisions, the HJPCs consist of local and international representatives. The creation of one single, state-level HJPC was done in 2004 and is seen as the only way to guarantee uniformity of standards of appointment, ethical conduct and discipline. Although the entity prime ministers have been tasked since 2002 to negotiate a process that would transfer competence to a single HJPC, nothing happened until the High Representative in June 2003 appointed the then IJC director as facilitator of this process.

New Judicial Service Laws provided for substantial salary increases to judges and prosecutors. The rationale was that the judiciary was not independent and was prone to influence peddling partly

¹¹⁶ See Final Report of the Independent Judicial Commission, November 2004, p. 49

¹¹⁷ See also <http://www.hjpc.ba/intro/?cid=246,1,1>

because of their poor remuneration. Appropriate salaries were seen as one way to encourage judicial independence. Between 2000 and 2004, salaries in the Federation rose by 37% and in the RS by 42%, whereas the average net salary rose less than 10%. Judges and prosecutors also retained benefits inherited from the Yugoslav period. Salaries ranged from ca. 1800 KM a month for RS Basic Court judges to ca. 3500 KM a month for Federation Supreme Court judges. The additional funds had to be found in the budgets of the courts and prosecutors' offices. However, the governments were unable to sustain this through budgeting properly. The IJC interpreted this as a lack of genuine interest in the establishment of an independent judiciary.¹¹⁸ As a result, the IJC and OHR introduced new legislation that provided a different basis for calculating salary increases. There was also a freeze on rises until 2007.

The argument of low salaries being in direct correlation to the corruptness of the officer has been made elsewhere (be it in the police, health care, judiciary). However, most evidence suggests that an increase in salary has had a short-term effect, only. In the medium and long-term it has done nothing to decrease bribery in the structures in question. In BiH, the concerns about partiality of judges remain high; and even the higher than average salaries have done nothing to change this picture significantly.

The BiH State Court and the State level Prosecutor's Office were established in January 2003 through amendments to the Law on the Court of BiH and the Law on the Prosecutor's Office. These amendments limit the jurisdiction of the State Court to cases that are deemed to have substantial detrimental effect to BiH and to the competencies defined by the Bosnian constitution. This jurisdiction was deliberately defined in such a way as to assist in the capture and prosecution of the most serious criminal cases, including war crimes, corruption and organized crime on an inter-entity level¹¹⁹.

The BiH Prosecutor's Office has seven international prosecutors¹²⁰. It is supported by four Anti-Crime and Corruption Units, which are headed by additional international prosecutors¹²¹. The role of the international staff is to 'shadow', monitor and support the work of national prosecutors. As Bosnian prosecutors would be put under substantial political pressure and intimidations, the presence of international prosecutors is, for the moment, one of the few guarantees that sensitive cases are being taken up at all¹²². However, there is substantial psychological pressure and threats of physical violence to these international prosecutors¹²³, too, giving an idea of both the political interests at stake in the cases they are investigating and the extent of intimidation that local staff would be exposed to. Since international prosecutors cannot be there forever, this again poses the question as to sustainability of the structures created and the real success in achieving independence of the judiciary and enforcement institutions. In addition, it is worth noting that the State Court will deal exclusively with major cases. Smaller cases will continue to be dealt with at municipal/district or cantonal levels, i.e. levels without international supervision and, hence, without the same pressure to either open cases or to prosecute them according to the standards set by the legislation.

¹¹⁸ Ibid. p. 116

¹¹⁹ Funding for the establishment of the State Court and the Prosecutor's office, including reconstruction work on their permanent premises, were provided by the US, Spain and the EC.

¹²⁰ Sida has funded one Swedish prosecutor to the State Prosecutors Office

¹²¹ The OHR's Anti-Crime and Corruption Unit (ACCU), which is part of the Rule of Law Pillar, provides the support and liaison between OHR and the Prosecutor's Office. ACCU is expected to be phased out by the end of 2005, but it is planned to continue the presence of International Prosecutors in the short- and medium-term. Sida is currently funding two investigators to this unit.

¹²² It has to be added that the international staff faces substantial threats to their security, too, and is provided with special security arrangements at all times.

¹²³ See, for example <http://www.css.ba/en/izbor.asp?kat=news&godina=2004#90> on threats to international and local prosecutors.

As with judges, prosecutors have a knowledge and skills gap on how to deal with crimes involving financial transactions/aspects. More targeted training would be needed on this issue to increase the capacity of the prosecution to efficiently deal with such cases¹²⁴.

A number of projects and initiatives have dealt with court administration and court security through technical upgrading of the courts and with the introduction of computerized case registrations and tracking systems. Many of these projects were carried out by the International Criminal Investigative Training and Assistance Program (ICITAP), which is part of the US Department of Justice. By improving the technical standards and infrastructure in the courts, it aims to substantially reduce excuses for case backlogs etc. However, there has been no assessment of whether there has been a substantive improvement in the situation.

UN IPTF and now EUPM have also assisted RS and Federation police in establishing efficient Court Police capable of providing adequate security for judges, prosecutors and judges in the court buildings. The Federation Court Police is providing temporary assistance to the Court of BiH until a Court Police can be established at State level. Again, a comprehensive assessment of the impact of these measures has not been made. Many international interlocutors are skeptical. Intimidation is frequent, and courts still seem often to lack basic security equipment (video recording etc.). Case files are known to disappear, as there are no sufficient safeguards in place to control (and restrict) access to filing cabinets etc.

In the area of Public Administration Reform, currently, there are four laws regulating the public administration¹²⁵ in BiH, but efforts are underway to harmonize these laws and thus provide greater clarity and transparency on responsibilities and competencies.

Established in 2003, the Bosnian Civil Service Agency is the institution in charge of personnel policy in the public administration at state level¹²⁶. One of its tasks is to establish and implement transparent recruitment procedures. However, there is criticism as to how successful this task is being accomplished, for example in the case of the recruitment process for the Indirect Taxation Authority (ITA)¹²⁷.

Auditing

External Audit/State Audit Institutions

To date, no audit or control structure for *internal* oversight of the public administration exists. Financial audit and control – including that of the public administration – is undertaken by the State Audit Office, whose work is governed by the Law on Auditing of Institutions of BiH. The Law authorizes the Office to make sure a) that ‘all reasonable measures are taken to ensure the collection and proper management of revenues of the institutions of BiH; b) that payments out of revenues, including non-budgetary finances, are executed with appropriate authorization and for the purpose earmarked; and c) that all reasonable precautions to ensure receiving, keeping, and using of state

¹²⁴ Information given during interview with informant in BiH.

¹²⁵ The Civil Service Law, the BiH Law on Administration, the Law on the Council of Ministers and the BiH Law on Ministries

¹²⁶ There is also a RS Civil Service Agency, which started its operations in 2002; the establishment of a Federation Civil Service Agency is underway; see

http://www.sigmaweb.org/PDF/PAPROFILES/Balkans_04/SIGMAPAPROF_BiH_Fed_04E.pdf

¹²⁷ Information given during interview with informant in BiH.

reserves are taken¹²⁸. Among the Office's strategic objectives are to: 'ensure transparency of public spending by presentation of audit reports to the Parliament, media and general public; increase responsible expenditure of public funds by carrying out audit of financial systems, reports, transactions; increase the quality and reliability of financial processes through recommendations to bodies that affect budget management; ensure legitimacy of public fund users, identify deviations and suggest corrective measures; provide information to the Parliament and the Council of Ministers through submitting reports; and increase public confidence in the state institutions¹²⁹.'

The State Audit Office came about through pressure from the World Bank, which made its establishment a pre-requisite for the granting of loans; donors have been instrumental in building the institutions. At present, Sweden is supporting the work of the State Audit Office through funding an auditor seconded from the Swedish Riksrevisionen (the Swedish State Audit Institution), who is in charge of training the national staff (consisting of the Auditor-General and two deputies, seven civil servants, and administrative and technical staff). The State Audit Office has had some impressive results (see, for example, the 2003 audits of the three electricity providers referred to in the previous part of this report). However, the auditors are frequently prevented from exercising their tasks, and exposed to substantial political pressure and intimidation. Entity governments have, for example, withheld funding after damning reports had been tabled. And many of the Office's reports or their recommendations are not taken any further¹³⁰, although the State Prosecutor's Office can, on the basis of the reports, launch criminal proceedings.

Economic Reforms

The Law on [Private Sector] Accounting and Auditing was adopted in 2004, with the aim at establishing mandatory accounting and auditing standards and introducing a professional code of ethics of auditors for the entire BiH. If harmonized on the entity (and Brcko district) level, it will address criticism previously voiced over accounting and auditing standards in BiH and bring the system in line with international and EU standards¹³¹. USAID – the lead donor for economic reform – has been supporting these initiatives, inter alia through the promotion and training of accountants and auditors, and reforms of the respective university curricula.

Public Utilities

Where they addressed systemic and structural issues, part of the recommendations from the 2003 audits of the electricity suppliers contributed to the drafting by the OHR of a new Law on Public Enterprises, which has been passed in the RS, and, very recently (February 2005) in the Federal Parliament. Inter alia, it spells out incompatibilities of managerial functions and membership in executive organs, conflict of interest, procurement rules, and internal and external audit provisions¹³². The 2003 audits also led to a number of criminal investigations conducted by the State Prosecutor's Office. However, there are still concerns about the running of public utilities: the High Representative has recently ordered audits in key enterprises; and a specific Public Utilities Unit is operating within the OHR's Economic Department's Economic Pillars Unit.

¹²⁸ See SIGMA, Public Administration Profile Bosnian and Herzegovina/State Level, Paris 2004, at http://www.sigmaweb.org/PDF/PAPROFILES/Balkans_04/SIGMAPAPROF_BiH_State_04E.pdf

¹²⁹ Ibid.

¹³⁰ This is a situation that can be observed in other transitional countries, too, for example in Poland.

¹³¹ The measures aim at establishing a system based on four prime principles: 1) independence and integrity of the accounting and auditing profession; 2) self-regulation, according to internationally accepted and enforced standards; 3) protection of the public; and 4) continuous improvement of standards. See OHR Economic Newsletter Vol. 8, Issue 1 January 2005.

¹³² For the text of the Law on Public Enterprises in the Federation BiH, see Official Gazette of FBiH, Number 8, page 299, 9 February 2005.

Business Registration Reform¹³³

A State Framework Law on Business Registration entered into force in September 2004. Its objective was to harmonize State and Entity (and Brcko District) legislation with EU standards and to ensure a fast and uniform process of business registration at all levels for both domestic and foreign businesses. However, harmonization with the State Law is now required at entity level, a process that is going painstakingly slowly. In the RS, the draft Business Legislation Law was adopted at the end of December 2004. In the Federation, the Draft Law has not yet been presented to the Government. It is feared that a further delay will send negative signals to potential foreign investors and b) negatively impact the World Bank's Business Environment Adjustment Credit, one of the conditions for which is this reform¹³⁴.

'Bulldozer'-Process/Initiative

The so-called 'Bulldozer'-Process/Initiative was launched by the High Representative in November 2002. It aims at dismantling 'barriers to business growth and job creation' with the intention to 'to knock down as many roadblocks and cut as much red tape [...] to free up the economy for growth'¹³⁵. In the three phases of the Initiative, stakeholders from local business associations, regional development agencies, chambers of commerce, employers' associations and foreign investors' associations were consulted on which reforms they believed were necessary to bring about change in the economic climate. As a result of the initial information collected, six Regional Bulldozer Committees and one national one on agriculture were established. These committees launched into collecting more detailed information from business people on obstacles to doing business in BiH. This information was then translated into reform proposals that were presented to the government. Phase II also saw the formation by the two entity prime ministers of the so-called Emergency Reform Units, led by the appropriate ministries and tasked with overseeing the adoption and coordination of the reforms that followed. While Phase I and II of the process was led and coordinated by the OHR, at the end of 2004, the leadership of Phase III was gradually handed over to the newly established Association of Employers of BiH. The Association is now in charge of creating publicity and support among the public and parliamentarians for 50 reform proposals in order to ensure their swift adoption. Overall, 150 economic reforms will have been proposed in the framework of this Initiative, some of which have been taken on board in the framework of, for example, the passage of new indirect taxation legislation.

Maybe equally important is the establishment of a public – private sector dialogue on the entity level, which will now have to be maintained and brought to the state level. Efforts are underway to create such a Social and Economical Council at state level¹³⁶.

The Bulldozer-Initiative and the Business Registration Reform work on the assumption that by cutting red tape and thus reducing the number of institutions that an entrepreneur-to-be has to deal with, opportunities for corruption would be cut. However, there has to be a level of caution against such approaches: having less regulations can equally result in *increasing* opportunities for corruption. Again, a balance has to be struck between facilitation of economic growth through cutting obstacles for businesses and retaining an appropriate level of control over business to avoid abuse and corruption.

¹³³ Activities in support of this reform are funded by the UK Department for International Development (DfID).

¹³⁴ See OHR Economic Newsletter. Vol. 8, Issue 1 January 2005.

¹³⁵ See OHR Press Release http://www.ohr.int/ohr-dept/econ/bulldozer-initiative/default.asp?content_id=28712

¹³⁶ See OHR Economic Newsletter Vol. 8, Issue 1 January 2005.

Privatization

Little has been achieved by way of progress in the privatization process. The fact that, for example, the Federation authorities have not yet started to look for a replacement for the head and deputy head of the Federation's Privatization Agency, whose terms expire in early spring 2005, shows that there is no real sense of urgency in the Federation government to move this issue seriously forward. Equally alarming appear efforts in the FBiH government to continue with the adoption of amendments to existing laws and new laws in the area of privatization. These foresee, among other, the auditing of already privatized enterprises and of enterprises earmarked for privatization. This would result in legal uncertainty and thus put off potential foreign investors.

Public Sector Service Delivery Reforms

Public Utilities

USAID is funding activities in the water sector. The aim is to assist the management boards of water providers to become independent public corporations that are free from interference by municipal and other authorities. This is done through making the boards financially self-sustaining and enabling them to achieve autonomy for self-control and management. It is hoped that this will put an end to the siphoning off of funds to high-ranking party officials.¹³⁷

Also funded by USAID is the Public Sector Accounting Project, which promotes accountability and transparency through the development of automated accounting and budget execution systems for all levels of government. The project establishes an internal control capacity as any spending is immediately recorded and expenditure is being kept track of. This makes audits easier and establishes individual accountability.

Local Self-Governance reform

The Law on Local Self-Governance, which is based on the European Charter of Local Self-Government, was adopted by the House of Representatives on 17 January 2005, and should be on the agenda for adoption by the Federal Parliament in one of the forthcoming sessions; it was adopted by the RS Parliament in September 2004. However, the Constitutional Commission has not adopted the law's amendments, and it is anticipated that further complications lie ahead. The law is particularly unpopular in the Federation, as it will strengthen the local level to the detriment of the cantonal level, from where the strongest resistance originates. While politicians on the local level from whatever party seem to be very positive about the law, the nationalist leadership at the cantonal level is not.

In addition to better regulating the transfer of budgetary funds to the local level and thus giving local authorities the means to finance expenditures that fall under their competencies (such as, for example, primary education), this law is important in the context of the fight against corruption in that it tries:

- to implement the principle that, where possible, public responsibilities shall generally be exercised by those authorities that are closest to the citizen;
- to foster accountability of the local self-government to the citizens by making governance processes more transparent;
- to increase the participation of citizens in policy making at the local level through referendums, civic initiatives etc.

¹³⁷ Information leaflet by USAID 'Bosnia-Herzegovina Anti-Corruption efforts', www.usaid.ba

OSCE – not the national authorities – plan public discussions about the Law and its Amendments throughout BiH over a period of 60 days.

Sida, together with USAID, is funding the Governance Accountability Project (GAP), a 3 year project (which started in July 2004 and is expected to last until 2007) targeting a total of 40 municipalities throughout Bosnia and Herzegovina. The aim of the project is to improve ‘the capacity of a critical mass of municipalities to better serve their citizens within a policy and fiscal framework of good governance’. GAP will train local authorities in a number of innovative approaches to service delivery, such as One-Stop-Shops for obtaining certificates, which will dramatically reduce the need of citizens to approach several offices of the local public administration and thus also reduce the opportunities for rent seeking by different local public servants. Interestingly, the response to the project by the local mayors was very positive, but whether that is the case at the lower level of local government is disputable. The project will also try to make a number of policy interventions that affect local self-governance, specifically in supporting the adoption and implementation of the Law on Local Self-Governance, the elaboration of a Local Debt Law and clarifications of the regulations on Value-Added Tax. At the moment, for example, it is not clear how revenues collected by the Indirect Taxation Authority would benefit the municipal level.

Media reforms

Since the signing of the DPA in 1995, funds in excess of US\$ 40 million¹³⁸ have gone into support of the media in BiH. This support has undoubtedly facilitated the development of free and independent media in the country and has de-politicized the public broadcasters. However, with currently 187 registered media for a population of approximately 4 million¹³⁹, quantity has dominated over quality¹⁴⁰. The Bosnian market is too small for such a large number of media. Since many are still dependent on foreign assistance, with the continuing reduction of international support, it can be expected that a substantial number will be unable to survive¹⁴¹. Others can, however, be expected to make a successful transition to independence¹⁴².

International support has, it appears, done little to improve the quality of journalism¹⁴³. A first wave of change in journalistic reporting came as a result of the de-criminalization of defamation in 2001,

¹³⁸ Aggregate figures are difficult to come by; the estimate results from an approximated US\$ 20 Million that has gone into the establishment and support of OBN and another US\$ 20 Million into the restructuring of public service broadcasting, including the establishment of the Independent Media Commission (IMC) and the creation of the Communications Regulatory Agency (CRA) as well as initial support to RTRS, Radio FERN and Mreža. The figure does not include funding that has gone into training of journalists, as no such data has been available.

¹³⁹ <http://www.cia.gov/cia/publications/factbook/geos/bk.html#People>

¹⁴⁰ For comparison, the United Kingdom has ca. 950 media for a population of ca. 70 Million. See <http://www.wrx.zen.co.uk/britnews.htm> and

<http://www.wrx.zen.co.uk/fromhere.htm>

¹⁴¹ Such as the Banja Luka based Nezavisne Novine (Independent Newspaper), with a circulation of just 15.000 (weekdays) and 20.000 (Saturdays), or the Sarajevo-based TV station Studio 99.

¹⁴² Such as the Banja Luka based ATV or the Travnik regional radio station TNT that have made a successful transition to become commercial broadcasters.

¹⁴³ Sida, together with other donors, has supported the work of the Press Council, a self-regulatory body established in 2000, consisting of journalists, the public and the international community to oversee the application of the Press Code (See:

http://www.ejc.nl/jr/emland/text%20versions/special%20files%20bosnia/Press_Code.doc), which stresses

making slander and libel civil offenses¹⁴⁴. This opened the door to the sensationalist reporting, often not based on facts, which currently pervades in the media. More and more politicians and the public are becoming aware of the provisions of the new Libel Law and there are a rising number of actual libel cases against journalists resulting in civil penalties (fines). So, the pendulum might slowly swing back and facilitate a more responsible reporting. It is, however, too early to clearly identify this as a trend.

While countless topical training programs were and are offered to journalists, they had little impact on increasing journalistic standards. In late 2004, the Sarajevo-based Mediacentar¹⁴⁵, co-funded by the BBC and the Open Society Institute, launched a competitive scholarship program on investigative techniques for reporting on organized crime for print media journalists from the region. However, it has been unable to find sufficient interest for this course. This is probably not because the topic is too sensitive or too dangerous for journalists. Rather, there appears to be simply no strong sense of a need for training and improvement of skills, or of better qualifications leading to better employability or higher pay. There is certainly also an element of fatigue with existing assistance models, such as workshops and trainings; and donors may have spoiled their target group: journalists will not come to events unless the costs of these are fully covered by the donor.

Finally, progress on the establishment of a genuinely independent State Broadcasting System as requested by the EC feasibility study is still very slow. The issue of financing the broadcasters through the collection of fees remains a serious concern. Equally, politicians appear to not yet have fully seized the concept and implications of an independent public broadcasting system.

4.3 Explicit responses

General

As mentioned earlier, there have been relatively few explicit anti-corruption efforts. In early 1999, the OHR issued ‘A comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina’¹⁴⁶. This was centered around so-called ‘strategic pillars’: ‘Education and Public Awareness’, ‘Eliminate Opportunities’, ‘Transparency and Reporting’, ‘Controls and Penalties’. It also set out sectoral reform priorities (such as tax and customs reform, treasury, payment bureaus etc.). While the Strategy as such did not have a very long, high-profile life, the majority of the reforms therein have been tackled, in the framework of either support to the introduction of the rule of law, economic reforms or reforms of the public administration.

Medium Term Development Strategy (MTDS) or Poverty Reduction Strategy Paper (PRSP)

Largely in response to pressure from the World Bank, and also from other players in the International Community, the Bosnian government elaborated a BiH Medium Term Development Strategy (or Poverty Reduction Strategy Paper), which was adopted in March 2004 by the Council

ethical standards in journalistic work. No evaluations of the work of the Press Council were available to the authors of this paper. The website of the Press Council is <http://www.vzs.ba>

¹⁴⁴ Before this, arrests of journalists were frequent. See for example the arrests in 1999 of Senad Pecanin and Senad Avdic at <http://www.ddh.nl/org/poo/bsh/media/history.htm#0999>, or <http://www.mediaonline.ba/en/arhiva/arhiva/pdf/2000/mnbr58en.pdf>. The respective RS and FBiH Laws can be found at <http://www.ti-bih.org/documents/zakoni/>

¹⁴⁵ <http://www.media.ba/SarajevoBN/News/2004/11/23/News1541/>

¹⁴⁶ http://www.ohr.int/ohr-dept/afd/ac-cor-strat/default.asp?content_id=5240

of Ministers. It had been preceded in 2002 by an Interim Poverty Reduction Strategy Paper (or I-PRSP).

The ‘Strategy for Combating Crime and Corruption’ is an integral part of the MTDS. It is complemented by an Anti-Corruption Action Plan. The *Strategy* is a largely descriptive document, in which the Bosnian authorities commit themselves to legislative, institutional and educational activities. It outlines broader concerns about good governance and repression of corruption through investigation and prosecution, and strengthening the judiciary and law enforcement agencies. The Strategy sets out objectives for reforming the public administration and improving the fiscal system, as well as for improving transparency in the privatization process.

The *Action Plan* broadly outlines legislative reforms in the relevant sectors and assigns responsibilities to the institutions in charge of advancing these reforms. It also provides timelines for their implementation. It does not, however, identify risks or success indicators which could help to monitor the implementation of the anti-corruption reforms and assess and/or evaluate their impact.

The MTDS/PRSP Unit, an integral part of the State government’s Economic Planning and Policy Unit (EPPU), was charged with coordinating the elaboration of the Strategy and the Action Plan. This was done through the rather novel mechanism of broad stakeholder consultation, including with civil society/NGO representatives. While such an exercise is probably already a success in itself, given the government’s general reluctance and lack of experience in public debates, there are mixed views on how much genuine consultation has really taken place as opposed to simply meeting a donor demand.

The EPPU is also in charge of monitoring the implementation of the overall MTDS. Currently with a staff of nine, the EPPU monitors progress in all sectors outlined in the MTDS, and collates and submits interim reports to the government. To this end, over 20 Working Groups consisting of representatives from the different line ministries and NGO representatives have been set up. The Working Groups are involved in the definition of the Action Plans and in the assessment of implementation of the reform objectives.

The most recent interim report was presented to the government in December 2004, assessing progress made between August 2003 and November 2004 – the first year of the MTDS.¹⁴⁷ The interim reports will serve as the basis for discussion of the revision of the MTDS and its Action Plans in March 2005. The revision process will also set new priorities and formulate further reforms and measures to be taken.

Public Awareness Campaigns

A Public Awareness Campaign was conducted by OHR in 2000 and in 2001. OHR had commissioned the Sarajevo Centre for Contemporary Art to provide cartoons, comics and posters for this so called ‘Ovaj and Onaj’-campaign¹⁴⁸. The campaign also included radio jingles and TV spots. The objective of the two-part campaign was to sensitivise the public to the issue of corruption and its cost to society. The campaign has failed for two reasons. Firstly, the campaign is not remembered for the subject it raised, but for the its visual implementation, which fell just short of insulting citizens by doubting that they could swallow more complex messages. Secondly – and this

¹⁴⁷ The interim report is available in the local language version at <http://www.eppu.ba>.

¹⁴⁸ The campaign title has never been translated into English; roughly, it could be translated as ‘The one here, and the one over there’.

has been the experience elsewhere in the region¹⁴⁹ - the campaign failed because it had no specific target issue, but aimed to raise awareness about corruption in a more general way. While it might indeed have raised awareness (although people in BiH have always been aware that the problem exists), it also provided an anti-climax. Raised awareness results in raised expectations, and these expectations need to be met. Yet, public awareness campaigns that are isolated from any real issue do not meet expectations; on the contrary, they have the potential to be counterproductive and to increase the public's cynicism¹⁵⁰.

Under the slogan: 'Vote Corruption Away', another awareness campaign was conducted by the OSCE in the run-up to the 2000 elections. Through the dissemination in the print media of around 200,000 educational brochures and through television advertisements and radio spots, the campaign aimed to educate the wider public about the causes and consequences of corruption. It was hoped that the topic would become an issue in the election campaign and, eventually, in the way people would cast their votes. No assessment or evaluation has been made of the impact that this campaign had against the objectives set.

Transparency International – Local Chapter

The Bosnian chapter of Transparency International (TI) – an international NGO dedicated to the fight against corruption – was established in 2000. It is to date the only local NGO that deals specifically and exclusively with corruption. In 2004, TI published the Bosnian National Integrity Systems Country Study Report and the Transparency International Corruption Perception Study. TI also established its Advocacy and Legal Advice Centre. This incorporates a toll-free phone line to report on corruption. After verification of the substance of the claims brought forward by citizens, TI either forwards the cases to the Public Prosecutor's office in the hope of initiating criminal investigations, or sends an information letter to the Prosecutor's office. TI continues to be active in promoting and providing training on the Law on Conflict of Interest in Governmental Institutions and on the Freedom of Access to Information Act. TI is present in the national media on a regular basis through statements on corruption-related issues, and its reports often provoke defensive reactions by the institutions that are being criticized¹⁵¹.

Since its establishment in 2000, TI BiH has also been one of the most regular and outspoken critics of the role of the international community in general and the OHR in particular. The criticism is mainly directed towards what TI perceives as double standards: a lack of transparency and accountability and arbitrariness in which decisions are being passed by the OHR. While TI's criticism might be reasonable, the way in which it is delivered is often wanting. But equally, the way in which the OHR has reacted to such criticism in the past – mainly by counterattacking the TI leadership instead of addressing in a constructive way the points where criticism was justified – has not always been helpful. If one of OHR's long-term policy objectives is the promotion of a vibrant civil society as part of a stable democracy, then this should demand a certain confidence in interacting with such groups, rather than putting itself above criticism¹⁵².

¹⁴⁹ Bulgaria is a good example for a counterproductive anti-corruption awareness campaign. When in 2001, such a campaign was launched, the perceived level of corruption in Bulgaria soared. The public believed that once there was a campaign, the problem must have had dramatically worsened, otherwise there would not have been a campaign in the first place.

¹⁵⁰ A detailed discussion on anti-corruption public awareness campaigns and their impact can be found in: 'From the Ground Up – Assessing the Record of Anticorruption Assistance in Southeastern Europe' by Martin Tisné and Daniel Smilov, Center for Policy Studies, Central European University, The Soros Foundations Network, Budapest, 2004.

¹⁵¹ For more information on TI BiH's activities, see its 2004 Annual Activity Report at

<http://www.ekaan.com/tibih/Izvještaj%20TI%20BiH-a%20za%202004.%20godinu.pdf>

¹⁵² This concerns, for example, the conflict between TI and the then High Representative Wolfgang Petritsch in 2001.

4.4 International efforts/Regional level

Stability Pact Anti-Corruption Initiative (SPAI)

Bosnia and Herzegovina has participated in the Stability Pact Anti-Corruption Initiative (SPAI) since 2002. SPAI is a regional initiative¹⁵³ to promote anti-corruption reforms, share best practices and lessons learned and monitor progress. It is supported by a number of multi-lateral organizations and bi-lateral donors. Since 2004, Sarajevo has hosted the Initiative's Regional Secretariat Liaison Office (RSLO). While SPAI had some moderate success in most of the other participating countries – mainly in promoting the adoption of comprehensive anti-corruption strategies and the establishment of specific anti-corruption agencies - it seems to have done little for BiH. This has as much to do with the specifics of the BiH situation as with the vague objectives (and the lack of means to assist in delivering these objectives) of SPAI itself and the Initiative's continuing dilemma of being unable to define its value-added vis-à-vis other frameworks, specifically that set by the Council of Europe's GRECO.

Council of Europe

Bosnia and Herzegovina has been a member of the Council of Europe (CoE) since January 2002. It signed the CoE's Criminal and Civil Law Conventions on Corruption in 2000. Both Conventions were ratified and entered into force in 2002. This was a pre-condition for BiH joining of the CoE's Group of States against Corruption (GRECO). GRECO provides for regular evaluation and peer review of the state of implementation of both Conventions and the CoE's 'Guiding Principles for the Fight against Corruption'. BiH underwent its first round of evaluation in 2002¹⁵⁴. On 4 January 2005, BiH submitted a situation report on the measures taken to implement the recommendations from this first evaluation round, which should be on the agenda for adoption by the evaluators in May 2005. The second round of evaluations is scheduled for September 2005.

Bosnia and Herzegovina is also part of the Council of Europe's PACO Impact II project, a regional technical assistance project for the countries of the Western Balkans¹⁵⁵ funded by Sida, which aims at cross-regional sharing of lessons learned and best practices in the fight against corruption. Since its inception in spring 2004, the project has held one activity in BiH - a stock-taking workshop on anti-corruption efforts, bringing together all relevant Bosnian stakeholders. It aimed at providing relevant regional expertise on the establishment of an anti-corruption agency, should the Bosnian authorities indeed decide to take the idea of such an agency forward. The planned workshop will also aim to discuss options for improving the Anti-corruption Strategy and the Action Plan within the Medium-Term Development Strategy (MTDS), in particular through the establishment of benchmarks for success and impact measurement.

A further regional, multi-annual Council of Europe-led activity, funded by the EC¹⁵⁶, is the 'Development of Reliable and Functioning Policing Systems and Enhancing of Combating Main Criminal Activities and Police Co-operation (CARPO)'-project. CARPO aims at strengthening the

¹⁵³ Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia, Moldova, Montenegro, Romania and Serbia are participating in the SPAI.

¹⁵⁴ GRECO evaluations are looking at the implementation of a selected number of the 'Guiding Principles'. The first round evaluation report of BiH was adopted at the GRECO Plenary Meeting in Strasbourg in July 2003 and can be found at <http://www.greco.coe.int/evaluations/Default.htm>

¹⁵⁵ The project covers Albania, BiH and Herzegovina, Croatia, Macedonia, Serbia and Montenegro including Kosovo. SIDA contribution to the project is €1, 5 Million.

¹⁵⁶ The project's duration is planned to be from 2004 to 2006. It is funded with €4,4 million.

capacities of the CARDS countries to develop and implement regional strategies against serious forms of crime based on the *acquis communautaire* and other European standards and practices. It also aims to provide law enforcement institutions with the tools necessary to implement these strategies; and to build up capacities for: financial investigations aimed at the confiscation of proceeds from crime; a more effective use of special investigative means and intelligence in accordance with human rights standards; and the creation of effective mechanisms to protect witnesses of serious crime. CARPO intends to contribute to more efficient cooperation in criminal matters among the countries of South-eastern Europe and to build up training capacities related to trafficking in human beings, smuggling and illegal migration based on standards and benchmarks in line with EU policies and practices¹⁵⁷.

BiH is also part of the Council of Europe's MONEYVAL, an experts' group that was set up in 1997, which through evaluation and peer pressure reviews 'the anti-money laundering measures and measures to counter the financing of terrorism in Council of Europe member states'¹⁵⁸ which are not members of the Financial Action Task Force (FATF). Bosnia and Herzegovina has undergone the first evaluation round in 2003, but the findings have not yet been made public¹⁵⁹.

Mutual Legal Assistance

BiH has ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime which has entered into force in July 2004¹⁶⁰. Ratification of the Council of Europe Convention on Mutual Assistance in Criminal Matters is still outstanding. General knowledge and understanding about instruments and mechanisms of mutual legal assistance seems to be weak¹⁶¹. However, this appears to be due to insufficient priority given to the issue by the Bosnian authorities rather than the lack of assistance or training opportunities on the subject¹⁶².

Interpol

Bosnia and Herzegovina is member of Interpol and thus, at least theoretically, committed to this organization's activities in fighting, inter alia, corruption, financial crime, drugs, children and human trafficking and in cooperating on criminal intelligence analysis¹⁶³.

Responsibility for international law enforcement (i.e. international treaties and relations with Interpol) lies according to the BiH Constitution with the institutions at State-level, which might be one of the explanations why the level of responsiveness and involvement of the authorities to these instruments has been very poor.

¹⁵⁷ http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Regional_project_CARDS_Police/

¹⁵⁸ See

<http://www.coe.int/T/E/Legal%5Faffairs/Legal%5Fco%2Doperation/Combating%5Feconomic%5Fcrime/Money%5Flaundering/>

¹⁵⁹ See also

http://www.coe.int/T/E/Legal%5Faffairs/Legal%5Fco%2Doperation/Combating%5Feconomic%5Fcrime/Money%5Flaundering/Evaluations/Reports_summaries.asp#TopOfPage

¹⁶⁰ See <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=141&CM=3&DF=2/18/05&CL=ENG>

¹⁶¹ Information provided by interviewee.

¹⁶² Mutual Legal Assistance (assistance in drafting legislation and training) is covered by two EC CARDS projects implemented by the Council of Europe. Regional countries indicate to finding it difficult to make progress with BiH on this matter.

¹⁶³ <http://www.interpol.org/>

United Nations Convention against Corruption

BiH has not yet signed the 2003 UN Convention against Corruption. There has been pressure to accede to the Convention from Transparency International. The Convention's Article 6 on 'Preventive Anti-corruption body or bodies' calls on parties to establish such structures. It could be argued that there is by now already a proliferation of institutions in BiH that are – at least theoretically – well placed to fight efficiently against corruption. The establishment of yet another such agency might therefore be questionable, whether it is funded from either finite donor money or from BiH's State budget – it does not appear to be sustainable. If the Bosnian authorities do want to pursue such an agency, they should be pressured to define very precisely *ex ante* what such an agency would do and what its value added would be vis-à-vis existing structures.

OECD Anti-Bribery Convention

The Anti-corruption Strategy of the MTDS notes BiH's aspiration to join the OECD Convention on Bribery of Foreign Public Officials. It would be a mistake, however, for this to become a priority of the Bosnian authorities. The OECD Convention specifically targets the major exporting nations – BiH is unlikely to become a big exporter in the near or medium-term future. Like the membership in GRECO, adherence to the Convention requires the allocation of substantial resources for the participation in the peer review process. BiH would be better advised to allocate existing scarce resources to fulfill its obligations under GRECO, and in due course to the UN Convention.

5. Recommendations for Sida Interventions

5.1 Emerging Lessons

- Compared to other countries in the region, BiH has seen relatively few explicit anti-corruption programs and projects. Instead, corruption has been addressed in the framework of wider sector reforms and the overall establishment of the rule of law, encompassing the introduction of a legislative framework with a strong focus on repressive aspects, and efforts to depoliticize the enforcement structures and the judiciary, and to establish independent oversight and control mechanisms.
- The scarcity of explicit anti-corruption programs and projects in BiH so far is actually a positive. It has been shown elsewhere how hard it is to build efforts on a legacy of failed anti-corruption initiatives, as this legacy often implies unmet expectations after a massive build-up, resulting in an even greater than usual cynicism and consequently, less support of the public. And while corruption is an issue of concern, it needs to be disentangled into its segments to be addressed efficiently. Just to say: let's fight corruption, without linking it to sectoral reforms is unlikely to work. In this respect, the overall approach taken by the international community in BiH appears to be the right one.
- Another argument against explicit anti-corruption programming is the fact that there will be even less enthusiasm and ownership by the authorities for such projects than for others. Few administrations and governments like to be publicly associated with corruption - except where there is a strong political will to tackle the issue - and having to implement a project carrying corruption in its title is doing just that.
- While the establishment of the legislative framework has been broadly successful and corresponds to international standards, the de-politicization and independence of enforcement, judiciary and oversight bodies has at best been partly successful. Yet without efficient and effective enforcement, these reforms will have been in vain.
- This impression is reinforced by the lack of efforts to capture the impact of the reforms undertaken (in particular having the end-users/citizens in mind), which, in turn, might be caused by the general lack of data that such efforts would need.
- While there have been a lot of reform efforts introducing a new legal framework and establishing corresponding institutions and structures, capacity building and training for these institutions is lagging behind. This concerns training on general issues, such as management and specialized issues, such as dealing with fiscal and financial crime.
- For training purposes it is important that the international community bring in highly qualified personnel who are able to do hands on mentoring. Models that focus on knowledge transfers through twinning exercises are likely to be more effective, and surely more sustainable.
- Finding credible and effective counterparts on all levels is a challenge for the donors. In the Bosnian context it is important to be aware that there is a pool of highly qualified persons available. Most of these people come from the younger generation, and some have studied

or worked abroad, indicating that they are less likely to be under the control of existing power structures.

- There is a satisfactory institutional framework in place on paper to capture the twin tasks of corruption and organized crime. The State Information and Protection Agency (SIPA) is of special interest. A principal challenge will be, on the one hand, to give these newly established or already existing institutions political support and, on the other hand, to safeguard or establish their independency from political interference. One of the manifestations political support will have to take is the appropriation and allocation of sufficient budgetary resources.
- Like in many countries with a strong international donor presence, co-ordination is a weak point. This concerns in particular the lack of a jointly pursued vision and resulting fragmentation of efforts in the provision of technical assistance; on how the new legislative framework should be enforced; and how the different institutions should be logically interlinked.
- The presence of international staff such as CAFAO experts in the ITA or international prosecutors in the State Prosecutor's office is necessary for the moment; otherwise, there would be little realistic chance of the Bosnian prosecution taking on high-profile cases. Serious thought has now to be given to medium-term exit strategies of such assistance. International prosecutors cannot continue for much longer to fulfil a fig-leave function for a technically competent local prosecution. Yet, there appear to be no real signs of a gradual weakening of the dependence from international staff.
- It is difficult to understand why the international community chooses to participate in the vetting process for some institutions, but opts out of other such processes, although they equally concern important institutions such as the ITA, the independence from political influence of which is crucial. Lack of transparency and politicization of the recruitment procedures for such authorities by criminal politicians that are trying to secure their short-term rent seeking has a serious long-term effect on the efficiency and capacity of these institutions. Talented workforce is again left outside policy making.
- The usefulness of the multitude of regional efforts that Bosnia and Herzegovina is participating in should be re-considered with view to the country's pressing tasks and the demands these initiatives (such as SPAI) pose on limited human resources and capacities of its institutions. Regional awareness raising and lessons learned sharing on corruption and organized crime has probably reached the end of its lifespan. By inviting experts to endless regional roundtables and workshops, one has to wonder whether their time and efforts would not be better spent by focusing on priority work inside the country, rather than being away from their desks for a considerable part of their time. Regional countries – including BiH – have now to get down to looking for specific solutions for their specific problems. These include concrete steps to resolve specific regional problems, and most importantly the formalization of mutual legal assistance agreements with BiH's neighbouring countries.
- Red tape increases the opportunities for corrupt transactions to take place. Yet, simplifying too many regulations – as seems to be a trend in particular in the area of economic reforms - opens opportunities for corruption, too. A better balance needs to be found between facilitation of economic growth and effective checks and balances against abuse and corrupt activities.

Medium Term Development Strategy (or PRSP): While progress has been made in the implementation of the objectives of the Anti-corruption segment of the MTDS, there are the following concerns:

- As has been pointed out elsewhere, the mere existence of an anti-corruption program is not an indicator of how seriously the government is in its commitment to implement it¹⁶⁴, in particular if it is, as in the case of BiH, a result of outside pressure. The fact that a number of the objectives set out in the strategy have been achieved already is not a real indicator of commitment, either, since ongoing reform efforts are largely driven by the international community, not so much by the Bosnian authorities.
- There is a lack of indicators of success for the strategy and of benchmarks of how to measure progress and impact of the implementation of the objectives set out in the strategy. Experience from other countries suggests that this could lead to a situation of a successfully implemented, comprehensive anti-corruption strategy, with all objectives being ‘ticked’ off, while at the same time, the real-life situation will not have changed, or might have changed a little, but without the authorities being able to capture or measure this difference.
- It has been noted above that there is a striking lack of information in general inside the government. It is not really clear what informs policy making and the design of reforms in general, and certainly the specific case of this anti-corruption strategy¹⁶⁵. Given the difficulty of collating such data – not only for the Bosnian authorities, but for any other government, too – if seriously committed to implementation, the government must be asked and should be assisted, in establishing mechanisms to independently and continuously collect information/data to measure impact and progress, and to design subsequent reform efforts in response to this.
- This concerns not only, but notably, corruption in the public service sector delivery (health, education) and at any other interface of citizens with the state (licensing, business registrations, public procurement, tax authorities, customs etc.). Having more and reliable data available will also be important for the relation of the Bosnian authorities with donors and the influence this could have on shaping technical assistance programs and projects.
- The government does not feel that it needs to communicate its efforts to the public. In fact, public information or communication strategies or public education campaigns towards citizens do not play any significant role in the document at all. It should be brought back to the government that informing citizens is part of their brief, and that exploring ways of informing the public is a win-win situation for it, in that it has the potential to build the credibility of the reform efforts as well as to earn trust and support in their implementation.
- The government should build on the stakeholder consultation mechanism that was used in the elaboration phase of the MTDS. However, future exercises and the work of the 20 working groups monitoring the implementation should indeed be consultations, not pro-forma exercises where comments are solicited from stakeholders that then rarely find their way into the final documents.

¹⁶⁴ See, for example Franklin Steves and Alan Rousso: Anti-Corruption programmes in post-communist transition countries and changes in the business environment, 1999-2002, EBRD Working Paper No. 85, p. 7

¹⁶⁵ Which relies almost exclusively on 2002 data compiled by the Bosnian chapter of Transparency International.

- Repressive actions seem to be overemphasized, while preventive actions (and, as mentioned above, educational ones) do not seem to receive the emphasis they deserve.
- There could be a concern that the MTDS (and its anti-corruption strategy) is de-prioritized by the Bosnian authorities in favor of the implementation of the 16 recommendations of the EC's Feasibility study. This requires persistence particularly by those donors who have a strong emphasis on poverty reduction goals. The MTDS is broader in its ambitions than the Feasibility study requirement; these ambitions should not be abandoned for the benefit of a narrower reform agenda.

5.2 Possible Sida interventions

The international community in Bosnia and Herzegovina has at its disposal a set of tools that it has in few other places: military, political, economic and social. Even so, corruption in the public sector is a delicate issue that should be given careful consideration. A tough approach might induce resistance that will lead to failure for the given intervention. It might also damage the relationship with the government. While a head on approach might work in some countries, a more indirect approach can be more effective.

Policy Level

After almost 10 years since the end of the war, it is becoming increasingly clear that the institutional set-up of BiH sanctioned by the Dayton Peace Agreement - based on strong entity level and weak state level structures — is preventing the country from moving forward. It is too costly, too complex to instil trust of the citizens into the state, and too fragmented to provide for efficient safeguards against the abuse of public funding. More importantly, it consolidates the very power structures that were implicated in the unlawfulness of the war and that are the biggest obstacles for reform efforts. Sida's interventions should be targeted at supporting the strengthening of State-level institutions and municipal level government (i.e. the level of government that is closest to their electorate) to the detriment of (as opposed to) efforts that support entity-level structures.

Ways need to be found to build-up ownership of Bosnians for their country's affairs at every level. The principle of ownership should be reconfirmed in all negotiations and dealings with Bosnian interlocutors – as should the absence of an alternative to ownership in light of the successive withdrawal of the International Community.

Sida and Other Players in the International Community

With an annual envelope of approximately €30 million, Sida is the biggest bi-lateral donor in BiH. It should lead by example and continue to communicate its concern about corruption to other international players in the country in order to keep it on the agenda of assistance delivery discussions. Sida should also continue to facilitate coordination efforts wherever possible.

Where possible, Sida should also try to play a pro-active role on the overall direction reform efforts take, based on what it considers to be best practices and experience. For example, while the cutting of red tape in the economic area is intended to lead to kick-starting businesses and thus facilitate economic growth, developments in our own countries go in the opposite direction – inter alia, because deregulation also bears the risks of abuse and corruption.

Sida and Bosnian counterparts

Sida should stress its policy and concerns with regards to corruption in all its negotiations with Bosnian counterparts. These concerns should be reflected in all relevant programming and project documents to be signed with beneficiaries. The concern over corruption should also consider a situation where implementing partners are held responsible for results, and fewer questions are asked over how these results were achieved. Where possible and useful, Sida might want to reflect on conditionality if anti-corruption provisions of agreements are not fulfilled. Sida might want to consider to pro-actively communicating its anti-corruption policy to stakeholders.

In line with its assistance goals, Sida should insist in holding Bosnian counterparts responsible for policy commitments they have entered.

- Most importantly, this concerns the Anti-Corruption Strategy of the Medium-Term Development Strategy (or Poverty Reduction Strategy Paper). Although the MTDS' goals are in line with those set by the EU pre-accession agenda, they also have a wider, pro-poor focus. The Bosnian authorities should not have an option to neglect these commitments by refocusing their attention on the Stabilization and Association Agreement (SAA) negotiations, only.
- SAA negotiations are likely to start in 2005. There is a possibility that this could lead to a de-prioritization and obstruction by the Bosnian authorities of some key reforms, such as the police reform. Sida should insist on the importance of such reforms – one of the tenets of which is the de-politicization of the police forces - for an effective response to corruption.
- Sida should insist on the Bosnian counterparts fulfilling commitments entered on the regional level, in particular those in the framework of BiH's membership of the Council of Europe, and specifically when it comes to agreements on the provision of mutual legal assistance with neighboring countries.

Project and Programme Level

Sida should build in (mainstream) anti-corruption safeguards in all interventions through a check for *technical* and *welfare relevance*. Technical relevance concerns whether a proposed programme or project will have an impact on the form of corruption one seeks to address. Welfare relevance on the other hand seeks to understand the importance of a given project or programme on overall targets like economic growth and poverty reduction. It is important to note that an intervention can be well suited for addressing a given corruption problem, but that reducing this form of corruption is a relative little importance on reducing poverty. Doing analysis on the root cause of any given problem and making sure that the tools are tailored to meet the context in question is of utmost importance. Entry points can be found at many levels.

Pro-poor Projects: Social Audits

Sida should consider addressing some of the issues addressed above, in particular in key public sector service delivery areas that affect the poor most. It is where people interact with the state that their trust in society is built up or lost. So could, for example, social audits in the health and education sectors involve a wide range of stakeholders at community level through a consultation mechanism. It could also provide the government at central level with data about the real situation on the ground and system leakages due to corruption and/or mismanagement that occur from the central level down to the local level. On the basis of this, remedies for existing leakages could be designed with stakeholders and policy makers, providing a model for an inclusive consultation

process. At the same time, authorities could be hands-on trained on data collation and processing. Repeat audits could measure impact of reforms and improvement of the situation from the stakeholder perspective. The advantage of such an approach to corruption would be that the government would be given tangible tools to make the distinction between mismanagement and corruption and to communicate this difference to the public. It would also fill the existing gap of absence of data needed for policy making and would build the capacity of the government to collect, analyse and translate data into efficient policy reforms. Further, the government would be seen to be tackling the problem.

Support to Local/Municipal Level Politics

The joint Sida/USAID funded Governance Accountability Project appears to be the right direction to take, and Sida should, after a first year evaluation - with stakeholders on the ground - consider to increasing this type of intervention. It increases transparency and accountability of local politicians vis-à-vis the electorate and supports those politicians with tangible mechanisms and tools, who have the interests of their citizens at the heart of their agenda.

At the same time, efforts should continue to influence and support the strengthening of local/municipal level government through the elaboration of necessary legislation at central policy making level.

Working with the Private Sector/Business Community

More interventions should target the private sector/the business community (maybe based on the recommendations coming out from the EC functional reviews of the economic sector, but also based on the recommendations for piecemeal legal reform coming from the work of the Bulldozer Commission). There should be a particular focus on activities involving small- and medium size enterprises, on which much of the economic future of the country will depend, and which will, eventually, lose out on business in a corrupt environment. At the same time, Sida should be careful to not only target the small players, while big corruption (in state-owned enterprises and in corruptly privatized enterprises) thrives. This is a point that is often made by business people in the region, who represent small, 'unsophisticated' businesses, such as building/construction companies, for which there is a huge competition. They feel that while initiatives to make their operations 'cleaner' target them, nobody ever looks at the big fish. They also say that they have simply no other option than engaging in bribery and corruption, because if one of them really stays clean, the business will be handed down to the next one in the line, and there are plenty to chose from.

The fragmentation of the business community is therefore an obvious weakness. Because one may rely on the power of numbers, more efforts should be used in strengthening the business associations and facilitate cooperation among them.¹⁶⁶ A part of the "strengthening process" could be to increase their membership and to better organize their capacity and openness. This would reduce the need for informal means of communication with the government. It will further give the associations the technical capacity to influence policy. The dialogue between government and business should then not be based solely on the interests of a particular firm or industrial branch, but rather on the interests of the wider business community.¹⁶⁷ Every effort should also be made to ensure that these organizations, internally and as coalitions, cross over regional and ethnic barriers. Sida could also help promote corporate governance and support the development of ethics training programmes with business associations as part of a larger programme to develop the private sector.

¹⁶⁶ This is already being done through support of the Regional Development agencies.

¹⁶⁷ The USAID funded Centre for International Private Enterprise have done projects along these lines.

One further avenue could be to work with the – albeit small - foreign investors' community in BiH, to make sure that they lead by example.

Other possible interventions could encompass involving the business community in overseeing the implementation of the new public procurement legislation.

Working with Civil Society

Large parts of civil society in BiH have lost credibility with donors. Still, there is no real way around working with civil society on corruption prevention and there are positive rewards to be had.

- Interventions could be conceivable that both assist the government on institutionalizing genuine working mechanisms of consulting with civil society. Likewise, assistance could be given to civil society organisations that have been part of consultation exercises to exert more efficient pressure to have their views reflected in the resulting policies (as opposed to having them participate in a pro-forma exercise).
- Possible projects could involve civil society at municipal/local levels, for example through supporting initiatives dealing with monitoring of municipal budgeting and local public procurement processes.
- Other projects could involve civil society monitoring of pre-election/campaign financing by civil society groups, based on methodology and experience of other transition countries.

When deciding on project beneficiaries, one of the requirements for applicants should be requested to demonstrate efforts made at acquainting themselves with lessons already learned from anti-corruption projects in the region.

Possibilities could be explored at supporting students' groups that have started to look at corruption as a problem affecting them independently from funding available (such as at Tuzla university). Possibilities could be explored in linking up with the network of universities created by the Budapest-based Central European University, which created specific cross-faculty anti-corruption curricula.

Addressing the information gap

Sida should consider supporting projects that would fill the existing information gap inside government, in particular in such areas that have a direct impact on policy making that benefits the poor.

Support to the Judiciary

Sida could consider supporting the ongoing efforts to reform the judiciary by:

- supporting the establishment of good Civil Courts;
- supporting measures to improve the safety in courts (witness protection and protection of documents/files);
- supporting the training of local prosecutors and judges on forensic auditing;
- continued support to international prosecutors (both investigators and technical experts are needed).

Institutional Support

The new legal framework introduced through wide-ranging legislative reforms over the past few years, Sida should now focus on making these reforms sustainable by supporting and strengthening those institutions that are charged with the enforcement of this new framework. This support could take a variety of forms:

- This analysis has pointed to the involvement of the police, military and security establishment in corrupt networks. Donors should recognise that these institutions do not have the strength to reform themselves as the countervailing forces are so strong. Sida could therefore consider strengthening its support to the police and security sector. To not strengthen SIPA at this critical time is to let an opportunity slip for making a state level multiethnic security establishment work.
- Funding of political parties and political competition is a difficult but necessary avenue to explore. More public financing of political parties is unlikely to reduce the problem of money in politics. Rather, parties can be supported in developing their capacity to conduct research, develop platforms, voter outreach campaigns etc. Political foundations in Sweden can be encouraged to make greater efforts to support their Bosnian counterparts.
- The Election Commission needs support to strengthen its oversight function over the spending of political parties. This pertains especially to the Law on political party financing and the Law on Conflict of interest.
- Training. There is still need for general training on issues such as management techniques, for example inside institutions such as the Indirect Taxation Authority and the institutions charged with the implementation of the new procurement legislation. Equally, there is endless scope for specialized training on issues pertaining to investigative techniques for financial crime etc.
- Facilitation of introduction of relevant information technology: Sida could consider supporting the establishment of an intelligence database for the use of the ITA/the single customs administration modelled and equipped to the standards of Sweden or Denmark.
- Continued Swedish support to the State Audit Institutions

Some of the above suggested interventions are short-term ones. While, for example, there is still a strong need for seconding of international staff to local institutions, such as the State Audit Office or the State Prosecutor's Office, this support will have to be phased out in the medium-term future. Sida should establish mechanisms to measure the impact of the work of the international prosecutors and discuss with OHR an exit strategy for this type of support.

Training Courses for Sida Staff

Sweden has recently joined the Utstein Group, and agency staff can be trained in this framework both through web based or in-country courses. In these courses staff can learn while at the same time share views and experiences with colleagues from other development agencies.

One point that is made in these courses is that agencies that operate in a corruption prone environment like Bosnia and Herzegovina have few problems in pointing out the nature of the problem and its consequences. Analyses often hold that corruption is the mother of all ills, one which breeds a lack of political will and block development outcomes. If one share this grim assessment, endlessly long perspectives are foreseen in getting tangible results, or hasty exit

strategies are sought. Under both scenarios poor people and fragile states are left to fend for themselves. Sida has chosen neither of these strategies. While recognizing the fact that BiH has a long way to go in order to consolidate a functioning democracy, the agency is impatient, and has chosen to allocate both resources and personal to assist Bosnia and Herzegovina in the 2006-2010 period. For all those involved the problems described in this report constitute a serious intellectual and professional challenge.

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SUMMARY

In Bosnia and Herzegovina, we find that corruption exists in all its facets – bribery, nepotism, embezzlement, diversion of public funds, tax fraud, illegal rent seeking, kick-back schemes etc. The victims of corruption are often the most vulnerable groups: the elderly, the unemployed and other low-income groups, who cannot afford to pay for up-grades of health care services; women, who, through traditional role patterns, are more often exposed to corruption; and minorities, facing a judiciary and administration appointed according to ethnic majority criteria, are denied impartial treatment based on clearly established rules and regulations. Defining an anti-corruption agenda for the international community in general, and for bilateral donors like Sida in particular, is a challenge under these circumstances. Experience from anti-corruption interventions elsewhere suggests that progress cannot be achieved without the full cooperation of national authorities. The lack of political will described in this report could justify a recommendation not to engage until the circumstances have changed. However, the authors believe that it is essential to address corruption and organized crime in BiH – both in order to minimize the consequences for Europe and to facilitate the countries progress towards Europe. Giving the way NGOs interact with citizens, government and the donors:

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