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BOSNIA-HERZEGOVINA

MONITORING AND EVALUATION SUPPORT ACTIVITY (MEASURE-BiH)

A Cross-Cutting Survey of Corruption and Anti-Corruption Issues in Bosnia and Herzegovina:
Overview, Challenges and Recommendations

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Foreword

Conducting an assessment of anti-corruption issues, initiatives and recommendations in Bosnia and Herzegovina (BiH) in 2015 is akin to drafting a short history of international state-building and economic reform efforts in the country over more than a decade and a half. Political elites' apparent capture of a fragile and contested BiH still recovering economically, politically and socially from Europe's worst armed conflict since World War II has created not only a development and democratization challenge, but also a security challenge.

This assessment looks at the issues of corruption and anti-corruption through eight different approaches to reform that have been tried, and that to date have failed to make a macro-level impact in terms of reducing corruption and increasing democratic transparency.

Each chapter of this assessment can be read separately to provide a view of reform efforts in a specific sector. Read together, this report describes the difficulties of state-building and peace-building in a state shaped by war, ethnic cleaning and a peace agreement that froze the conflict without yet remedying its roots.

It has become a cliché to say that every year in BiH, and every election in BiH, is somehow pivotal to the country and its future; yet still the country limps on, neither at war nor at peace. The country is far from thriving, lagging behind its neighbors in many respects. The lack of reforms over several years, and the rollback of progress in many areas, is a concern to its citizens and international observers. The social unrest in 2014 showed that BiH is not exhibiting signs of stability, but of stagnation. While similar uprisings have not occurred in the early months of 2015, many continue to ask how much more people can take before the fragile status quo is seriously threatened, either in a positive or negative direction.

This report offers a chance to assess why the hundreds of efforts to date have not struck at the root causes of BiH's pervasive corruption, and to re-group to more effectively prioritize efforts and coordinate resources. Nearly all of the pieces of the puzzle exist; they are just not being put in place to potentially trigger a real call for change.

The author would like to thank Armina Mujanovic for research support in this effort, and the team at USAID/BiH MEASURE-BiH implemented by IMPAQ International, USAID and the US Embassy for the opportunity to support this discussion.

Valery Perry

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Note: The following materials are included as separate attachments:

- Plenum demands diagram
- Comparative state practice memo on anti-corruption commissions
- Comparative state practice memo on conflict of interest approaches
- Comparative state practice memo on direct elections
- Comparative state practice memo on election timing
- Comparative state practice memo on closed/open/mixed lists
- S. Brady paper on organized crime in BiH
- T. Donais article on corruption and political stalemate

I. Executive Summary

Corruption is widely recognized as a key problem in Bosnia and Herzegovina (BiH) by public opinion polls and various independent assessments and reports. Political and institutional barriers have impeded efforts to reduce pervasive corruption and public perceptions of corruption. Nearly two decades after the end of the war, and after billions of dollars have been spent on aid, support and investment, pervasive corruption persists and is even tolerated. This problem has been much – and accurately – diagnosed, including in many USAID documents; however, effective remedies have not been consistently, impartially, and independently implemented.

This assessment reviews past and current approaches to projects and initiatives to reduce corruption, including efforts to strengthen an independent judiciary, and increase good governance, economic development, public sector reform, and civil society support – all approaches both directly and indirectly tied to curbing corruption. It is fair to say that nearly everything suggested by USAID and others in terms of potential anti-corruption projects has been or is being tried. It is unlikely that a new project on anti-corruption will make a significant difference.

However, while a project-driven approach is unlikely to be substantially successful, **a problem-driven task force approach** with top-level, cross-cutting support and dedicated coordination potentially could make a dent in the problem, and could send a public signal that the US not only understands the extent of the problem, but is prepared to tackle the problem. As demonstrated in this assessment and acknowledged in many USAID documents, many of the pieces of this approach are in place; what is missing is strategic programmatic and political coordination.

As Yemen crumbles, MENA rumbles and economic measures in critical places tumble, BiH can easily fall low on the U.S.'s list of priorities. However, there is no need to expend significant new resources; rather, existing resources can be better used and backed by **policy coherence**. The alternative is a lasting hole in Europe, and diminishing the U.S.'s formerly strong reputation in the region. Rather than promote cosmetic successes in this “Dayton + 20” year, the U.S. has an opportunity – and in fact a competitive advantage – to focus on one of the biggest post-war social, economic and political problems in BiH – corruption – and to demonstrate that it understands the impact of this issue, and is prepared to target its efforts at increasing the accountability necessary to end 20 years of party and elite capture of the state.

2. Key Recommendations

A chart of thematic recommendations is included in this package, with the context and rationale provided in the narrative. The U.S. Mission is encouraged to discuss all of the available options noted. The following are among the most important recommendations that the U.S. Mission should consider:

- Establish a **task force within the U.S. Mission** to coordinate various USAID partners and other donors' projects relevant to anti-corruption
 - Coordinate policy, programmatic efforts and political information
 - Ensure a shared focus on key identified issues
- Identify ways to take **lucrative public companies** out of the hands of political parties without repeating the privatization mistakes of the past
- Support the role of **asset/property declaration cards** in promoting transparency and identifying abuses of office by improving access to freedom of information, and introducing verification measures, investigation and related public/private messaging campaigns
- Increase support for **auditing bodies**, including more aggressive auditing and follow up on reports of public companies and development banks; introduce more mechanisms to ensure an independent, institutional response to audit findings
- Bundle **needed legislative changes** into an “anti-corruption package” that would be more relevant to citizens than the current ad hoc approach; build business-civic coalitions
- Support establishment of comprehensive, independent **corruption case analysis**, to determine why cases fall apart; possibly supplement non-legal NGO efforts, and a planned USAID effort, with an OSCE extra-budgetary effort to ensure that findings are not “just American”
- Continue to support **quality investigative journalism**, including periodic follow up on reporting; include research on political party links to foreign investment in BiH
- Support civic-business coalition to establish a **state Ministry of Agriculture**, to open economic opportunities and reduce corruption in agricultural subsidies
- Coordinate effort to **end at-will use of “urgent procedure” legislation adoption**, a tactic that cuts off public discussion of important issues
- Continue to support **civic efforts in anti-corruption initiatives**; target smaller networking efforts of participants engaged around specific themes (public procurement, conflict of interest, public employment, etc.); engage civic networks with broader task force to **bridge the political and the civic** (top-down/bottom-up)
- **Resist election law changes** that would further reduce accountability; identify new ways to target political capacity building support to agents of change, not political parties
- Consider ways to involve Interpol or Europol to address serious **organized crime with a regional dimension**, in cases in which there is insufficient domestic will or ability to investigate and prosecute cross-border criminal activity

3. Proposed U.S. Engagement Strategy

Nearly two decades of experience has shown that reform is difficult in BiH. However, the following substantial reforms have been made:

- The establishment of the Court of BiH (2000) and the HJPC (2002)¹
- The establishment of a single Ministry of Defense, and elimination of entity level ministries of defense (2005/06)
- The closing of the payment bureaus (2001),² and the introduction of the VAT (2006)

These reforms were *not* simply imposed by the Office of the High Representative using the Bonn Powers. They did, however, represent sustained concerted effort and international coordination and resolve.

In the case of corruption, a “project model” will not work; the problems being discussed will not be solved through a service delivery approach.³ A problem-solving, cross-cutting task force model is needed; this approach would be in line with Jennings’ and Aplan’s recommendations that a “problem set” lens should be applied to break the country’s general political and economic deadlock.⁴ Any engagement should not be activity-focused and transactional, but politically strategic and **transformative**. Such an approach would reflect the 2015 *USAID Practitioner’s Guide for Anticorruption Programming*, which notes that “several studies have shown the importance of multipronged, comprehensive and whole-of-government efforts that incorporate prevention, public education and law enforcement,” and discusses eight multipronged efforts supported by USAID in sub-Saharan Africa.⁵

Beyond political and programmatic coordination aimed at strategic thinking and connecting the dots, much can be done within the existing USAID projects underway; strategic coordination would provide a multiplier effect.

Coordination within the U.S. Mission is essential.⁶ Coordination with international partners is also critical, but not guaranteed. The U.S. should make its interests clear, work with those

¹ The Law establishing the Court of BiH (BiH State Court) was imposed by High Representative Petritsch in 2000 (Decision Establishing the BiH State Court) available at http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=362. The Law establishing the HJPC was imposed in 2002 (Decision Enacting the Law on the High Judicial Council of Bosnia and Herzegovina) available at http://www.ohr.int/decisions/judicialrdec/default.asp?content_id=8464.

² A USAID project, “Fiscal Reform in Support of Trade Liberalization,” provided \$14 million of assistance from 1999-2004 on this and related matters. See https://egateg.usaid.gov/sites/default/files/bosnia_treasury_and_payment_bureaus.pdf

³ Brady notes a similar frustration with projects through her interviews: “Some suggested that the IC continued to fund and invest in projects etc. even though they knew of the high levels of corrupt behavior. It was suggested that even when they were in a position to act they failed to do so, doing the same thing over and over again.” p. 42.

⁴ Jennings and Aplan, p. 9.

⁵ Bertram I. Spector, Svetlana Winbourne, and Phyllis Dininio, Management Systems International for USAID, *USAID Practitioner’s Guide for Anticorruption Programming* (January 2015), 15.

⁶ It has been noted that various natural disaster responses could provide examples of how to coordinate such an effort. USAID’s Steven Majors (Program Office Director) notes that the 2014 U.S. flood response provided some good examples of internal U.S. coordination, donor coordination, and messaging. Steven Majors, e-mail message to author, February 4 2015. However, while certain elements may apply, the different nature of an unforeseen calamity from a long-term systemic problem must be acknowledged.

countries and missions that support the anti-corruption focus, and ensure that the public recognizes the U.S.'s understanding of and focus on this issue. Austria, the Netherlands, Norway, Belgium and Sweden are among those countries that have supported relevant anti-corruption programs in the past (or currently) and could have an interest in a new approach to the country's stalemate. There is much that the U.S. can do on its own, particularly in aiming to shine a light on the issue, to show its recognition of the problem and specific junctions of dysfunction and demonstrably support agents of change.

Respondents often note that IMF funds are used to prop up the status quo and, in fact, reward the lack of reforms, with many suggesting that all external funds need to be simply cut to "starve the beast." However, it has also been pointed out that while the regular tranches of IMF loans do go directly into the budget and enable the country to meet its obligations, these funds pale in comparison to the money available and accessible in the available BiH budgets generally. (EU IPA funds are seen as even less desirable by politicians and decision-makers, as these funds are directly tied to projects.) Getting a stronger grip on how domestic sources of funds are spent is, therefore, critical, and can proceed independent of any decisions on IMF or other external funds.

Strategic coordination could be managed by a dedicated focal point at the Mission working as a political intelligence and coordination officer, with a direct line of communication to both the Embassy and USAID. Currently, there is little demonstrated capacity to connect the dots among donors' programs and activities, formal and informal civil society, citizens' efforts, journalism, academic research, and international policy initiatives. Further, there is a need for political intelligence to be mustered to both consolidate and operationalize political intelligence of the sort noted by Jennings and Aplon: network connections; party interests; regional links, etc.⁷ Strategies could be red-teamed and discussed to determine political and programmatic opportunities, risks and risk mitigation opportunities. Finally there is a need to ensure that the U.S. Mission articulates clear and consistent messages and talking points, and considers the citizens' perceptions when engaging in photo ops, media statements, and meetings with official and civic stakeholders. The citizens of BiH need to see that the U.S. understands the underlying reasons for the lack of accountability; if not carefully approached, the U.S. risks being viewed as ignorant of reality, complacent or complicit. This would be in line with USAID's approach of radical transparency.

This approach would not take substantial new resources, and in fact could be considerably less expensive than a new "project." This report is lengthy because it details the many approaches that have been tried, and currently are being tried; all of the pieces of the puzzle are there, but political coordination has been lacking. The proposed approach could help to resolve the problem of little to no systematic political and programmatic coherence, and ensure that the problem of corruption is approached from all of the necessary directions.

In short, what is required to remedy corruption in BiH is a clear expectation in terms of reform, a harmonized approach to move in that direction, agreement among all international actors that this is a priority and dedicated support not simply in the drafting stage, but throughout the reform implementation stage.

⁷ Jennings and Aplon, p. 10.

4. Introduction

4.1 Statement of Purpose

The purpose of this report is to provide a survey of the problem of corruption in BiH, to review efforts to improve anti-corruption initiatives and, based on past and present experience, provide political and programmatic recommendations for the future.

4.2 Methodology

4.2.1 First Principles and Key Questions

A three-page document from USAID (which roughly served at the Statement of Work; no title but first words on page 1 are “First Principles”) provided a broad framework in which to consider this issue. The following are the two first principles:

1. “Bosnia and Herzegovina is under State capture
2. The only way to fight State capture is to (a) decrease the gains to private individuals or parties who are benefitting, (b) increase the cost to politicians who are complicit”⁸

The rest of the three-page document poses questions and issues that the author explores in this research. The author addresses the questions contained in the document throughout this report, with one exception. The section reviewing the demand-driven/social accountability Anti-Corruption Civic Organizations Unified Network (ACCOUNT) project is aimed at serving as an informal and broad project assessment, and, therefore, the author addresses each of the six noted “social accountability” points directly in that section.

Within this framework and direction, the following key questions have provided a foundation for this research and analysis:

- What is the problem that needs to be solved in BiH to reduce corruption?
- What programmatic efforts have been tried?
- How can USAID identify pressure points in the system that will facilitate lasting and meaningful change?
- How can USAID leverage current projects, and create a “task force” environment to ensure a strategic and coherent approach?

The term “corruption” is used throughout the report to encompass petty corruption, organized white-collar crime and abuse of office, and organized crime. The definition of corruption used by Transparency International (“TI”) provides a useful baseline: “Corruption is the abuse of entrusted power for private gain.”⁹ Similarly, this report takes a very broad view of what constitutes an “anti-corruption initiative.” Therefore, while a project like ACCOUNT may have the concept and even the words in its very title, indirect efforts that are aimed at more broadly reforming key structures – such as the judiciary – are in fact even more critical.

⁸ “First Principles.” USAID document, 3 pages, December 2014.

⁹ Transparency International, accessed February 24, 2015, <http://www.transparency.org/whatwedo?gclid=CNOA9-vrIMMCFQGc2wodHK8AYQ>

4.2.2 Theories of Change

There are no formally stated theories of change to guide the work of the many various USAID initiatives addressing the issue of corruption in BiH. (The ACCOUNT project does have a theory of change, as noted in review of demand driven activities.) For the purposes of this report, the following is offered to frame the analysis and provide food for thought for future programming.

The U.S. government has provided extensive support to strengthen accountable, good governance and develop an independent judiciary grounded in the rule of law. Such efforts are based on the assumption that such reforms are needed to consolidate democratic and liberal political and economic practices. Effective reform in these areas can also greatly reduce the opportunities for public officials to freely engage in corrupt practices, thereby limiting corruption and in turn increasing public confidence in their government and institutions, and in the democratic process and free market.

To date the effectiveness of all reform efforts has been hampered by a lack of electoral, institutional and personal accountability among the country's leaders. There are no consequences for the failures of leaders to address the problems of corruption or unemployment, or inability to export agricultural products to the EU, or poor food inspection regimes, etc. There are also no incentives to do so.

The proposed theory of change is the following: Public officials in BiH have demonstrated that they will not act in an accountable manner in the absence of a reason to do so. USAID and its partners can seek to increase the pressure by coordinating their efforts to identify the lack of accountability in the system, while at the same time tying funding and expert resources to demonstrated progress in embedding independent and enforceable accountability mechanisms into the political system. This will signal to citizens not only that the U.S. understands the sources of the problem, but that to reduce official corruption in BiH the U.S. is prepared to increase the consequences for perpetrators of corruption, thereby strengthening citizens' faith in the democratic process and rule of law.

4.2.3 Data Collection

Due to the short timeframe for this effort,¹⁰ the author's research is not comprehensive, but indicative. The author aimed to review as many key reports as possible to ensure a broad understanding of the key issues and challenges, and to speak with a variety of local experts, donors and project implementers.

¹⁰ The assessment was conducted over 30 business days, with USAID meetings on December 30 and 31, 2014. On 30 January 2015 a draft was provided to the U.S. Mission, and on 2 February 2015 a presentation and discussion were held with Mission staff to gather initial feedback.

Primary Sources

The author held more than 35 interviews/discussions between December 30, 2014 and February 13, 2015. A complete list is provided in the Annex. Most interviews were in person; however, a number of telephone interviews were held.¹¹

The following were the main targets of interviews and discussions:

- International/donor community representatives, to learn about their past and current efforts in terms of anti-corruption initiatives, and their recommendations
- Relevant NGOs
- Independent experts

Due to the short timeframe, MEASURE-BiH made a conscious choice not to interview local leading officials in relevant bodies: for example, the Chief Prosecutor, President of the Court of BiH, the High Judicial and Prosecutorial Council (HJPC) or the Head of the Agency for Anti-Corruption. There is little reason to believe that such interviews would yield any actionable information that cannot already be gained through press reviews and discussions with secondary respondents with experience with these institutions.

Secondary Sources

The author conducted a literature review, reviewing the most important and comprehensive reports, assessments and project documents done to date. Information is extensively cited in the footnotes.

This research process should not be considered to be a thorough “mapping” exercise. UNDP has been supporting a mapping exercise on the topic of anti-corruption since late 2013. UNDP distributed a questionnaire to key institutions and agencies to gather information on anti-corruption projects and initiatives and has compiled more than 40 responses into a database. This information will be given to the new Anti-Corruption Agency (APIK), likely in the first quarter of 2015. It is hoped that APIK will choose to share this information in some format.

4.2.4 Structure of the Report

The report is structured in the following manner. First, the author provides an overview of the corruption context. Next, the author reviews eight different thematic issues relevant to effective anti-corruption strategies. Each section includes basic context and a summary of key problems, a survey of selected interventions to date to remedy these weaknesses, and then recommendations on how to shape future engagement. The author concludes with thoughts on the reasons why BiH matters to the U.S.

The annex contains a number of materials, including a supplementary overview chart of recommendations, and additional background materials as noted in the text.

¹¹ This was the case with semi-structured interviews with NGOs participating in the ACCOUNT network. Telephone interviews were held with seven NGOs throughout BiH.

5. Corruption and Anti-Corruption Initiatives in BiH – The Context

It is useful to start with a question:

What prevents (or minimizes) corruption in well-functioning societies?

Three basic answers can be identified:

- Elected officials who consider engaging in corrupt practices are deterred from doing so out of fear of being voted out of office
- Officials or political elites who try to engage in corrupt practices are prevented from doing so by working checks, balances and preventive mechanisms
- Officials or political elites who engage in corrupt practices are investigated, prosecuted and convicted, removing them from the picture and sending a public message

This report demonstrates that all three incentives are lacking in post-Dayton BiH.¹²

Public opinion polls and various independent assessments and reports recognize that corruption is a key problem in BiH. The following excerpt from the 2014 European Commission Progress Report for BiH provides a good summary:

“There was little progress in advancing reforms to reduce corruption, which continues to affect the entire public sector and remains most acute in the areas of service delivery and access to employment. Political patronage networks are widespread and influence all levels of government. Investigation and prosecution in high-profile cases remain insufficient and the overall level of effective investigations, prosecution and convictions is low. There is little political will to move beyond rhetoric and tackle corruption, including investigations and convictions in high-profile cases. There has been overall limited progress tackling organized crime, which remains a serious concern despite some successful joint operations, including through close coordination with neighboring countries. Fighting organized crime and corruption is fundamental to countering criminal infiltration of the political, legal and economic systems.”¹³

While there is a general nostalgic myth that before the war there was no organized crime and corruption, this is not the case.¹⁴ The war, however, led to new power elites and structures, and fed on and contributed to divisive ethno-national politics. In his book on the siege of Sarajevo and the rise of criminal activity, Peter Andreas notes, “The siege thus provided an effective vehicle for initial capital accumulation, which in turn placed the new elites in the most advantageous position to profit from the peace.”¹⁵ Years of polling data in

¹² The role of an independent media in supporting all three elements cannot be ignored.

¹³ European Commission, *Bosnia and Herzegovina Progress Report* (October 2014) 2, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf

¹⁴ Brady explains that in fact crime and corruption began to rise in the 1980s as decentralization loosened central controls. Sheelagh Brady, *Organized Crime in Bosnia and Herzegovina* (October 2012). This report is provided in the attachments, and was drafted by a criminologist with experience at the EUPM. It was presented to ICITAP staff in early 2013.

¹⁵ Peter Andreas, *Blue Helmets and Black Markets* (Ithaca, NY: Cornell University Press, 2008), 123. Andreas goes on to note the following: “Moreover, local war profiteers on all sides of the conflict, including many

BiH show that citizens view corruption as an urgent problem in BiH.¹⁶ BiH consistently ranks poorly in Transparency International's Corruption Perception Index. (In the 2013 Index, BiH ranked 72, tied with Brazil, Sao Tome and Principe, and Serbia).¹⁷ Other countries in the region also struggle with corruption.

The problem of corruption in BiH has been understood for more than a decade. In February 1999, the Office of the High Representative (OHR) announced the first "Comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina."¹⁸ "In a 2000 report on crime and corruption in Bosnia, the US General Accounting Office suggests, in fact, that 'having used illegal networks for military and economic ends during the war, political parties are now inseparable from criminal organizations'."¹⁹ Van de Vliet notes a 2001 World Bank report referencing both "state capture" and "administrative corruption" in BiH.²⁰

There have been many subsequent strategies (as outlined below), creating a Potemkin village of reform without many lasting and tangible results. International engagement has ranged from the executive (early examples of the High Representative's executive engagement included the removal of Federation Prime Minister Edhem Bicakcic from his position as Elektroprivreda (the public electricity agency) in 2001 for abuse of office, and the seizure of Herzegovacka Banka in 2001 due to concerns about the bank's role in supporting Croat secession or third entity movements,²¹ to the technical (endless capacity building support to various level of government and civic actors).

politicians and military commanders, were shielded from prosecution thanks to a sweeping amnesty law. When international officials pushed for an amnesty law for draft dodgers and deserters, local politicians opportunistically expanded the amnesty to include such crimes as illegal commerce, tax evasion, and illegal use of humanitarian aid. The time period covered by the amnesty was from January 1991 to late December 1995." (Andreas, 123-124). The source for this is noted as an interview with a senior official in the Bosnian Intelligence Agency in 2002. This claim has not been independently confirmed.

¹⁶ Explicit questions about corruption were included in a poll commissioned by PILPG as a part of the USAID-funded project, "Constitutional Reform in Bosnia and Herzegovina: Engaging Civil Society" in mid 2013. Raluca Raduta analyzes seven polls conducted between 2007 and 2013, five of which include the topic of corruption. (The polls were commissioned by UNDP, CCI, NDI, the University of Edinburgh and PILPG.) She additionally examines the link between corruption and the economy, and citizen views on the justice sector. Raluca Raduta, "Constitutional and Governance Reforms in Bosnia and Herzegovina: Does Public Opinion Matter?" *Democratization Policy Council Policy Note #8* (January, 2015): 8-12, <http://www.democratizationpolicy.org/uiimages/DPC%20Policy%20Note%20New%20Series%208%20Does%20Public%20Opinion%20Matter.pdf>

¹⁷ Transparency International, *Transparency International Corruption Perceptions Index 2013*, 5, accessed February 24, 2015, [http://www.ey.com/Publication/vwLUAssets/EY-Transparency-International-Corruption-Perceptions-Index-2013/\\$FILE/EY-Transparency-International-Corruption-Perceptions-Index-2013.pdf](http://www.ey.com/Publication/vwLUAssets/EY-Transparency-International-Corruption-Perceptions-Index-2013/$FILE/EY-Transparency-International-Corruption-Perceptions-Index-2013.pdf)

¹⁸ Office of the High Representative, *A Comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina* (February 15, 1999), http://www.ohr.int/ohr-dept/afd/ac-cor-strat/?content_id=5240

¹⁹ Donais, p. 363.

²⁰ Sebastian Van de Vliet, "Addressing Corruption and Organized Crime in the Context of Re-establishing the Rule of Law," *Deconstructing the Reconstruction: Human Rights and the Rule of Law in Postwar Bosnia and Herzegovina*, ed. Dina Francesca Haynes (Surrey, England: Ashgate, 2008), 209.

²¹ Van de Vliet, "Addressing Corruption and Organized Crime . . .," 212-213.

Box 1: Selected Findings – 2012 Report, Organized Crime in Bosnia and Herzegovina

“From before the war, but more identifiable during and after, relationships emerged between organized criminals and the powerful elite, some arguably the result of necessity to keep the status quo, and some because of a desire to protect personal and/or professional interests. Some of these relationships are still said to be evident today.”

“An accurate picture of the extent of OC and related criminal groups is also somewhat limited. This is, allegedly, due to issues such as a lack of intelligence data, limited data exchange, police agency structures, political obstruction, limited/restrictive budgets, etc.”

“The police agencies, albeit criticized due to structure and processes, do not appear to be heavily criticized in respect of corruption, but the prosecutors and judiciary are heavily so. Serious allegations of corruption are rife within this area from those interviewed.”

“A large number of allegations of improper practices emerged, not only in the criminal justice systems, but also within the political and business realms, many of which should not be left unchecked. For example, allegations of involvement of members of the powerful elite with drug trafficking, unofficial weapon production, etc. require further investigation.”

“Worryingly, the issue of nontraditional types of organized crime, such as privatization, procurement and tender fraud, was continuously being highlighted as areas of huge concern, due to the level of associated corruption. However, little response was evident in this area. In fact, many of the police agencies noted that they did not have the capacity to investigate these offences, or emerging crimes, such as cybercrime, financial crime, etc.”

“A lack of transparency, accountability and oversight was apparent on many levels, and although the majority of those interviewed acknowledged the existence of a number of areas of concern, very little in the way of suggestions of how these three key elements could be implemented. In the majority of cases, acceptance of faults did not appear to be matched with a willingness to act, noted by continuous reference to a lack of political will for change.”²²

Using a typology of four different types of corruption syndromes presented in the *USAID Anticorruption Assessment Handbook: Final Report*, the author of this report contends that BiH most strongly displays characteristics of third noted “type”:²³ “Oligarchs contend in a setting of pervasive insecurity.” The insecurity is a legacy of the violent war, the fragile peace, and the non-linear post-war development and reform process. The oligarchs include many individuals who rose to power and prominence during the war, became legitimized in rapid post-war elections, and institutionalized both politically and by privatizing former state assets. Certain elements of Type II (“High-level figures collude to weaken political/economic competitors”) and IV (“A dominant inner circle acts with impunity”) are also visible. (Prior

²² Brady, pp. 5-6.

²³ Bertam I. Spector, Michael Johnston, and Svetlana Winbourne, Management Systems International for USAID, *Anticorruption Assessment Handbook: Final Report* (February 28, 2009) 13, http://pdf.usaid.gov/pdf_docs/pnadv270.pdf

to initiating any new anti-corruption initiative, U.S. Embassy and USAID staff should discuss the four different syndromes and their relevance to BiH.)

A number of political and institutional barriers have impeded progress in remedying pervasive corruption and public perceptions of corruption. Nearly two decades after the end of the war, and after billions of dollars have been spent on aid, support and investment, corruption remains problematic and is even promoted. Many USAID project documents have diagnosed the problem of corruption; however, consistent, impartial and independent implementation of effective remedies remains elusive. To a large extent, anti-corruption efforts have failed because the system has its own fuel source. “[The] existing institutional logic of BiH of ethnic-identity based politics and administration empowers corrupt elements in the society, and those elements, in turn, attempt to use their resources to further maintain the institutional logic of ethnicity that empowers them.”²⁴

The structural and political sources of corruption – and impediments to successful anti-corruption efforts - in BiH include the following key elements that reflect a state (at all levels) that has been captured by a narrow circle of cooperating political party elites.

- There is a lack of systemic incentives in the political and electoral systems that might prevent or punish official corruption.
- While the legislative framework for anti-corruption efforts has improved, there are still gaps and weaknesses. However, of greater concern is the uneven or non-existent implementation and enforcement of legislation, and Constitutional Court decisions.
- The lack of truly independent, funded, and empowered bodies able to fight corruption impedes prevention, investigation, and prosecution. BiH’s weak, politicized, ethnified, and fragmented political system facilitates capturing intended systems of oversight and enforcement.
- In a fragmented system, coordination without independent enforcement mechanisms does not create an environment conducive to effective prevention and prosecution of corruption.
- In spite of intensive, long-term support for the judicial system, at every level (state, entity, and canton/district) convictions frequently are overturned.²⁵
- Audits and investigations are often incomplete or ignored, with little connection to investigation or criminal charges.
- Public companies, development banks, and public tenders/public procurement provide immediate and lucrative opportunities for political gain.

²⁴ Vilmos F. Misangyi, Gary R. Weaver and Heather Elms, “Ending Corruption: The Interplay among Institutional Logics Resources and Institutional Entrepreneurs,” *The Academy of Management Review* 33, 3 (2008): 757.

²⁵ This is a common complaint today, but is not new. Peter Andreas notes the following in his book *Blue Helmets and Black Markets*: “Frustrating prosecutors was the fact that about 90 percent of the organized crime convictions between late 2003 and mid-2006 were revoked, revised, or modified for the betterment of the defense. Witnesses were reluctant to come forward due to a general lack of public trust and confidence in the legal system. With a low probability of conviction, defendants had little incentive to plea bargain – denying the prosecution a powerful tool commonly used in Western courts.” Andreas, *Blue Helmets and Black Markets*, 126. This issue is not limited to corruption cases, as explained in a recent piece looking at war crimes, noting, “Concerns have been raised after the appeals chambers of the Bosnian court made 20 decisions in 2014, only three of which confirmed in full the first-instance war crimes verdict. In all the other cases, the verdicts were either quashed or amended.” Denis Dzidic, “Bosnian Court Criticized over Quashed Verdicts,” *Balkan Insight* (January 26, 2015) <http://www.balkaninsight.com/en/article/bosnian-court-criticised-over-quashed-verdicts>.

- The country's bloated public sector remains staffed based less on merit and ability and more on connections and patronage. There are few incentives for employees to do their jobs, take risks, or seek to change and improve the systems from within.
- "Demand driven" efforts to reduce and end corruption through organized civil society, investigative journalists, or calls to action by informal citizen groups such as the plenums, have failed to substantially affect the environment in which corruption thrives. Voices are ignored, and BiH actors and the international community alike have missed opportunities to link anti-corruption messages to higher order politics.

Each one of these points is grounded in a common theme: ***the complete lack of accountability in the system.***

It is not likely that BiH's corruption problem can be solved solely by capacity building; it is conceivable that \$1 billion could be spent on sub-systemic solutions to little effect (nearly all respondents agree with this assessment).²⁶ Nevertheless, this report and the accompanying overview chart provide a number of specific recommendations. The following broad themes are represented in the recommendations:

- Any international effort on this issue requires both political and programmatic coordination among all international actors. Ideally, the actors would include the U.S., E.U., Switzerland, Norway, the IMF, the EBRD, the World Bank, and the OHR. A steering board to this effect is needed.
- In the absence of a direct and stated commitment by the international community to fight/reduce corruption, it is likely that little will change for the better; in fact the situation in BiH could very well continue to deteriorate.
- Specific, targeted, and consistent pressure needs to be applied to all relevant institutions to determine why specific, named cases are not investigated; why investigations are dropped; why convictions are overturned; and why institutions are not doing their jobs. This pressure should be both private and public.

The crucial issue remains that ***there is no reason for high-level politicians to fight corruption.*** The normal electoral incentives that should encourage honest behavior in a democracy do not exist in BiH, because its political system is built largely along ethnic electoral districts and constituencies built on patronage. The normal systemic checks and balances are not independent and are subject to consistent direct and indirect pressures. High-level allegations of corruption are rarely prosecuted, creating a climate of seeming impunity. This sense of impunity trickles down throughout the system: lower- and middle-level corruption affects people in their day-to-day lives, and is only sporadically prosecuted.

The solution is not – and cannot be – simple. For example, *centralization* would not be a silver bullet; if centralization and ethnic/territorial congruity were the answer to the country's corruption problems, then the RS should be an example of good practice. However, it is not. Simple *decentralization* (devolving competencies to municipalities) will not be sufficient if the higher level political and electoral rules are not changed; effective local

²⁶ The EU has a web page on which it details the money it is spending in BiH, noting it has spent more than 3.2 billion Euro between 1991 and 2013. (This would presumably not count individual country provision of bilateral funds, or military expenditures during the war or in EUFOR.) It is reasonable for citizens to wonder what has been accomplished with this money. Delegation of the European Union to Bosnia and Herzegovina, *EU Funding in Bosnia and Herzegovina*, accessed February 24, 2015, <http://projects.europa.ba/About>.

governance is not solely related to municipal level performance, but to the party standing of local officials as channeled through cantonal, entity, and state political filters. Ethnic partition through an enhanced Croat polity in the existing constitutional framework is not the answer; again, if it were, then the RS should be an example of good governance, and it is not.

The vast majority of respondents from BiH and other countries noted that the problem of corruption is inextricably linked to the structure and constitution of BiH. Andreas writes, “The highly fractured nature of the political authority structure created by Dayton contributed to the problem, inviting massive rent-seeking and making coordinated border controls and collection of customs duties extremely cumbersome and difficult. For example, by creating interethnic borders within the country with little inter-entity cooperation on law enforcement matters, Dayton made it possible for law evaders to avoid the reach of the law by simply moving back and forth across entity lines.”²⁷ There has been at least one policy paper that looked at the link between the constitutional framework and the BiH constitution.²⁸ However, in spite of polling data showing citizens’ interest in reforms, constitutional reform remains the unspeakable elephant in the room.²⁹ For this reason, constitutional reform is not included among the noted recommendations in this report, although it is the author’s opinion that only such structural change will solve the country’s endemic political problems, and, in turn address corruption.

Notwithstanding the above, the proposed solutions to BiH’s problems with corruption **are** simple: maximize current, ongoing projects in a manner that bridges the political and the programmatic, the American and the international, the official and the civic/informal.

Creating political accountability – and remedying the lack of accountability – are critical to fight corruption. As demonstrated through 19 years of evidence, it is unlikely that political accountability will ever emerge domestically in BiH’s current political structure without a combination of top-down international pressure supporting bottom-up civic calls for change.

²⁷ Andreas, *Blue Helmets and Black Markets*, 120.

²⁸ Adnan Huskic and Damir Mehmedbasic, European Research Center, *Korelacija Izmedu Ustava BiH I Korupcije.*” (Sarajevo 2013) http://www.erc.ba/wp-content/uploads/Korelacija_izmedju_Ustava_BiH_i_korupcije_analiza_sa_koricama.pdf. This paper was developed by the ERC through the framework of the “Constitutional Reform in Bosnia and Herzegovina: Engaging Civil Society” project, implemented by PILPG. The author of this anti-corruption assessment was the Chief of Party of that project.

²⁹ Valery Perry, “The Elephant in the Room: Bosnia and Herzegovina’s Unmentionable Constitutional Disability,” *Transconflict* (July 9, 2014) <http://www.transconflict.com/2014/07/elephant-room-bosnia-herzegovinas-unmentionable-constitutional-disability-097/>.

6. A Thematic Review of a Cross-Cutting Issue

This overview is organized according to the following broad themes, each of which is represented in USAID's democracy, governance, human rights, and economic development toolboxes:

- Legislative Frameworks
- Justice Sector Reforms
- Politics and Elections
- Auditing Institutions
- Reform of Public Sector, Public Administration, and Public Companies
- Business and Economic Environment
- Anti-corruption Institutions and Strategies
- Demand Driven Reform

The themes' order does not reflect any presumed prioritization. Demand driven reform is included as the last item due to its length, as it also consists of a mini-review of the ACCOUNT project to date.

This report's recommendations combine the institutional and the political. They also seek to raise public confidence in a) the U.S. government's awareness and honest assessment of the problems in BiH 20 years after the end of the war; b) the democratic system of governance; and, c) those institutions and civic actors that *do* work. Right now confidence in all three is low.

Many of the report's recommendations (though not all) could be implemented within existing USAID projects, and enhanced by a more targeted and coordinated focus and political support.

Many (though not all) could be simply ignored by party leaders and officials in the absence of significant top-down and bottom-up pressure, policy harmonization among the international community actors, and in some cases financial conditionality. Nearly every respondent demonstrated incredulity that the continued policy of external sources of funding (primarily, but not only the IMF), are viewed as a blank check for the status quo that is little by little mortgaging the future.

The author briefly introduces each of these issues together with recommended reforms. Further details on rationale, risks, and options are noted in the accompanying summary chart.

6.1 Legislative Frameworks

Key Problem Areas/Challenges Related to Fight Against Corruption

- Broadly adequate legislative framework, but very inconsistent implementation
- Inconsistent harmonization among four levels of government
- Identifiable key weaknesses and loopholes
- Not immediately “sexy” or seemingly relevant to average citizen

Key Recommendations

- Bundle key needed reforms into an anti-corruption package that will be more relevant to citizens; develop an ad hoc legal team to look at BiH’s needs and comparative European state practices
- Work with relevant NGOs, journalists, and international partners to develop consistent messaging campaign; high-level international officials can join NGOs to explain reforms directly to the citizens
- Work with domestic decision-makers and party partners to push the legislation through in a defined time period; challenge inaction and delays
- Support independent verification of asset declaration cards and any possible subsequent institutional investigations

6.1.1 Context

It has long been acknowledged that BiH’s legal and legislative framework is sufficient for the country to function in a responsible and effective manner.³⁰ In addition, BiH has signed on to a number of relevant international conventions.³¹ There are still some problems with harmonization across levels of government, however, and some lack of clarity that can lead to loopholes. BiH’s primary problem is that legislation is not implemented sufficiently, appropriately, and consistently. No amount of new legislation, or reforms and amendments to existing legislation, will improve *any* aspect of public policy if there is neither the political will nor the internal independence and enforcement mechanisms needed to ensure

³⁰ “Although BiH does not have a specific anti-corruption law, it has a reasonable legal framework for fighting corruption and space for enforcement of the existing laws as well as for advocating some new ones (for example whistle blowing protection legislation).” ACCOUNT, *First Year Work Plan, Performance Monitoring and Evaluation Plan (PMAP)* (version resubmitted August 8, 2012), Introduction, 3 (no page numbers). See also Brady, *Title of Book*, 45.

³¹ For example: United Nations, *Convention Against Transnational Organized Crime* (2000); United Nations, *Convention Against Corruption* (2003); Council of Europe, *Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption* (1997); Council of Europe, *The Criminal Law Convention on Corruption* (1999), CETS No.:173; Council of Europe, *The Civil Law Convention on Corruption* (1999), CETS No.: 174; Council of Europe, *Recommendation No. R (2000) 10 on Codes of Conduct for Public Officials* (2000); Council of Europe, *Recommendation of the Committee of Ministers to Member States on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns* (2003); Council of Europe, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* (2005) (CETS No.: 198). An internal assessment commissioned by the OSCE Mission to BiH in 2012 (“Assessment of the Legal, Institutional and Policy Anti-Corruption Framework in Bosnia and Herzegovina”) provides more information on the various relevant frameworks and conventions.

legislative implementation at every level of government. Of more concern, there have been efforts to weaken existing pieces of legislation (some of which were either imposed by the High Representative or adopted under considerable pressure by the international community), which would lead to less independent action and less transparency.

By addressing some of the remaining legislative weaknesses, [entity] can serve to fill gaps, remedy identified weaknesses, increase harmonization among layers of government, and build in missing enforcement mechanisms. It can also provide a **platform** to inform citizens of the issues being addressed, and to publically pressure authorities to explain why they are opposed to reforms broadly seen as necessary and in line with established good practice.

It is interesting to note that the country’s Criminal Procedure Codes (CPC; BiH, Federation, RS, Brcko District) make scant if any reference to corruption; organized crime is not defined at any level. Definitions of crimes are more detailed in the criminal material codes; however, most experts agree that there is a need for a more precise definition of corruption cases. While including more precise terms and definitions will not alone strengthen the rule of law in practice, it is reasonable to conclude that the absence of more rigorous definitions could provide loopholes, particularly in a fragmented system in which many judges are said to take very narrow readings of the law. It would be useful to speak with lawyers familiar with the history of the CPC (perhaps in the Justice Reform Project) to find out why this is so, whether there have been efforts to remedy this, and relevant comparative state practice in the region and the EU, and what possible technical or political pressure points might exist.

The following chart summarizes several laws that have been identified as ripe for improvement in terms of the letter of the law and their implementation.³²

Chart I: Laws in Need of Review and Reform

Law	Issues/Needs
Public Procurement ³³	<ul style="list-style-type: none"> • Low fines and penalties for misconduct • Minimally transparent
Conflict of Interest	<ul style="list-style-type: none"> • See inset box
Whistleblower Protection	<ul style="list-style-type: none"> • Track implementation, possible weaknesses • Look at sub-state level laws³⁴
Election Law; Political Party Financing ³⁵	<ul style="list-style-type: none"> • CEC’s role as independent body limited

³² Transparency International provides background on the issues of party financing, immunity, codes of conduct, conflict of interest and asset declaration. Transparency International, “Bosnia and Herzegovina: Overview of Political Corruption,” *Transparency International Anti-Corruption Helpdesk* (June 2, 2014), http://www.transparency.org/files/content/corruptionqas/Bosnia_overview_of_political_corruption_2014.pdf

³³ A web site called Balkan Tender Watch published a report (funded by WU IPA funds for civil society) called, “Public Procurement in Bosnia and Herzegovina, Montenegro, Macedonia and Serbia: Comparative Analysis of Legal and Institutional Framework.” Available at <http://balkantenderwatch.eu/btw/uploaded/Comparative/Comparative%20analysis%20of%20legal%20and%20institutional%20framework.pdf>

³⁴ The Federation has a draft law; the RS does not.

³⁵ The Council of Europe (CoE) Group of States against Corruption (GRECO) noted BiH’s unsatisfactory implementation of recommendations, noting that only 4 of 22 recommendations were implemented. The third GRECO evaluation round reviewed the themes of “Incriminations” (bribes and influences) and “Transparency of Party Funding.” The Council of Europe (CoE) Group of States against Corruption (GRECO). Third

	<ul style="list-style-type: none"> • 2012 amendments relax limitations on party financing • Published financial reports lack specific details • No ongoing or detailed auditing of party expenses • Existing fines and sanctions not a deterrent • BiH not compliant with GRECO obligations
Laws on Public Companies	<ul style="list-style-type: none"> • Party members eligible to serve on boards and in management; not part of civil service • How to minimize political appointments, and increase professional/independent employment?
Property card and asset disclosure by officials	<ul style="list-style-type: none"> • Lack of verification • Minimal information access; process made more cumbersome, rather than less • Revisions to regulate passing one's property to a family member in time frame before elections
Immunity laws	<ul style="list-style-type: none"> • Fragmentation and lack of oversight lead to difficulty in detection and prosecution • Fragmented system very susceptible to political manipulation³⁶
Legal provisions on sentencing	<ul style="list-style-type: none"> • Review sentencing/penalties in relevant laws. Are they sufficient deterrents? Review asset seizure laws
Laws on subsidies	<ul style="list-style-type: none"> • Review laws related to the granting of subsidies to increase transparency
Laws related to public funds used in overseas lobbying	<ul style="list-style-type: none"> • The RS spends public money on lobbying in DC and elsewhere;³⁷ Croats as well; this is transparent primarily in the U.S.³⁸ due to FARA (Foreign Agents Registration Act); look for more transparency on this issue

6.1.2 Efforts to Date – Selected Review

While TI BiH, CIN, ACCOUNT members and others have noted reforms that are needed to improve transparency and accountability for years, the political dynamics have changed and now there are concerns about efforts to *roll back* transparency requirements and various checks and balances. Just two examples are noted below.

Box 2: Conflict of Interest – Two Steps Back?

The BiH Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina was imposed by High Representative Wolfgang Petritsch in May 2002.³⁹ TI BiH notes that the “strict conflict of interest rules were vastly unpopular among the country’s

Evaluation Round. Interim Compliance Report on Bosnia and Herzegovina. Adopted by GRECO, 64th Plenary Meeting, 16-20 June 2014.

³⁶ Transparency International, *Transparency International Anti-Corruption Helpdesk*, 6. A comparative state practice chart looking at immunity issues in other European countries is available in the full report package.

³⁷ Lily Lynch, “The Self-Destruction of Republika Srpska,” *Balkanist* (March 7, 2014) <http://balkanist.net/the-self-destruction-of-republika-srpska/>; Valerie Hopkins, “Bosnian Serbs Splash Out on Lobbying in US,” *BIRN (premium content)* (September 16, 2011) http://www.bosnia.org.uk/news/news_body.cfm?newsid=2817

³⁸ See for example, The Sunlight Foundation, <http://sunlightfoundation.com/lobbyingguidelines/>

³⁹ “Decision Imposing the BiH Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina,” (May 23, 2002) http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=8568

ruling politicians who, in 2012 proceeded to amend the law in a rare example of cross-ethnic parliamentary consensus.”⁴⁰ The Council of Ministers sent the amendments to parliamentary procedures, and the amendments were passed in the House of Representatives on May 23, 2013 and in the House of Peoples on November 5, 2013.⁴¹ The amendments were passed through urgent procedure, meaning that there was no opportunity for public hearings or discussion. (The amendments had been a part of a broader 2012 SDP-SNSD agreement.)

The amendments contain vague descriptions of sanctions in cases of conflict of interests. For example, sanctions include cutting officials' salaries for a maximum period of 12 months, and up to 30 percent or 50 percent depending on the case. The law does *not* state a “floor,” meaning that a sanction could cut salary by only one percent.

However, the change that raised the most concern was the government’s decision to cut the BiH Central Election Commission (CEC) out of the conflict of interest process. The CEC, an independent body, had held the competencies to deal with conflict of interest issues according to the previous law. The amendments provided for the CEC to be replaced by a new Commission for decisions on conflict of interest issues consisting of nine members: three members from the House of Representatives, three delegates from the House of Peoples, and the director and two vice-directors from the Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption.⁴² This change meant that Parliament oversees conflict of interest as opposed to an independent body. Politicians basically are able to decide on other politicians' conflict of interest issues.

The amendment process was not transparent, and there were no public hearings or discussion organized on this matter.

There have been numerous reactions to the amendments.

Representatives of the international community, including the head of the E.U. Delegation to BiH Peter Sorenson and U.S. Ambassador Patrick Moon, sent a letter to Justice Minister Barisa Colak saying that the law should not be adopted because of serious concerns. The letter stated that the commission should be truly independent and suggested that Parliament should seek the opinion of the Venice Commission, which acts as the Council of Europe’s advisory body on constitutional matters.⁴³ Non-governmental organizations also complained about the changes, saying they would create a situation in which politicians will be the ones deciding whether they and their colleagues are in a conflict of interest.⁴⁴ Tija Memišević, from European Research Center stated that the political oligarchy in BiH is just continuing to protect their interests.⁴⁵ Transparency International in BiH made several

⁴⁰ Transparency International, *Transparency International Anti-Corruption Helpdesk*, 8.

⁴¹ BiH Parliamentary Assembly web site,

<https://www.parlament.ba/sadrzaj/zakonodavstvo/usvojeni/default.aspx?id=40582&langTag=bs-BA&pril=b>

⁴² Amendments to the BiH Law on conflict of interest, Article 17,

<https://www.parlament.ba/sadrzaj/zakonodavstvo/usvojeni/default.aspx?id=44589&langTag=bs-BA&pril=b>

⁴³ “Bosnia Criticized Over Conflict of Interest Law,” *European Forum for Democracy and Solidarity* (July 16, 2013), http://www.europeanforum.net/news/1719/bosnia_criticized_over_conflict_of_interest_law

⁴⁴ Elvira Jukic, “Bosnia Warned on Conflict of Interests Law,” *Balkan Insight* (July 15, 2013),

<http://www.balkaninsight.com/en/article/bosnia-warned-on-conflict-of-interests-law>

⁴⁵ Elvir Padalović, “Zakon o sukobu interesa u institucijama vlasti : Zna se ko su bogovi u našoj zemlji!” *Buka* (November 7, 2013), <http://www.6yka.com/novost/37364/zakon-o-sukobu-interesa-u-institucijama-vlasti-zna-se-ko-su-bogovi-u-nasoj-zemlji>

statements and criticized the amendments to the law.⁴⁶ In 2013, U.S. Ambassador Moon noted his concerns about these amendments and two other laws addressing public procurement and freedom of access to information, saying that the politicians should agree to respect the mechanisms for protection from corruption and strengthen the ones that are weak.⁴⁷

If the political leaders and elected representatives in BiH are willing to ignore domestic and international criticism, what can be done? The following could be considered:

- ***Renew attention to this and other laws through the proposed “anti-corruption legislation bundle”***
- ***Integrate this legal reform agenda in all relevant public and private fora***
- ***Highlight BiH’s lack of compliance, referencing Council of Europe, GRECO and other obligations; hold named officials accountable***

Box 3: Transparency Withdrawn: Elected official/candidate asset/property cards

In 2012, after BiH adopted the Law on the Protection of Personal Data, the Agency for the Protection of Personal Data requested that the CEC remove from public view all officials' and election candidates' property cards under the pretext that the availability of such information did not accord with the new law.

- **Article 5** of the law states:
 - “Personal data shall not be processed unless: a) the data subject has unambiguously given his consent
- Further, **Article 17** of the law states:
 - “The individual rights of the data subject (Articles 11, 12, and 15) may be restricted by law in the interest of the external and internal security of the State, in the areas of national defense, national security, crime prevention or criminal investigation as well as in the monetary interest of the State, or **protecting the data subject or the rights or freedoms of others (emphasis added)**. Such restrictions are only permissible to the extent that they are necessary in a democratic society for one of the listed purposes.”⁴⁸

Article 17 was used to support candidates' and officials' claims that they felt unprotected with all of their information available to the public. The CEC did as requested and removed all property cards from its web site, where they had been available for easy review. A

⁴⁶ Srdjan Blagovcanin, “Zakon za vlastite i stranačke interese,” *Al Jazeera*, July 23, 2013, <http://balkans.aljazeera.net/vijesti/zakon-za-vlastite-i-stranacke-interese>

⁴⁷ “Politički procesi u BiH: Dva koraka naprijed, korak nazad,” *ACCOUNT*, June 4, 2013, <http://www.account.ba/novost/9712/politicki-procesi-u-bih-dva-koraka-naprijed-korak-nazad>

⁴⁸ Law on the Protection of Personal Data, <http://dzlp.mk/sites/default/files/Dokumenti/EU%20zakoni%20zzlp/BiH.pdf>
Amendments to the Law on the Protection of Personal Data, <http://www.azlp.gov.ba/images/PropisiEN/Law%20on%20Amendments%20to%20the%20Law%20on%20the%20Protection%20of%20Personal%20Data.doc>

spokesperson from the CEC later explained that while the cards were not as publicly accessible as before, it was still possible for citizens to acquire the data. The spokesperson explained that every citizen or journalist who wants to see an official's property card should send an e-mail request to the CEC explaining why he or she seeks the information and the CEC will provide the requested information.⁴⁹ The CEC does not specifically identify the circumstances in which an individual may request such information, or the criteria that the CEC uses to determine whether it will provide the information.

Failing to provide full information, or hiding information by not putting in on the property card, might be considered a false statement, which is a criminal felony under the BiH Criminal Code, but no official has been charged to date. In 2009, the Center for Investigative Journalism (CIN) in BiH published an article about Dragan Vrankić (HDZ BiH) from Čapljina because he did not give accurate and complete information on his property card.⁵⁰ The financial police questioned Vrankić concerning one of his properties, but he was not sanctioned.

This demonstrates another problem: the lack of mechanisms to verify and ensure that the information provided by the officials/candidates is true. After officials/candidates submit their cards, they submit a signed statement in which they testify: "Everything written in the card is truthful, complete and accurate, and I sign it under my full material and moral responsibility." However, no institution checks the accuracy of the data. (The CEC is responsible for monitoring the procedure of collecting the data, but not for ensuring its accuracy. APIK is in charge of processing civil servant asset declarations. SIPA is responsible for confirming the information on the cards of candidates for the Council of Ministers.) There has been the suggestion that the procedure might be changed so that fewer cards are received (for example, only by candidates that win office), but that there is stricter verification.

The Center for Investigative Journalism in BiH (CIN) has compiled and published a database that includes 160 BiH officials' property cards. It is available at: <http://www.imovinapoliticara.cin.ba/>. CIN developed this database through a time-consuming process: CIN staff physically went to the CEC and copied information by hand. (CIN notes that there are more than 8000 cards on file, for all candidates.) CIN and TI BiH have support from the USAID Civil Society Sustainability Program (CSSP) for a project which includes greater transparency on asset declarations.⁵¹

Are there possible opportunities to improve this issue?

- ***Review comparative state practice and work with experts to build a case that the Law on Personal Data Protection is being abused; consider what ideal draft amendments to that or other laws would look like in order to balance citizens' interests in access to information with reasonable data protection***

⁴⁹ "Uklonjene imovinske kartice političara sa stranice SIP-a BiH," ABCPortal.Info, August 28, 2014, <http://www.abcportal.info/clanak/uklonjene-imovinske-kartice-politicara-sa-stranice-sipa-bih>

⁵⁰ "Netocni podaci u imovinskom kartonu Dragana Vrankića." Center for Investigative Journalism, December 8, 2009, <http://www.cin.ba/netocni-podaci-u-imovinskom-kartonu-dragana-vrankica-2/>

⁵¹ "Civil Society Sustainability Program in BiH (CSSP) in Cooperation with the Center for Investigative Journalism," Transparency International BiH, <http://ti-bih.org/projekti/program-odrzivosti-civilnog-drustva-u-bih-cssp-u-partnerstvu-sa-centrom-za-istrazivacko-novinarstvo/?lang=en>

measures

- **Bring case directly to citizens, explaining why this lack of transparency is harmful to the public trust**
- **Fund independent civic efforts to investigate and verify asset declarations of selected high level officials, and support subsequent formal investigation and civic outreach/advocacy**

6.1.3 Recommendations

- Efforts to improve these laws have been ongoing, with little effect. In fact, as noted some laws have been weakened.
- A “legal task force” approach that would make an explicit link between these gaps and the problems of corruption in society could help to both a) pressure lawmakers at a minimum to discuss, and ideally implement legislative changes, and b) demonstrate the to public that there is an understanding that corruption is a problem and that these legal shortcomings require reform.
- A campaign can be developed to explain the issue, and the international community could send strong and coordinated messages. Such messages should include specifics, such as why this institution or that individual is delaying the process. These messages should be presented consistently in public and in private. Those actors who blog and use social media (embassies of U.S., U.K., Council of Europe, etc.) can reiterate that they have asked these questions and fill possible gaps in media coverage that instead focuses on the “smiling and shaking hands” photo opportunities that feed citizens’ skepticism. Instead, coordinated press can help to identify local allies – agents of change – and build momentum from there.⁵²
- In the event that the delay is explained by a lack of capacity, in-house legal advisors from relevant NGOs (TI, etc.), the embassy, and international partners could support the analytical work and provide the needed materials, thereby avoiding the need to identify funds, hire a working group, etc. The knowledge is there.
- The EU Progress Report (EUPR) for 2014 noted concerns on some of these issues; this task force, if it secures EU and member state support, could link to 2015 EUPR.

⁵² Other U.S. funded projects that involve partnership and engagement with elected officials should be more effectively leveraged. For example, NDI’s efforts with political parties and cross-party coalitions, or the Strengthening Governing Institutions and Processes’ (SGIP) work with state and Federation Parliamentarians should be targeted towards any agree-upon legislation package.

6.2 Justice Sector

Key Problem Areas/Challenges Related to Fight Against Corruption

- Prosecutors face difficulties in securing convictions that stick
- Prosecutorial inability or reluctance to take on difficult corruption cases, including high-level cases
- Politicization of judiciary through hiring and fragmented budgeting processes and politics that weaken judicial independence
- Constitutional structure – abetted by lack of political will – makes possibility of an USKOK-like approach extremely unlikely (See Annex B)
- General weakening of judicial reform efforts over the past several years

Key Recommendations

- Pursue strategic coherence in identifying important, high-level cases for prosecution that could have a “signal effect,” and coordinate all relevant actors to pursue these cases
- Identify the precise ways in which the corruption cases that move through the court system fall apart, and identify either personal (targeted individual) or procedural failings
- Introduce long-needed incentives for prosecutors – both carrots (for taking on tough cases) and sticks (disciplinary measures for consistent poor performance)
- Pursue and encourage international partners to introduce independent judicial budgeting process

6.2.1 Context

As noted by Brady, “In a country where the general view (is) that corruption is everywhere, why are only a small number of cases investigated and brought before the court?”⁵³

The answer is linked to the broader health of BiH’s justice sector. While policing was explicitly mentioned in Annex 11 of the Dayton Peace Agreement (which set up the International Police Task Force, or IPTF), beyond the establishment of a Commission on Human Rights (Annex 6, Chapter 2) and broad references to a secure environment and rule of law, there was no explicit task in the peace agreement to begin rebuilding the country’s shattered (and ethnically divided) justice sector. However, it did not take long for this gap to be noticed. High Representative Westerndorp called for a task force to assess and monitor the status of the country’s courts at the (now infamous) Peace Implementation Council (PIC) meeting in Bonn in December 1997. A task force called JSAP (Judicial System Assessment Program) was established in late 1998 and operated for two years under the auspices of the U.N. This was followed by the High Representative’s establishment of the Independent Judicial Commission (IJC).⁵⁴ There was then an increase in activity, including the

⁵³ Brady, *Title of book*, 12.

⁵⁴ “Decision Providing the Independent Judicial Commission (IJC) with a Comprehensive Mandate,” Office of the High Representative, March 14, 2001, http://www.ohr.int/decisions/judicialrdec/default.asp?content_id=69

establishment of the Court of BiH in 2000 (with international judges and prosecutors), and the HJPC in 2002. (Aitchison describes efforts to reform the police, judiciary, and penal system during this period.⁵⁵) While (as noted above) the problem of endemic corruption was evident from the very earliest days of peace implementation, Van de Vliet, in a chapter published in 2008 (and earlier) notes that finally seven years after the war ended the High Representative set up concerted anti-crime and anti-corruption efforts, and that at the time of his writing it was not yet possible to assess the impact of those efforts.⁵⁶

Just as there is broad agreement that the political situation in BiH has deteriorated since 2006/2007,⁵⁷ there is also agreement among the majority of individuals interviewed in this research effort that reform in the justice sector has steeply declined, particularly since 2011. Whereas BiH was once a model for justice sector reform for countries such as Montenegro and Serbia, these two neighbors have now surpassed BiH in many ways. The majority of respondents familiar with the judicial system's issues noted that this period of regression was tied to three inter-related developments. 1) International judges and prosecutors withdrew in 2009, which left a vacuum.⁵⁸ 2) The effective challenges of the BiH justice sector examined by Milorad Dodik in 2011, which led to the EU's Structured Dialogue on the sector. This structured dialogue has in fact hijacked the reform process to date and simultaneously undermined public confidence in the judiciary by giving credence to Dodik's complaints.⁵⁹ 3) Politicians use the judiciary for their own end, either in terms of the lack of prosecution or by selecting targets for prosecution, with increasing impunity. The 2013 *Transparency International National Integrity System (NIS) Assessment* notes: "Comparison with the 2004 and 2007 studies shows that the power vacuum left in the wake of the diminished role of the international community was filled by political elites, which brought one NIS pillar after another under their control."⁶⁰

Efforts to reform and strengthen BiH's justice sector to ensure an independent judiciary has long been a priority of the international community. Hundreds of millions of dollars have been spent on projects ranging from the institutional (setting up the HJPC, Court of BiH, etc.) to the professional and technical (capacity building training and education, etc.). There has been significant support in particular to the prosecution of war crimes. In theory, this should have accomplished two things: help the country in its post-war transitional justice

⁵⁵ Andy Aitchison, *Making the Transition: International Intervention, State-building and Criminal Justice Reform in Bosnia and Herzegovina* (Cambridge: Intersentia, 2011).

⁵⁶ Van de Vliet, *Title of Book*, 233.

⁵⁷ Patrice C. McMahon and Jon Western, "The Death of Dayton: How to Stop Bosnia from Falling Apart," *Foreign Affairs* (September – October 2009), 69-83; Christopher Chivvis, "Back to the Brink in Bosnia?" *Survival: Global Politics and Strategy*, 52, 1 (February-March 2010), 97-110.

⁵⁸ Brady corroborates this noting that when international prosecutors were removed from cases, "This occurred without any notice or preparation and it created a huge gap in work at the State level." Brady, *Title of book*, 42.

⁵⁹ The "structured dialogue" on the BiH justice sector was launched in response to threats from the RS to pull out of state justice institutions (the BiH Court and High Judicial and Prosecutorial Council). Eldin Hadzovic, "Bosnia: Dodik Agrees to Drop Disputed Referendum," *Balkan Insight* (May 143, 2011). Many people link Dodik's own heightened rhetoric to fears that he would be indicted for corruption and/or abuse of office. The author recalls a conversation with an individual who formerly worked with the EUPM that there was in fact a file of information on Dodik that was ready for prosecution, but that once the E.U.'s structured dialogue process was agreed upon, they were told to destroy this material. When the international prosecutors were removed from the State Court in 2009, case information on Dodik was transferred to RS entity courts, where it was dropped.

⁶⁰ *Transparency International Integrity System Assessment, Bosnia and Herzegovina 2013*, 21, 31.

process, and strengthen the justice sector generally, thereby contributing to a stronger judiciary. This intended spillover effect has not occurred, either in general or with regards to corruption cases. Instead, the focus on war crimes – and the massive backlog of war crimes and other cases – has in some ways served as a decoy and distraction from the prosecution of perpetrators of other crimes.⁶¹

The difficulty in establishing an independent judiciary is not unique to BiH; for example, recently there have been comments about political pressures on the courts in Serbia as well.⁶² However, BiH's fragile peace, its fragmented and dysfunctional structure, and its divisive and polarizing politics have made the problem of effective judicial measure in the area of corruption even more challenging. The following selected excerpts from some European Commission Progress Reports for BiH are indicative of the problem:

- “Political attacks on the judiciary have continued during the reporting period. Financial restrictions and excessive fragmentation of budgetary responsibilities also continue to undermine independence. The process of streamlining budgetary competences initiated via the Justice Sector Reform Strategy, particularly relevant for the Federation, has not yet produced results.”⁶³
- “There are persistent flaws in the **independence** and **impartiality** of the judiciary. Political interference has continued. In particular, the political establishment has applied pressure on issues related to processing war crimes, including the enforcement of the European Court for Human Rights judgment in the case of Maktouf and Damjanović vs Bosnia and Herzegovina.”⁶⁴
- “The budgetary process for the judiciary is fragmented across a range of budgetary authorities. This leads to considerable disparities in the funding of the judiciary and in the quality of courts which, in turn, give rise to serious concerns about the equality of citizens before the law.”⁶⁵

The Council of Europe's Venice Commission has noted similar concerns: “Even though the HJPC has an extremely important role to play in strengthening the judiciary, the Venice Commission believes that the general state of the BiH judiciary gives rise to concerns regarding legal certainty and independence.”⁶⁶ (Legal certainty is in part compromised by the fact that more than 80 BiH Constitutional Court decisions have not been implemented by

⁶¹ “Many indictments were filed in the national court, but the system was quickly clogged, especially with war crime cases. Although those indicted were no longer untouchable and immune from scrutiny, many of them no doubt calculated that they could simply wait it out – expecting Western governments to eventually lose interest and the international funding for the court to dry up.” Andreas, *Title of Book*, 126. The international judges and prosecutors were pulled out in 2009, leaving a vacuum that remains unfilled.

⁶² Milan Antonijević, “A Serbian Guide to Ruining Reputations,” *Balkan Insight* (January 20, 2015), <http://www.balkaninsight.com/en/article/a-serbian-guide-to-ruining-reputations>

⁶³ European Commission Progress Report for Bosnia and Herzegovina, 2013, 12.

⁶⁴ European Commission Progress Report for Bosnia and Herzegovina, 2014, 12.

⁶⁵ European Commission Progress Report for Bosnia and Herzegovina, 2005, 17.

⁶⁶ *High Judicial and Prosecutorial Council of Bosnia and Herzegovina 2013 Annual Report*, 12. See also “Opinion of the Venice Commission on Legal Certainty and the Independence of the Judiciary in BiH opted by the Venice Commission at its 91st Plenary Session.” The Council of Europe Venice Commission. (CDL-AD(2102)014 –e) (June 15-16, 2012) <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282012%29014-e>

the relevant institutions,⁶⁷ this is not only troubling in terms of rule of law, but creates a risky and uncertain legal environment in which to do business.)

A full review of the challenges that still face the justice sector is beyond the scope of this survey. However, some deserve mention, as they were often repeated by respondents in the course of interviews. Heavy case backlogs remain a burden on the system. There are insufficient budgets for general operations, let alone for expert skills needed in complex investigation. Respondents also often noted that judicial budgets themselves are politicized, and not independently allocated. While the establishment of the HJPC has gone a long way to improving the selection of judges and prosecutors, the professionalism of the Council, as well as of the judges and prosecutors hired, often remains questionable.⁶⁸ Case quota systems lead prosecutors to take simple cases to ensure they meet the required annual minimum, rather than encourage them to work on complex cases that take much time and commitment to investigate and prosecute. Complex organized crime cases are broken down and tried in smaller pieces; the smaller cases often are easier to prosecute, but then the resulting convictions carry lighter sentences. Evidence is often weak, leading cases to fall apart early in trials, or in later appeals. One respondent noted that judges themselves rarely take risks in terms of more aggressively interpreting the law to ensure maximal penalties for organized crime and corruption. Those who do take professional risks can face personal risks: in 2014, Dijana Kajmaković, the acting Prosecutor in the case of Zijad Turković, had her car brakes cut and the cables detached, in an act presumed to send a signal. The prosecutors' office started an investigation but has not charged anyone with the crime yet.⁶⁹ On 13 February 2015, Jasmina Koričić was killed in a bomb explosion in front of her office in Bihać. An investigation is underway.⁷⁰ On the same night an explosive device was planted

⁶⁷ "Predstavnički dom PSBiH: Ima prostora za značajne uštede u budžetu BiH," Klix, January 29, 2015, <http://www.klix.ba/vijesti/bih/predstavnicki-dom-psbih-ima-prostora-za-znacajne-ustede-u-budzetu-bih/150129071>

⁶⁸ At a 5 February [year] EU TAIEX (Technical Assistance and Information Exchange Instrument) seminar sponsored within the framework of the Structured Dialogue on justice process on the topic of the HJPC Code of Conduct, two respondents (one embassy, one civil society) noted the quality of the debate, as HJPC members were openly seeking to ensure sufficient ability to get their children positions in the judicial sector. HJPC members complained that the Code of Conduct is stricter than those in other countries, without considering that other countries have additional legislation that creates the framework to ensure independence and avoid misconduct to the extent possible. A respondent often overheard participants speaking that they had support from their party for certain elements of the Code.

⁶⁹ "Dijana Kajmaković presječeni kablovi kočnica na vozilu," Radio Sarajevo, December 8, 2014, <http://radiosarajevo.ba/novost/173789/diani-kajmakovic-presjeceni-kablovi-kocnica-na-vozilu>; "Tužilaštvo BiH povodom slučaja Diane Kajmaković: Provodimo intenzivne aktivnosti," Radio Sarajevo, December 8, 2014, <http://radiosarajevo.ba/novost/173828/tuzilastvo-bih-povodom-slucaja-diane-kajmakovic-provodimo-intenzivne-aktivnosti>; "Tužilaštvo BiH: Napadi i zastrašivanja nas neće zaustaviti u radu," Radio Studio 88, December 8, 2014, <http://www.studio88.ba/clanak/tuzilastvo-bih-napadi-i-zastrasivanja-nas-neece-zaustaviti-u-radu>; "VSTV BiH osudio ugrožavanje sigurnosti tužiteljice Kajmaković: Napadi na pravosudne djelatnike neprihvatljivi," BrzeVijesti.ba, December 10, 2014, <http://brzevijesti.ba/clanak/24502/vstv-bih-osudio-ugrozavanje-sigurnosti-tuziteljice-kajmakovic-napadi-na-pravosudne-djelatnike-neprihvatljivi>.

Turkovic received a 40-year sentence in 2013 for his involvement in organized crime and is expected to testify in the trial of Nasir Kelmendi in Kosovo, along with former BiH Minister of Security, and SBB Party Head, Fahrudin Radoncic. Una Hajdari, "Bosnia's Radoncic to Testify at L=Kelmendi Drug Trial," BIRN, January 26, 2015, <https://www.occrp.org/occrp/en/daily/3606-bosnia-s-radoncic-to-testify-at-kelmendi-drug-trial>

⁷⁰ "Bihać: Montirana eksplozivna naprava usmrtila advokaticu Jasminu Koričić," Oslobođenje, February 13, 2015, <http://www.oslobodjenje.ba/crna-hronika/u-eksploziji-bombe-u-bihacu-poginula-jedna-osoba>

in front of the office of Faruk Baliagić, a lawyer in Tuzla reported to be working on an important case.⁷¹ Lawyers are calling for protection.⁷²

Box 4: Ismet Bajramović “Ćelo” Case

One example of a judge who was willing to press the limits and be tough on corruption was Salem Mišo. In 2000, Ismet Bajramović “Ćelo”, Mahir Rađo, and Mevsud Ličina were accused of murdering Rahman Hajdarpašić and prosecuted in the Sarajevo Canton Court. This very sensitive case was prosecuted by a special unit of the Canton Sarajevo Ministry of Interiors. The judge and his family were threatened at one point, and the Ministry provided them with protection.⁷³ The trial lasted for around eight months and in 2001 Judge Salem Mišo sentenced the accused to 67 years of imprisonment. (Ismet Bajramović received a 20 years sentence.) In 2005, the decision was abolished and the Court repeated the process. However, the trial resulted in an acquittal, based on a decision of Judge Aleksandra Martinović citing the lack of evidence.⁷⁴

Public opinion polling bears out the citizens’ perception that the current justice system is not working. Many polls have been done over the years, some of which specifically target citizens’ perceptions of corruption, while others seek information on citizens’ confidence in the judiciary. A few highlights are included here.

A) Public Perception of Rule of Law in BiH: Trust, Transparency and Corruption, Public Opinion Polling Summary of Findings. Bosnia Justice Sector Development Project II. September 2012.

This poll found middling trust in various elements of the justice sector, as shown by the excerpts and graphs below.⁷⁵

⁷¹ A. Bajric, “TUZLA Eksplozivna naprava bačena u ured advokata Faruka Baliagića,” Dnevni Avaz, February 14 2014, <http://www.avaz.ba/clanak/163910/tuzla-eksplozivna-naprava-bacena-u-ured-advokata-faruka-baliagica>

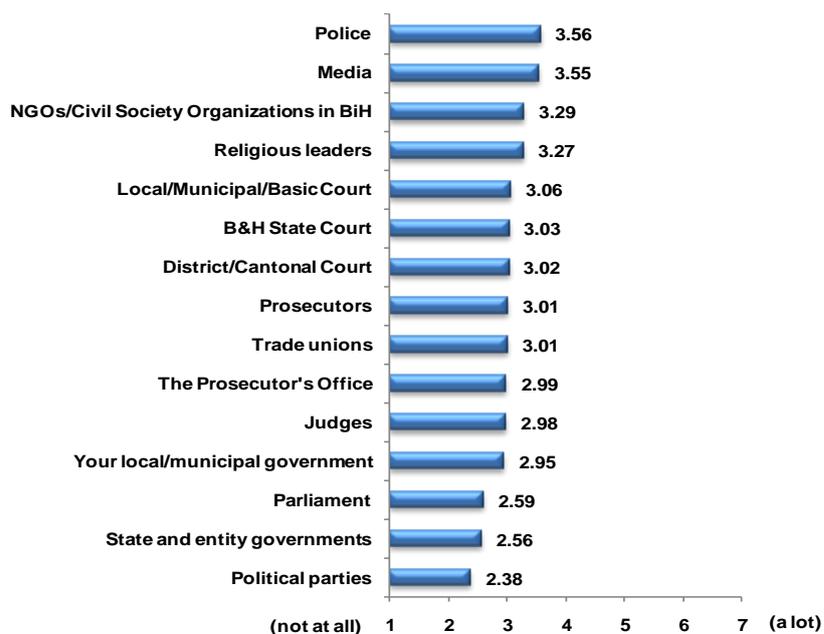
⁷² D. Kovač, “ADVOKATI UPLAŠENI: Ne osjećamo se sigurno, vlast i zakon moraju nas zaštititi!” Dnevni Avaz, February 14, 2014, <http://www.avaz.ba/clanak/163925/advokati-uplasceni-ne-osjecamo-se-sigurno-vlast-i-zakon-moraju-nas-zastititi>

⁷³ “Nije mi strah!” Dani, February 9, 2001, <https://www.bhdani.ba/portal/arhiva-67-281/192/intervju.shtml>

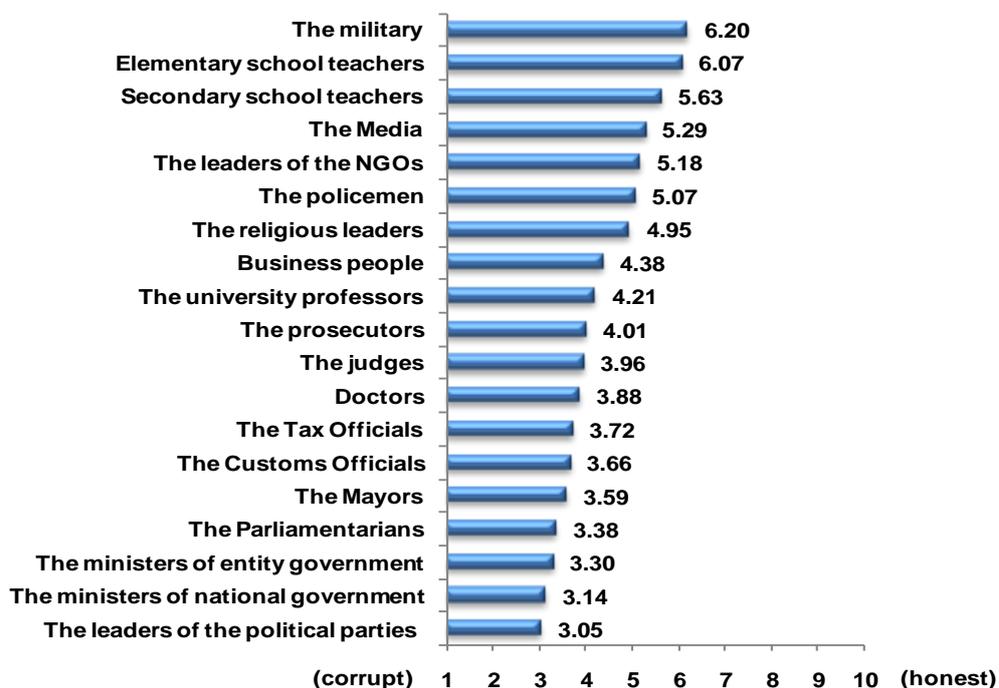
⁷⁴ “Ćelino oslobađanje podijelilo javnost,” Klix, June 24, 2004, <http://www.klix.ba/vijesti/bih/celino-oslobadjanje-podijelilo-javnost/040624001>

⁷⁵ It is interesting to compare citizens’ levels of trust in the police with their levels of trust in the judiciary, particularly when one considers the role of police during ethnic cleansing and other operations during the war. This author has pondered this question and offers a few theories. First, the police are a more visible presence in society, and a “face” of government very easily seen around town. The average citizen does not have formal or informal contact with judges or prosecutors as they may with the police. (Thanks to Kurt Bassuener for this insight.) Second, it is possible that the significant technical training of the police through IPTF, EUPM, ICITAP, and others has been transformative in strengthening a multiethnic, effective, and independent police force. Third, as police are still fragmented according to the various cantonal/entity levels they serve, they very often serve in ethnically homogenous areas; they may be seen as “our guys” from the perspective of an average citizen. (On this point it would be interesting to study the level of trust minority returnees have of the police in their communities; seeking such studies was beyond the scope of this research.) Fourth, frustration with the lack of successful, visible, high-level prosecutions is more easily blamed on judges or prosecutors than on police, who in the best of circumstances can only provide evidence.

Question: To what extent do you trust?⁷⁶



How corrupt or honest do you think the representatives of these institutions are?⁷⁷



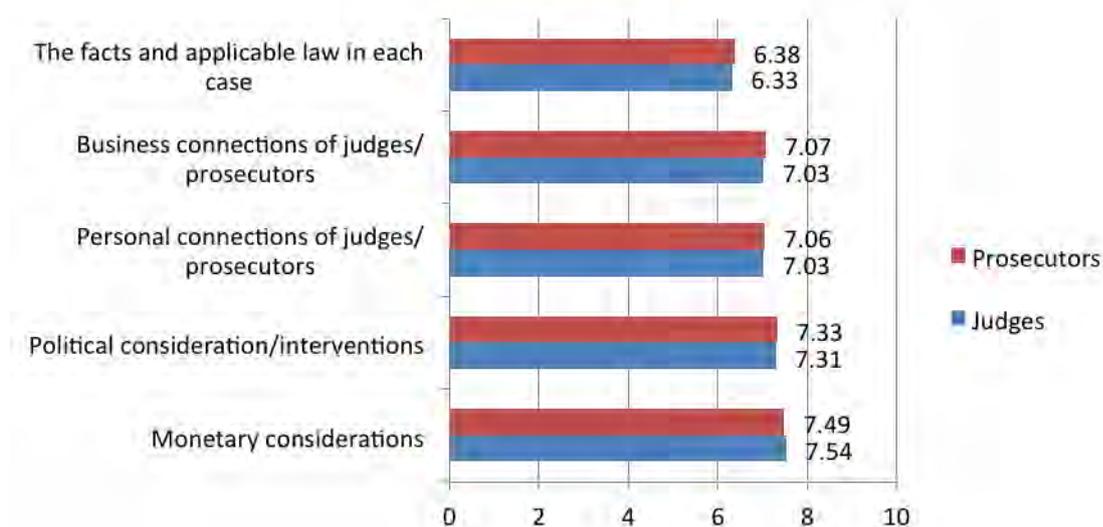
The analysis notes that “[t]he public opinion is divided on the matter of judicial transparency: most of respondents perceive these institutions to be ‘not transparent’ (43.47%) while a similar number (42.53%) of respondents is of the opinion that judicial

⁷⁶ *Public Perception of Rule of Law in BiH: Trust, Transparency and Corruption, Public Opinion Polling Summary of Findings*. Bosnia Justice Sector Development Project II (September 2012). Chart 4, 9.

⁷⁷ *Ibid.*, Chart 6, 12.

institutions are ‘somewhat or very transparent’.”⁷⁸ Among respondents, 48.2 percent do not agree that judges are impartial, and 52.8 percent disagree that prosecutors are impartial in handling cases and that they prepare indictments based on the legal process. When comparing 2010 data to 2012 data, the report notes that respondents are “less likely to express strong agreement with the statement that the judges are impartial (12.4%, compared to 18.9% in year 2010). There are no statistically significant differences in regards to impartiality of prosecutors.”⁷⁹

How much do you think each of the following factors affects the outcome of trials/indictment?⁸⁰



2) Public Opinion Poll, July 2013, commissioned through the project “Constitutional Reform in Bosnia and Herzegovina: Engaging Civil Society”⁸¹

This poll revealed that citizens rank corruption as the country’s number one problem, just edging out the economy. When asked to identify their preferred jurisdiction to have competence in fighting corruption, all respondent groups showed a preference for state level jurisdiction, suggesting that no one – in any entity, canton, or district – is satisfied with the status quo. (See graph below.)⁸²

Similarly, when asked which level of government (state, entity, canton, and municipality) should have competence for various aspects of public life, respondents again expressed a visible preference for state level competencies to address issues of crime and corruption:⁸³

⁷⁸ Ibid., 14.

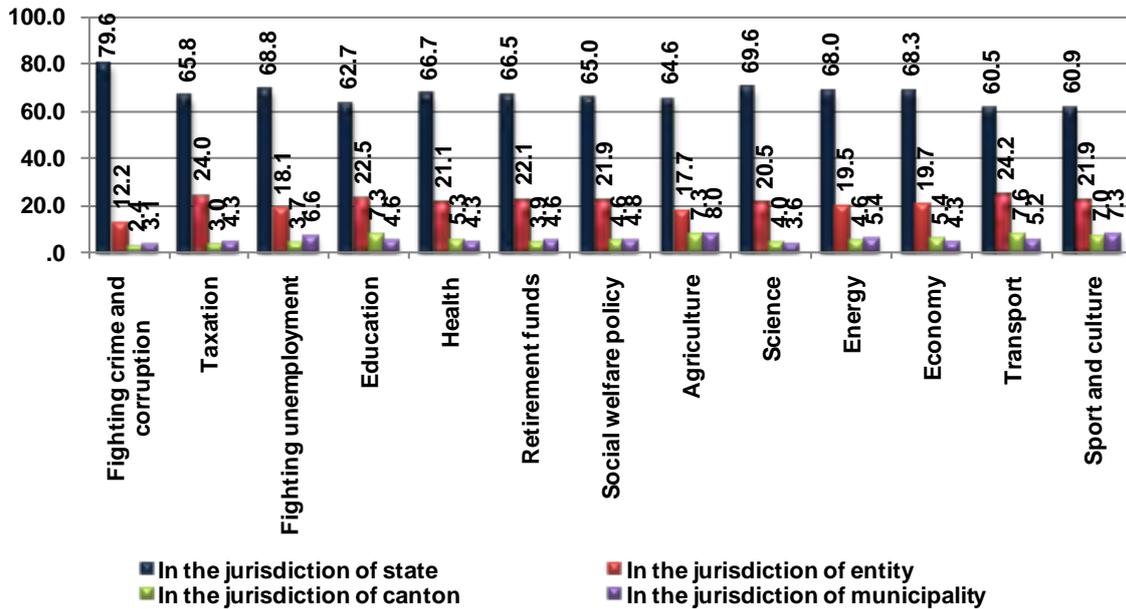
⁷⁹ Ibid., 14.

⁸⁰ Ibid., 16.

⁸¹ The author of this report was the Chief of Party of this project and worked closely on developing the polling questions and analysis. Available at <http://www.mreza-mira.net/wp-content/uploads/2013-Public-Opinion-Poll-Oct-31-Narrative-Report.pdf>

⁸² Ibid., 8.

⁸³ Ibid., 24.



Again, this does not mean that citizens necessarily love the state; however, it does show that they are dissatisfied with the status quo, and are looking for another approach.

The United Nations Office on Drugs and Crime (UNODC) published an analysis of survey data in 2011, focusing on bribery and other manifestations of corruption. Among polled BiH bribe-payers who responded that they paid selected types of public officials, police were ranked second to the top (a bit above 50 percent of those who admitted paying bribes, just behind doctors). Judges and prosecutors rank quite low, at around 5 percent.⁸⁴ The authors of the report posit that it is not surprising that public officials with higher levels of interaction with citizens also received higher numbers of bribes.⁸⁵

In a question on how often corrupt practices occur in selected sectors/institutions in BiH, respondents indicated that “law courts” (just under 60 percent) and “general prosecutor” (around 50 percent) fall in the middle range, whereas local government, political parties, and the police fall above 60 percent, and NGOs and the military around 25 percent.⁸⁶

As an additional tool one can also review the *Transparency International Integrity System Assessment, Bosnia and Herzegovina 2013*. The Judiciary received a score of 29/100, and is labeled “weak,” based on an assessment of judicial efficiency, case backlogs, political pressure on courts and prosecutors, and the lack of “grand corruption” cases.⁸⁷

There *have* been some clear successes and improvements: the establishment of the Court of BiH (2000), the HJPC (2002), the introduction of the Criminal Procedure Code (2003), and some impressive (albeit incomplete) progress in war crimes processing all deserve note. This all happened in difficult circumstances, and represents a significant achievement. However, after more than a decade and a half of intervention and support has this

⁸⁴ *Corruption in Bosnia and Herzegovina: Bribery As Experienced By the Population*. United Nations Office on Drugs and Crime (UNODC) (2011), 23.

⁸⁵ *Ibid.*, 24.

⁸⁶ *Ibid.*, 39.

⁸⁷ *Transparency International Integrity System Assessment, Bosnia and Herzegovina 2013*, 31, 34.

achievement translated into a justice sector that is independent, effective, efficient, unified⁸⁸ and capable of reducing corruption?

During the course of conducting interviews for this report, there was a near constant discussion on the merits of going after the “big fish” vs. focusing on lower/middle level prosecutions. (People used the word “the untouchables” frequently, which was intriguing to this report’s authors.) Brady heard similar impressions during her research: “It was intimated that targeting approximately ten politicians could have real positive impacts on the system as a whole.”⁸⁹ While most current respondents agreed that there would be political difficulty in getting high-level prosecution, they tended to think that such an approach is needed, even if lower/middle level cases are pursued at the same time; bottom-up is needed, but is not seen as sufficient to crack BiH’s corruption deadlock.

Respondents commonly report their sense that there is a class of people who can act with impunity; this echoes claims heard for years among normal citizens. Several respondents noted that it seems that there is always news in the media about an arrest or indictment, but then all of these people go free; this is echoed by Nenadovic: “[T]he newspapers in BiH regularly publish investigative stories linking the elected officials with criminal activities. Yet, the same actors are rarely investigated by judicial organs or the police, which adds to the general feeling that politicians are untouchable by the law.”⁹⁰ High-level, multi-year cases seem to go on and on, and seem inevitably to result in acquittals. “There are several local and international corruption fighting agencies active on the ground. Interviews with some of their officials, however, point to the fact that only ‘small fish’ are being investigated. Also, these interviews confirmed that members of political parties, despite the allegations of corruption and criminal activities that exist in the press, are not under investigation by any of these agencies.”⁹¹

Box 5: Looming Ahead – Prosecution of Former Defense Minister?

In 2012 the then Minister of Defense, Selmo Cikotić (SDA), signed an audit report which contained fictitious numbers regarding the amounts of weapons destroyed since 2006 as a part of various weapons destruction programs. The audit report had been requested by a Serb member of the BiH Presidency, Nebojsa Radmanovic (SNSD). There were allegations

⁸⁸ The issue of whether the justice sector is unified is important to consider, particularly in light of the following comments included in the project documentation for the 2014-2019 USAID Justice Reform Project: “Justice Project does not subscribe to the belief that the political fragmentation of the BiH prevents progress in the justice sector. On the contrary, the judiciary in BiH is the only branch of government unified at the state level, and this presents a huge advantage and an opportunity.” USAID Project Document, Contract No, AID-168-TO-14-00001, (September 2014), 2-3. The Justice sector is more unified than it was at the end of the war. However, it is *not* unified. There is no BiH Supreme Court meaning that non-constitutional appeals can be processed only up to the level of the entity Supreme Courts. There is no unified budgeting, giving significant power over the judiciary to lower level ministries. Some might argue that the Armed Forces of BiH, and the BiH ministry of Defense could more properly be cited as a good example of a branch of government unified at the state level, as the former entity levels ministries of defense were actually *closed* when the state level ministry was established following defense reform; however, some would contest the depth of actual lasting unity of the armed forces, and a discussion on that matter is beyond the scope of this report.

⁸⁹ Brady, *Title of book*, 39.

⁹⁰ Maja Nenadovic, “An Uneasy Symbiosis: The Impact of International Administrations on Political Parties in Post-Conflict Countries,” *Democratization*, 17, 6 (2010), 1165, note 26.

⁹¹ Maja Nenadovic, “An Uneasy Symbiosis: The Impact of International Administrations on Political Parties in Post-Conflict Countries,” *Democratization*, 17, 6 (2010), 1166, note 26.

that the numbers were manipulated because some of the weapons were in fact not destroyed but sold. There was an independent investigation in the BiH Parliament, initiated by the Chair of the Joint Commission on Defense and Security (Dušanka Majkić, SNSD), which resulted in some reports to SIPA. SIPA then forwarded the findings to the BiH Prosecutor's office, which started an investigation that included 11 individuals. Selmo Cikotić denied any responsibility.⁹² The last information in the media about the investigation was in 2013, when the persons charged in the case were questioned at the Prosecutor's Office.⁹³

6.2.2 Efforts to Date – Selected Review

As noted, since the JSAP began in 1998 there has been a gradual increase in engagement in the justice section, culminating in a burst of internationally supported activity from 2000 to 2005, followed by a period of stagnation, and, some would say, regression. Coordination has been admittedly imperfect, as new international officials, organizational programs, and driving personalities come and go. Further, BiH's political leaders change, again shifting agendas and priorities. However, even taking into account bureaucratic delays and shifting priorities, this is not a sector that has been ignored.⁹⁴ The UN and its family of donor countries supported JSAP. The U.S., E.U., Norway, and many other donors supported the IJC. The HJPC and State Court received significant support from many donors. Annual HJPC reports (from 2008-2013) provide a good review of the capacity building efforts of this body, support by USAID, Norway, the Netherlands, and many other countries.⁹⁵ The Justice Sector Reform Strategy (JSRS) adopted by BiH's authorities in 2008 and implemented from 2009 to 2013⁹⁶ has received E.U. IPA funds for various projects (for example, 5,200,000 Euro of IPA funds for upgrading ICT, and supporting penal/prison reforms). This is just the tip of the iceberg, and a complete accounting would be a research effort in itself.

USAID has provided consistent support in this sector as well. This summary is NOT aimed to suggest that the projects were poorly designed or poorly implemented. Similarly, it is not meant to suggest that they have not had a significant *micro-level* impact on certain participants or small groups of participating stakeholders in terms of their own

⁹² It is interesting to note that Cikotić returned to academia, as he is an Associate Fellow at the Geneva Center for Security Policy. See <http://www.gcsp.ch/About-Us/Global-Fellowship-Initiative/Associate-Fellows/Dr-Selmo-CIKOTIC>

⁹³ "Uzeli Pare Za Uništavanje Starog Oružja A Prodali Ga Kao Novo," *Slobodna Bosna*, June 6, 2013, http://www.slobodna-bosna.ba/vijest/8383/uzeli_pare_za_unistavanje_starog_oruzja_a_prodali_ga_kao_novo.html; Svjetlana Tadić, "Majkić: Izvezeno oružje koje se vodi kao uništeno," *Glas Srpske*, July 13, 2012, http://www.glassrpske.com/novosti/vijesti_dana/Majkic-Izvezeno-oruzje-koje-se-vodi-kao-unisteno/lat/85428.html;

"Kako je preprodavano oružje koje je trebalo biti uništeno," *Federalna.ba*, January 11, 2013, <http://www.federalna.ba/bhs/vijest/54325/zloupotrebom-polozaja-pribavljena-milionska-korist>

⁹⁴ The HJPC web site and the site "Judicial Portal of Bosnia and Herzegovina," <http://www.pravosudje.ba/> provide links to additional information. For specific information on anti-corruption, the portal <http://www.anticorruption-bosnia-and-herzegovina.org/> provides information on BiH and the region.

⁹⁵ Reports available at <http://vstv.pravosudje.ba>

⁹⁶ Project Title: Support to the Justice Sector Reform, IPA National Program (2011), Bosnia and Herzegovina, http://ec.europa.eu/enlargement/pdf/bosnia_and_herzegovina/ipa/2011/3_ipa_2011_justice_sector_final.pdf; the JSRS Action Plan adopted by BiH authorities in December 2008 is at http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/strategija/default.aspx?id=2395&langTag=bs-BA

professionalism, awareness, etc. It is simply intended to illustrate the kind of support USAID has offered over the years and to better consider what is possibly preventing broader *macro-level* impact in term of overall system function, in general and in terms of anti-corruption efforts.

It can be helpful to consider the following questions when reviewing past and ongoing project support:

- What prevented broader impact in terms of overall justice sector functioning? Is lack of political will (and as a byproduct, insufficient budgets etc.) overly simplistic? Would more workshops, trainings, and expert exchanges have changed the situation? Would more money have led to greater systemic impact?
- Is it possible that there has just not been enough time that all efforts require more years to truly sink in and create structural change? Are there other transitional countries that can provide a sense of “standard” timeframes for justice sector reform?
- Was there an effective targeting of effort at both lower (cantonal/district) and higher-level (entity/state) courts and prosecutor’s offices? Would a different sequencing approach have made a difference?
- If there had been serious political will to maximize the opportunities made available through these projects, how might the BiH justice sector look today? How might efforts to reduce corruption look?

Chart 2: Overview of Main USAID Justice Sector Projects

Project	Components/Objectives	Activities	Selected Quotes on Corruption
USAID Rule of Law Program 2000-2005 (ABA CEELI) ⁹⁷	<ul style="list-style-type: none"> • Judicial reform • Legal profession reform • Legislative reform • Alternative dispute resolution 	<ul style="list-style-type: none"> • Support to entity Bar Associations, and associations of judges and prosecutors • Drafting, training on new civil procedure codes • Support to FOIA • Support for independent court budgeting • Moot court competition and work with law faculties to build domestic capacity for such education 	“Perhaps the most important issue identified as inhibiting to the judiciary was the problem of corruption.” (p. 3)
USAID Justice Sector Development Program (JSDP) (East-	<ul style="list-style-type: none"> • Strengthen institutional capacity and performance of the HJPC; • Improve court administration and reduce case backlog; 	<ul style="list-style-type: none"> • Support to HJPC on appointments, performance, discipline, ethics, strategic planning, PR, court administration, 	“In Years 4 and 5, JSDP provided valuable technical assistance that upgraded Bosnia’s compliance with

⁹⁷ *Final Report for the Rule of Law Program in Bosnia-Herzegovina, 2000-2005*, ABA CEELI (no publication date).

<p>West Management Institute)⁹⁸</p> <p>2004 – 2009</p> <p>\$14.6 million</p>	<ul style="list-style-type: none"> • Strengthen institutional capacity and performance of the State (BiH) Ministry of Justice (MOJ), particularly legislative drafting skills; • Improve indigent criminal defense services and create a national-level legal aid office to provide such services. 	<p>court budgeting, rulebooks, manuals</p> <ul style="list-style-type: none"> • Model Courts Initiative in 32 courts: ICT/case management, court remodeling, case backlog reduction support, networks with NGOs and professional associations • BiH MoJ training in finance, PR, human resources, project planning; development of first Justice Sector Reform Strategy, ICT and MoJ databases, legislative drafting manuals, BiH harmonization on AC and OC legislation/international conventions • Legal aid, FOIA support, NGO and women’s networking and outreach 	<p>international treaties signed by BiH in the fields of anti-corruption and organized crime. JSDP sponsored a study trip in Year 4 to Vienna to the UN Office of Drugs and Organized Crime (UNDOC) for a week of training for a mixed group of Bosnian justice sector officials. An expatriate expert helped MOJ personnel to upgrade its database of severe criminal offences so that the authorities could track offenders more efficiently. He returned on two more occasions to work with justice ministry officials at state and entity levels to make amendments to the criminal codes that would meet international standards for control of organized crime and anti-corruption. In all but a few areas needed changes were agreed upon.” (p. 27)</p>
<p>USAID Justice Sector Development Program II (JSDP II) (East-West Management Institute)⁹⁹</p>	<ul style="list-style-type: none"> • Judicial Independence, Accountability and Effectiveness • A Coordinated and More Unified Justice Sector • Increased Public Confidence in the Rule of Law 	<ul style="list-style-type: none"> • New system of written testing and interviews for judge/prosecutor positions • New system to reduce case backlogs • New prosecution administration 	<p>“Public trust in the judiciary is low, partly because politicians rarely face justice for corruption and other crimes.” (p. 7)</p> <p>“Survey respondents</p>

⁹⁸ Justice Sector Development Program Final Report, East-West Management Institute, Inc. (August 2009).

⁹⁹ Justice Sector Development Program Final Report, East-West Management Institute, Inc. (September 2014).

<p>2009 – 2014</p> <p>\$ 8 million</p>		<p>standards</p> <ul style="list-style-type: none"> • IT support to prosecutor’s offices; PR and reporting support for prosecutor’s offices • Establishment of Forum for Joint Policy, which developed five proposals • Support for free legal aid • Strategic planning capacity support with MoJ and HJPC, as well as lower level units • Cooperation mechanism between cantonal and Federation Mojs • Efforts to reduce budget fragmentation • Support to civic Justice Network 	<p>each year believed that political influence was the most significant factor bearing on a judge’s or prosecutor’s decision, even though a very small percentage of respondents stated they knew somebody who was asked to pay a bribe to a court or prosecutor’s office employee. Respondents’ satisfaction with the independence of the judiciary, its efficiency and ability to fight corruption, process war crimes cases, and protect labor rights was generally low. The surveys also revealed that the concept of corruption is not broadly understood. Respondents tended to justify certain aspects of corruption and appear to distinguish between those who pay and those who receive bribes.” (p. 36)</p>
<p>USAID Justice project in BiH¹⁰⁰</p> <p>2014-2019</p>	<ul style="list-style-type: none"> • Preserving the independence of justice sector institutions through greater self-accountability (and external accountability mechanisms such as CSOs) • Moving key justice sector institutions from the planning and standards 	<ul style="list-style-type: none"> • Prosecutor Partnership Program (training, mentoring, performance incentives, better budgeting and management, etc.) • Diagnostic Assessments (BiH 	<p>“First, the executive and legislative powers at the state and entity levels have manifested intent to curb the independence of the judiciary.” (p. 2)</p> <p>“Second, obtaining</p>

¹⁰⁰ USAID Project Document, Contract No, AID-168-TO-14-00001 (September 2014).

	<p>development to improved performance based upon results analysis</p> <ul style="list-style-type: none"> • Strengthening HJPC and prosecutor’s office management practices and decision-making so that resources are allocated strategically to fight corruption and other serious crime • Delivering on-the-job, skills-based training and mentorship to front-line prosecutors and police • Building consensus for key reforms and standardizing cross-jurisdiction cooperation • Using diagnostic studies to inform policy solutions that improve system-wide performance and strategies to fight corruption • Increasing public confidence in the justice sector through professional regulation, accountability, and transparency. 	<p>cases, regional assessments)</p> <ul style="list-style-type: none"> • Consensus Building Forums (structured dialogue, policy discussions, campaigns) 	<p>convictions in corruption and serious crime cases has been seriously hampered by the inability of prosecutor offices to apply management skills and to conduct prosecutor-guided investigations jointly with police.” (p. 2)</p>
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The current Justice Reform Project has only begun its work, making it too soon to assess its efforts.

Nearly all respondents agreed that it is possible that even a billion dollars could be spent on capacity or institution building, but that in this political context and environment, little will change due to lack of political will. All respondents noted the need for better donor and international coordination on politics and programmatic work. Several of the respondents – and a number of people in informal conversations – suggested an effort aimed at getting the “untouchables”.

Box 6: Law and Order

“Decentralized policing still remains ever present, which is not conducive to effective policing, as it remains prone to political pressures and interventions. However, police services have developed in terms of professionalism, modernization and democratization, but there is still room for improvement. Unfortunately, police are still exposed to political pressure over autonomy and political/ethnic loyalty. The capacity of the police to

investigate cases involving the politic elites and state officials remains limited, making it increasingly difficult to deal with OC and corruption, at this level. Furthermore, this lack of ability of the police to investigate cases has been magnified by the lack of judicial will to hold public officials accountable.”¹⁰¹

6.2.3 Recommendations

No simple set of recommendations can replace the broad systemic efforts that have been underway for a decade and a half. However, the following can help to ensure a certain focus on the issue of corruption in the justice sector, especially in its role in prosecuting corruption cases.

- Many respondents noted the need for more coordination on the issue of corruption among international actors and donors. Other forums, such as the Board of Principals, are too broad. Structured dialogue is limited to the E.U., and includes local officials. Countries with a key interest in fighting corruption – in terms of political buy-in and also monetary support – need a place to strategize in order to together identify and leverage key pressure points. This should be principal level.
- The war crimes process has been quite extensively monitored both through in-country monitoring (e.g., by the OSCE Mission to BiH), but also through the ICTY *I l b i s* process for handing down court cases from the Hague to domestic courts. This has not been done with corruption cases.¹⁰² Several experts have noted a need for a systematic analysis of how a corruption case moves through the system. Rather than labor intensive trial monitoring (used in war crimes), some experts note that an analysis of key decisions – custody hearings, verdicts, appeals – can shine light on how and where these cases succeed, or, more often, fall apart. The USAID Justice Project is preparing a Request for Proposals to seek potential service providers for some kind of assessment; it is unclear, however, what methodologies are desired or proposed. ACCOUNT is initiating an effort in which NGOs and their members (not necessarily lawyers) will review why investigative materials are not acted upon by prosecutors, but instead are sitting in drawers. This effort should begin in February and is expected to last approximately four months.¹⁰³ However, an expert and independent process by an actor such as the OSCE MBiH (which has long experience with war crimes) should be considered, as this would allow for a triangulation of the data, and, perhaps most importantly, confirm that this is not just a U.S. effort or interest.
- Throughout the course of this research, the author of this report has been unable to find out if there has ever been an anonymous survey of judges and prosecutors to seek *their* input on systemic failures or inadequacies. It would be useful to a) confirm that

¹⁰¹ Brady, *Title of Book*, 23.

¹⁰² Brady, 2012 reviewed all of the cases that came before the BiH State Court, Section II OC., Economic Crimes and Corruption, and that were available on the State Court web site. She notes that she reviewed the 240 cases available in English (out of 313). Brady, *Title of Book*, 24. Further, she notes that her analysis of EUPM monitoring between 2006 and 2011 reveals interesting observations, although she acknowledges that the method is not authoritative. She notes “that there seemed to be a break down in processes when cases involved politicians, state official, police, etc. Issues surrounding prosecutors and police emerged, noting that cooperation between both was often limited, procedures were slow and time consuming, and cases were passed between a number of prosecutors and jurisdiction on many occasions.” *Ibid.* 26. She recommends a more comprehensive review on pages 45-46.

¹⁰³ The Lawyers’ Committee for Human Rights in Serbia (YUCOM) has a monitoring program focused on corruption. See <http://www.yucom.org.rs/rest.php?tip=vestgalerija&idSek=8&idSubSek=19&id=34&status=drugi>

such data are not already available, and b) consider whether such a survey might be administered by the Justice Reform Project. Such a survey could begin with a pilot test sample and then the methodology could be confirmed for a more thorough survey.

- The introduction of an incentive-based system for prosecutors that includes carrots and sticks is critical. Incentives should be given for successful convictions (not indictments); there also should be repercussions in cases in which indictments or cases consistently unravel. The current USAID Justice Sector project includes this objective, and this has been seen as needed for years; it will need significant political and other support to make progress on this valid goal, and to move away from words to action. Timelines should be set to make this a reality, and identify any issues and points that are impediments.¹⁰⁴
- Efforts to reform judicial budgeting also are critical for judicial independence; this is why they have been resisted for so long. Insufficient funds are allocated for the justice sector.¹⁰⁵ The fragmentation of judicial budgets has long been viewed as a serious threat to efficiency and judicial independence. This fragmentation is grounded in the BiH constitution. The European Commission Progress Report in 2005 notes this, and it is mentioned consistently in these annual reports through 2014.¹⁰⁶ The HJPC's Annual Report for 2013 notes these core budgeting problems and recommends a defined but limited HJPC role in supporting, multi-year judicial budgeting and other recommendations.¹⁰⁷ The final report for JSDP II similarly notes the need for a reduction of judicial budget fragmentation.¹⁰⁸ Ten years of talk, while tens of millions of [identify currency] have been spent supporting judicial institutions, should be seen as unacceptable, and further financial or technical support should be linked to reform on this matter in 2015. There have been efforts in the Federation to move judicial budgeting from the cantons to the Federation entity level; while this was discussed in 2013 Federation reform efforts and to an extent supported by even cantonal interlocutors, it is difficult to imagine Dragan Covic agreeing to move this competency to the Federation in the absence of the broader "Croat protections" he seeks.¹⁰⁹ State level engagement would be necessary to end the ethnic and ethno-political justice

¹⁰⁴ The HJPC has noted its support for this for years including in its 2013 Annual Report. However a February 2015 TAIEX workshop (see, supra, note 68) suggests that the notion of meritocracy is still not deeply rooted in all parts of the justice sector.

¹⁰⁵ The HJPC notes that while judicial budgets in 2013 were higher than in the previous year, it still does not allow "the efficient operations of the judicial institutions." High Judicial and Prosecutorial Council of Bosnia and Herzegovina 2013 Annual Report, p. 7. The EC Progress report notes, "The total adopted budget for 2013 was € 110 million, representing 0.82 % of the country's GDP. 13 Due to budgetary restrictions, 13 % of positions for regular and reserve judges, as well as prosecutors, cannot be filled across the country." *European Commission Bosnia and Herzegovina Progress Report* (October 2014), 12-13.

¹⁰⁶ "There was no progress on reducing the budgetary fragmentation of the judiciary, which also undermines independence." *European Commission Bosnia and Herzegovina Progress Report* (October 2014), 15.

¹⁰⁷ "[W]e need to stress that the powers of the judicial institutions in BiH regarding the budget process do not allow for full independence of financing. There is a common practice in many European countries whereby institutions similar to the HJPC propose a budget for all judicial institutions and that they directly negotiate with the parliaments and assemblies on the level of funds to be approved for the judiciary." *High Judicial and Prosecutorial Council of Bosnia and Herzegovina 2013 Annual Report*, 7.

¹⁰⁸ *Justice Sector Development Project II: Final Report*. East-West Management Institute, Inc. (September 2014). This project put particular energy into efforts to reduce budget fragmentation in the Federation.

¹⁰⁹ The Federation Expert Group would have harmonized the budgeting process for budgets would all come from the entity, rather than cantonal level. See <http://ustavnareformafbih.blogspot.com/>. This would have ultimately neutered the canton level Ministries of Justice; however, this process stalled. A draft law on the establishment of a Federation Prosecutor's Office has been in process for several years; this would also consolidate budgeting at the entity level. Some cantons have objected to this.

system in place. Citizens would support this; a 2013 poll showed that to more effectively fight corruption the vast majority of Serb respondents in the RS supported strengthening state competencies, and weakening RS competencies.¹¹⁰ The U.S. can help to support this constituency.

- Support local capacity to prosecute five to seven high level corruption cases, to demonstrate top-down as well as bottom up efforts to fight corruption. This would need dedicated multi-year support, coordinated within the proposed task force model, bringing together all U.S./USAID efforts, international partners, and civic actors. As cases of public corruption are often at their heart financial crimes, sufficient expert support by bilingual experts (perhaps drawing on qualified BiH diaspora) would very likely be needed. Bodies exist on paper: for example, within SIPA (a Financial Intelligence Unit; in addition the Criminal Investigation Unit contains a Section for Prevention and Detection of Financial Crime and Corruption, and a Section or Prevention and Detection of Organized Crime), but it has not demonstrated any independence of action.¹¹¹

¹¹⁰ An analysis of a mid-2013 public opinion poll commissioned by PILPG within the USAID, “Constitutional Reform in Bosnia and Herzegovina: Engaging Civil Society,” was shared with USAID and is available at <http://www.mreza-mira.net/wp-content/uploads/2013-Public-Opinion-Poll-Oct-31-Narrative-Report.pdf>

¹¹¹ Many respondents note that Goran Zubac (SIPA), Goran Salihovic (OTP), and Milan Tegeltija (HJPC) work together to ensure weak state level investigation and prosecution on non-war crimes matters, and collusion with leading political parties. No respondent sees them as independent, as individuals or in their joint approach to fighting high-level corruption.

6.3 Politics and Elections

Key Problem Areas/Challenges Related to Fight Against Corruption

- Election campaigns in BiH are more about ethno-national identity than issue-based platforms
- The electoral system contains few incentives for moderate, non-nationalist party approaches
- Allegations of vote buying and election season payouts reduce confidence in the system
- After 19 years, there is little sign of political accountability in the country's political and electoral system

Key Recommendations

- Support investigations into vote buying and other allegations of corruption in the 2014 general elections
- Resist election law proposals aimed at synchronizing election cycles and/or returning to closed lists
- Review political party support programming options to determine whether support for political party partners is yielding greater systematic accountability; consider targeting individual agents of change

6.3.1 Context

Any discussion about political, public, and official accountability in BiH inevitably must include elections. It is the author's opinion that the single biggest mistake in post-Dayton BiH (other than the failure to revisit the constitutional structure within a few years after the war), was the country's failure to institutionalize an election system that allowed cross-group (cross-national) voting aimed at incentivizing moderation. (For example, if BiH had institutes rules that each member of the three-person presidency required a certain threshold of support from various groups/regions candidates would have been forced to reach across party/group lines and to moderate their policies.)

Instead, the election law, together with electoral units that are more or less ethnically homogenous, ensures that candidates are electorally rewarded for pandering to their bases and by campaigning to their parties' extreme factions. There are no incentives for moderation, and, in fact, in a post-war divided system, moderation is punished.¹¹² Further, the four levels of government create perverse incentives for political parties that affect local elections through varying horizontal and vertical party linkages, and encourage fragmentation.¹¹³

¹¹² Nenadovic confirms this: "In terms of the institutional impact, the introduced party laws were basic: they did not create incentives for, nor did they demand the formation of cross cleavage, multi-ethnic parties. Equally, the laws on party financing exist, but have not prevented the parties' extraction of funds from the state budget, nor do they effectively regulate or make party financing transparent." Nenadovic, *Title*, 1168.

¹¹³ John Hulsey, "Party Politics in Bosnia and Herzegovina," in *Statebuilding and Democratization in Bosnia and Herzegovina*, ed. Soeren Keil and Valery Perry (Farnham and Burlington: Ashgate, 2015) (forthcoming).

While there currently seems to be no international appetite for the constitutional and substantive electoral reform needed to introduce *true* accountability into the system, there are some relevant steps that the U.S. can take to begin to improve the system. What kinds of officials and candidates would the U.S. like to see? Problem-solvers? Business-minded individuals interested in cross-administrative boundary agricultural cooperation? Young, educated multi-lingual returnees? Or more of the same? Rather than continuing to offer support to status quo parties that suffer from an internal democracy deficit,¹¹⁴ the U.S. should support agents of change who are able rise above the entrenched and sclerotic political party structure.

6.3.2 Efforts to Date – Selected Review

There have been countless efforts by many actors to perfect this imperfect system. Political party academies have been organized by the German *stiftungs*, the Council of Europe, and others. These organizations also have provided capacity building support, as have NDI and IRI. There have been countless youth party member training workshops, and endless efforts to improve women's participation in the political process; the list goes on.¹¹⁵ None has managed to change electioneering or party dynamics. Support to "new" party options has failed, as new parties adhere to the same policies and tactics as the old parties.¹¹⁶ When the author of this report asked respondents to point out any possible "agents of change" in the political system – at any level – the response was either silence, that "they are out there but are lying low so as not to get cut down," or the suggestion that SDA's Senad Sepic or SDP's Sasa Magazinovic are examples of "new-thinking" young leaders who have gained from U.S. capacity building support.¹¹⁷ Respondents noted that the work of NDI to strengthen a cross-party coalition of parties known as the Democratic Initiative for Europe (DIE) has been successful, with a tangible output being the support of DIE members in passing the state level whistleblower law. (As this non-formal initiative included SBiH, DNS, SDA, SDP BiH, HDZ 1990, PDP, SNSD and HDZ, it will be interesting to find out what is in store for the future following the 2014 elections. It would be useful to review what other pieces of legislation this group adopted through joint work if considering any possible future non-formal party coordination opportunities.)

As the *supply* of responsible politics has been lacking, there has been an increasingly vocal effort to change *demand*, by getting citizens to vote (if they don't), or to vote differently. A common mantra from the international community has been that citizens are to blame for

¹¹⁴ Roska Vrgova has studied the issue of intra-party democracy among selected parties in BiH and in Macedonia. Roska Vrgova, "Intra-Party Democracy In Consociational Democracies: The Cases of Bosnia and Herzegovina and Macedonia" (Master's thesis, The European Regional Master's Degree in Democracy and Human Rights in South-East Europe, University of Sarajevo and University of Bologna, October, 15 2012).

¹¹⁵ Nenadovic attributes SNSD's 2006 electoral success to both international administration removal of SDS officials from office, as well as to NDI's aid and advice to SNSD. Maja Nenadovic, "An Uneasy Symbiosis: The Impact of International Administrations on Political Parties in Post-Conflict Countries," *Democratization*, 17, 6 (2010) 1170, n.26.

¹¹⁶ Jennings and Aplon explicitly note this trend: "In the end the SDP practiced politics in a manner resembling the other ethnically based parties." Ray Salvatore Jennings and Jason Aplon, *Bosnia-Herzegovina; New Country Assessment and Consultation*, December 22, 2014, 5

¹¹⁷ It is interesting to note that at a January 2015 civil society seminar sponsored by the Austrian Foreign Ministry and its partners, Amna Popovac, an activist, businesswoman, and potential future mayoral candidate in Mostar, noted that they are working to identify agents of change in the parties in that region. It will be interesting to see what comes of this noted effort.

the situation, as they voted for these parties and individuals.¹¹⁸ This is a facile argument, however, and neglects the extent to which people do vote strategically, based either on narrow (though valid) personal patronage concerns, or based on fears of the likely voting choice of the other, in an electoral version of the prisoner's dilemma. It is technically possible that everyone could have woken up on Election Day in October and voted for *Nasa Stranka* or *Demokratska Fronta*; it is similarly possible that American voters could all vote for Bernie Sanders. However, in the existing political structures in each country, this will in practice simply not happen.¹¹⁹

Box 7: 2014 General Election Campaign – Corruption

The issue of corruption was invoked in statements by many of the party leaders in the 2014 election campaign; just some indicative examples are included below. These statements are typical of campaign promises, as well as the dynamics of opposition parties making promises that they have not had to act on in a current mandate.¹²⁰

- Mladen Ivanić (PDP) noted that BiH has to establish an agency for the fight against corruption (new; it is unclear why APIK could not be re-fashioned) but not within a political line. It should be independent, and BiH should adopt a whole new set of laws.
- Bakir Izetbegović noted that, if he is elected, he will process all remaining and stalled corruption cases in the Prosecutor's Office
- Dragan Čović said that BiH has to have politically independent institutions, which are a characteristic of a legal state
- Budimir stated that the people who are to fight corruption in this country are the people who have never been involved in a corruption case or a scandal
- Željka Cvijanović said that the institutions are not enough, BiH also has to have someone on the "other side" who will indicate and warn that there is corruption in BiH
- Fahrudin Radončić, whose pre-election campaign was called the "anti-corruption tsunami" said that BiH will not have problems with corruption if the people elected are honest and honorable
- Martin Raguž noted that BiH has to have a system in which "the untouchables" do not exist

¹¹⁸ This is commonly heard in conversation, but has also been in print. Dan Serwer notes in a blogpost dated March 4, 2014: "Sure elections can bring changes, provided Bosnians vote differently. But if they continue to return the same tired nationalists, reform is unlikely. Democracy doesn't guarantee change. It only provides the opportunity for it." Available at www.peacefare.org. High Representative Valentin Inzko said that voting gives BiH citizens their own form of the Bonn Powers, and that they should determine their destiny through voting. Valentin Inzko, "Glasaj 12. oktobra! Iskoristi svoju krajnju moć i odredi sam svoju sudbinu!" *Vijesti.ba*, August 12, 2014, <http://www.vijesti.ba/kolumne-komentari/231776-Glasaj-oktobra-Iskoristi-svoju-krajnju-moc-odredi-sam-svoju-sudbinu.html>. See also *Bosnia's Future*. International Crisis Group Europe Report No. 232, (July 10, 2014), <http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/232-bosnia-s-future.aspx>. Florian Bieber, "Why Constitutional Reform Will Not Solve the Bosnian Blockade," *Transconflict*. July 30, 2014, <http://www.transconflict.com/2014/07/why-constitutional-reform-will-not-solve-the-bosnian-blockade-307/>

¹¹⁹ Valery Perry, "Is Substantial Political Reform in Bosnia and Herzegovina Possible through the Ballot box in October 2014?" *Democratization Policy Council Note #7* (September 2014), http://democratizationpolicy.org/uimages/DPC%20Policy%20Note%20BiH%20new%20series%207_BiHs%20Electoral%20Straitjacket-I.pdf; Asim Mujkić and John Hulsey, "Explaining the Success of Nationalist Parties in Bosnia and Herzegovina," *Politicka Misao*, 47, 2 (2010), 143-158.

¹²⁰ "Sta su obećali pred izbore u vezi korupcije???" *Prva Politika*, November 16, 2014, <http://www.prvapolitika.com/Sta-su-obekali-pred-izbore-u-vezi-korupcije/>

In 2010 there was not as much consistent rhetoric about corruption. It is possible that this is a result of more public talk in the press and the public sphere about corruption (by NGOs, ACCOUNT, CIN, etc.). However, it could also reflect a basic political dynamic. The fact that SBB and NSRzB were among the most likely to mention corruption in their 2010 campaigns suggests that this is not simply a “real” platform issue, but is in fact a good one for opposition parties or parties seeking greater visibility to use as a theme. In 2014 as well, in the RS for example, the SDS saw a campaign advantage in building on popular dissatisfaction with the ruling SNSD, and built corruption into its messaging in spite of the fact that when SDS itself was in power (until 2006) it did not have a strong anti-corruption portfolio.

6.3.3 Recommendations

Each of the following recommendations is directly related to the need for a new approach to ensure more political accountability, or at least to prevent a reversal of reforms that could lead to *less* accountability.

- Vigorously support investigations into all allegations of vote-buying, especially in the RS (as it relates to the late December *Klix* raid), but in other cases in the recent elections as well. This should be a public and constant message. Mentoring and expert support should be provided to prosecutors and civic actors, as required. Journalists and others should investigate other allegations of vote-buying, and the legal system should impose consequences in proven cases. It is possible that relevant laws to increase fines and penalties should be strengthened; this could be built into the legislative agenda noted above.
- The U.S. and its partners should resist proposals to synchronize election cycles. This idea has gained support in the international community since approximately 2012, although it has been discussed for years. The presumed logic underlying this proposal is two-fold. First, supporters argue that it would save money. Second, supporters argue that having elections every four years would enable elected officials to have a full four years in which they can work without the pressures of elections. Each of these arguments is flawed. First, the cost savings would be negligible at best in part because there have already been suggestions that general and municipal elections would in fact *not* be held at the same time, but would be held at different times in the same year. The second argument, however, is of more concern. It presumes that the only factor preventing officials from making hard choices is the election cycle; *there is no evidence to support this claim*. Further, merging the election cycles would actually have the perverse effect of infecting the municipal elections – the ones most focused on actual issues of local concerns, under-girded by the successful reform to directly elect mayors – with the divisive nationalist rhetoric that is squarely focused on fear and patronage, and not on practical issues like local economic development or garbage collection. While some countries, like Sweden, have synchronized election cycles, most do not.¹²¹

¹²¹ See “Comparative State Practice: Timing of State and Local Elections,” February 2014, included in the report package. Eighteen countries in Europe intentionally stagger their elections. Several countries have hybrid staggered/synchronized election cycles. The rationale for this can vary. In some cases this reflects the impact of six-year terms, which throws off synchronization (e.g., Czech Republic); in others it reflects different timing for Presidential or Parliamentary elections (e.g., Cyprus). Hungary holds general and local elections in

- The U.S. and its partners should also resist reforms aimed at returning to closed lists.¹²² This has been proposed for two alleged reasons: a) to simplify the counting procedure (by eliminating the options of voting for individual candidates), and b) to make it easier to get more women in office by allowing parties to appoint a certain threshold of women rather than relying on voter preference. These lines of reasoning are mooted by political parties, and often parroted by some NGOs (including women's NGOs) that lack political acumen. In fact, the real reason parties are interested in this possible reform is that it is a recipe to ensure greater party control, and to minimize the potential for individual candidates to potentially "go rogue" or create their own bases of popular support separate from the party line.¹²³
- The U.S. should reconsider its traditional programs of support to political parties. Traditional political party capacity building implemented by NDI and IRI, including support in the development of issue-based campaigns, the introduction of televised debates, training workshops to strengthen youth and female candidates, etc., have led to little positive change in terms of either reducing the role of ethnicity in politics, or of increasing and promoting accountable politics. *This is not the fault of the programming*; it is a simple result of the election system and the electoral incentives that it creates. The U.S. should envision the type of candidates and officials that it would like to see, and, if these are available, support these options, targeting individual agents of change rather than parties.¹²⁴ NDI and IRI should instead look at options to increase accountability (potentially with its DIE or similar partners), considering for example: a) developing election laws that would increase accountability by linking more named candidates to specific offices; b) supporting the development of more constituency office of names responsible candidates; c) supporting the establishment of party constituency offices in non-traditional locations (e.g., *Nasa Stranka* in the RS, etc.); and, d) supporting more aggressive use of recall procedures,¹²⁵ etc. NDI and IRI programming should be re-framed to focus **solely on increasing accountability**; if this is not possible then the utility of more of the same should be strongly reconsidered.

the same year, but at different times. Romania holds local and parliamentary elections in the same year. Sweden synchronizes. In Switzerland cantons develop their own election timetables. Many of these timetables can of course be affected by snap or extraordinary elections, or the dissolution of government.

¹²² This was included in the controversial SDP-SNSD Deal of 2012. "Change the Election Law to ensure a more democratic election process in the part of determining the election results, eliminating electoral engineering by introducing closed election lists, more representation of the minority sex in legislation bodies." See excerpt at http://staff.balkans.aljazeera.net/sites/staff.balkans.aljazeera.com/files/3_49.jpg

¹²³ Transparency International issued a press release in 2010 when this issue was being floated. They appealed, "to the relevant institutions, international organizations and the public in Bosnia and Herzegovina to prevent the adoption of proposed changes to the Election Law which would close the list of candidates in the elections, whereas the citizens would not be able to vote for individuals on the list but only for the party, and the mandate won in the elections would no longer belong to individuals, but to a party." *TI BiH Press Release*. 26 (January 2010), http://ti-bih.org/wp-content/uploads/2010/01/01.26_eng.pdf

¹²⁴ It is understandable that the US cannot be seen as openly promoting a certain party or candidate. However, photo ops can be organized to ensure a visit to a local raspberry farm in a municipality with a young, solution-oriented agent of change/candidate occurs at the right time.

¹²⁵ Recall procedures (regulated by the Election Law) exist for ministers (at all levels), mayors, and canton and entity prime ministers. It is however rarely used. One example is the recall of the mayor of Kotor Varoš in 2014. See "CIK: Načelnik Kotor Varoša opozvan zakonito," *Moj kontakt portal*, February 5, 2015, <http://mojkontakt.com/2015/02/cik-nacelnik-kotor-varosa-opozvan-zakonito/>

6.4 Auditing Institutions

Key Problem Areas/Challenges Related to Fight Against Corruption

- Audits by state and entity bodies provide useful information but are not consistently used as tool to improve work or accountability

Key Recommendations

- Target a limited number of institutions (public companies or state/entity bodies) for specific attention, working with local experts, NGOs, and auditors to identify critical actors; develop campaigns to raise attention to these specific and limited targets, including coordinated messaging
- Work with prosecutors to ensure greater reference to/use of audit information, in general but particularly with regard to above-noted selected targets
- Identify regulatory gaps and build on comparative state practice to determine how to best integrate automatic, institutional triggers (potentially including budgeting decisions) that remove the levers of action away from politicians
- Support independent review and investigation of audits of public companies, monitoring (in)action and following up to determine where accountability breaks down

6.4.1 Context

The BiH, entity and Brcko District auditing agencies could be used in anti-corruption efforts. Respondents have been broadly positive when asked about the public auditing institutions (often referred to as Supreme Auditing Institutions); they noted that they are thorough and professional. One respondent noted that the public auditing institutions' work is more thorough than the work of private auditing firms.

Broadly speaking, there are two kinds of audits that can play a role in anti-corruption initiatives. *Financial audits* track money budgeted and money spent. *Performance audits* aim to determine whether money was spent in a way that was responsible and had impact in terms of ensuring that quality services were provided to citizens. (These were introduced in 2006 at the state and entity levels.) BiH has adopted the International Standards of Supreme Audit Institutions (ISSAI).¹²⁶ However, as is often the case, the standards are not being implemented as necessary to ensure both independence and effective response.

TI BiH, with the support of OSF, published a report on the monitoring of public auditing institutions in the period 2011 to 2012, identifying a number of problems that hindered the efficiency and efficacy of this potential anti-corruption tool. The following are some of the key problems identified:

- Political and regulatory frameworks for auditing institutions were never incorporated into state/entity constitutions, threatening their independence by putting them in the hands of parliamentary majorities

¹²⁶ Available at <http://www.issai.org/>.

- Lack of precise regulatory framework
- Excessive centralization in the RS, combined with excessive political influence
- Excessive fragmentation in the Federation, and insufficient resources for oversight of cantonal audits and response
- Lack of coordinated audit activities throughout BiH
- Insufficient use of audits in budgeting processes
- Questionable, non-meritocratic employment procedures, affecting expertise and independence
- Strategic plans drafted for BiH auditing institutions (2007-2009; 2009-2012) better on paper than in terms of implementation
- Room for political influence/manipulation of auditing institution annual budgets
- Insufficient training of auditing staff on ISSAI
- Need for better communications with citizens¹²⁷

“Unlike most countries in the European Union, legal, political and regulatory grounds for the work and jurisdiction of audit institutions in BiH has not been set in the current Constitutions / Statutes of the Entities and Brčko District, and they are not familiar with the functions of the public and parliamentary monitoring of the executive authorities, public institutions and public finances. Without constitutional grounding, independency and expertise of the SAI in BiH has been left to the will of the political leaders and parties, their parliamentary majority, making of the audit institutions a possible target for illegal influences of the executive authorities, political leaders and parties.”¹²⁸

The situation in BiH has not changed noticeably since this report. For example, in a BiH Parliament discussion on the 2013 financial audits, Deputy Chief Auditor for BiH Institutions Dzevad Nekic called on BiH institutions to pay more attention to austerity and create new values in public administration. He noted that conclusions and recommendations of the Audit Office have been repeated on several occasions, and that only 9 earlier recommendations were implemented, while 34 were not (23 were in the process of implementation).¹²⁹

6.4.2 Efforts to Date – Selected Review

There have been efforts to use this tool to reduce state capture and clean up public life. The OHR issued a decision to bring in a Special Auditor for the Federation of BiH, Ms. Dale Ralph, in 2000 and 2001. She also oversaw audits in the RS.¹³⁰ In 2001 audits of the entities

¹²⁷ Srđan Šušnica, “Monitoring of Functioning of Public Sector Auditing Institutions for Period 2011-2012,” Transparency International BiH, (August 19, 2013), <http://ti-bih.org/wp-content/uploads/2013/08/Monitoring-of-functioning-of-public-sector-audit-institutions-for-period.pdf>

¹²⁸ Ibid. See also “The Role of Audit Institutions Ignored, and their reports without any effect,” <http://www.anticorruption-bosnia-and-herzegovina.org/home-mainmenu-1/news-from-bosnia-and-herzegovina/83-the-role-of-the-audit-institutions-ignored-and-their-reports-without-any-effect>

¹²⁹ “Predstavnički dom PSBiH: Ima prostora za značajne uštede u budžetu BiH,” Klix, January 29, 2015, <http://www.klix.ba/vijesti/bih/predstavnicki-dom-psbih-ima-prostora-za-znacajne-ustede-u-budzetu-bih/150129071>

¹³⁰ “Decision on The Special Auditor for the Federation of Bosnia and Herzegovina,” Office of the High Representative, August 1, 2002, http://www.o-hr.int/decisions/econdec/default.asp?content_id=27615; SFOR Transcript - Press Conference (September 17, 2002), <http://www.nato.int/sfor/trans/2002/t020917a.htm>

and several cantons were conducted.¹³¹ The electricity companies and Hrvatska Posta were audited,¹³² and among others that attracted attention, the OHR audit team audited Telekom Srpska, finding significant irregularities, including missing cash paid by SFOR to Telekom Srpska in the amount of \$920,000.¹³³ (Dodik announced Telekom Srpska would be privatized in 2006, and in June 2007 Telekom Srbija bought 65 percent of the shares.¹³⁴)

While the OHR audits revealed much apparent malfeasance, it is difficult to find examples of broad subsequent consequences. The main political target was Ante Jelavic (HDZ BiH), who was involved in ongoing calls for a Croat third entity, and following an SFOR raid on the Herzegovacka Banka, he was eventually charged with corruption in 2004, and found guilty in 2005. His conviction was overturned in 2006, and Jelavic fled to Croatia.¹³⁵ Beyond that, it appears that even in the alleged “heavy-handed” era of Paddy Ashdown there was a willingness to let some other irregularities slide so as not to affect the broader “reform” agenda.¹³⁶ One of the last mentions of the audits by OHR was a statement on 21 November 2005 (see box below). As Ashdown’s tenure came to a close, the OHR auditing function did as well, and the well-known history since 2006 reveals little in the way of reform of any kind. Identified malfeasance brought no political consequence.

Box 8: Groundhog Day?

Remarks by Deputy HR, Head of Economic Department Patrice Dreiski at a Conference on Public Sector Auditing: "Flouting of Audit Reports Endangers BiH Transition Process"¹³⁷

Ladies and Gentlemen,

The State and Entity auditors have started to make waves. But these waves aren't big enough yet.

No matter how outrageous the findings – theft, incompetence, mismanagement – the popular indignation that now customarily follows the publication of audit reports appears to last only for a matter of days. After the indignation has died down, the politicians, directors of assorted boards and other insiders go back to business as usual. This is not merely a source of irritation. It is a tragedy. For Bosnia and Herzegovina and its people.

Successive audits of State and Entity ministries have found that scarce resources – in many ministries, as you all know, staff have to queue up for access to a shared computer

¹³¹ “BiH Special Audit Reports,” Office of the High Representative, June 30, 2001, http://www.ohr.int/ohr-dept/afd/audits/default.asp?content_id=5538

¹³² *National Integrity Systems: Transparency International Country Study Report, Bosnia and Herzegovina 2004*, 52, <http://ti-bih.org/wp-content/uploads/2004/03/NIS-BiH-english.pdf>

¹³³ Danijel Kovacevic, “Dial ‘F’ for Political Favors,” *Transitions Online* (November 11, 2003), <https://listserv.buffalo.edu/cgi-bin/wa?A3=ind0311&L=JUSTWATCH-L&E=0&P=1231939&B=--&T=TEXT%2FPLAIN;%20charset=US-ASCII&header=1>

¹³⁴ “2007: The Year of Republika Srpska,” *Balkan Insight*, January 9, 2008, <http://courses.wcupa.edu/rbove/eco343/070compecon/Centeur/Bosnia/080108deals.txt>. This together with refinery privatizations provided the entity government with a windfall of cash that was used and seen as a cash cow for Dodik to consolidate his support. “Bosnia: What Does Republika Srpska Want?” *International Crisis Group Europe Report No. 214* (October 6, 2011), 6.

¹³⁵ Anes Alic, “Former Bosnian Presidency Sentenced to 10 Years,” *The International Relations and Security Network*, (October 2005), <http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?lng=en&id=107276>; “Ante Jelavic’s Kidnappers Sentenced in Zagreb,” *Balkan Insight*, March 18, 2010, <http://www.balkaninsight.com/en/article/ante-jelavic-s-kidnappers-sentenced-in-zagreb>

¹³⁶ The author recalls hearing this in 2004/2005 when international auditors were sitting in the offices of the OSCE Mission to BiH.

¹³⁷ Available at http://www.ohr.int/ohr-dept/press/presssp/default.asp?content_id=36013

– scarce resources that should go to making the ministries work more productively go instead to maintaining top-of-the-range fleets of executive cars or for financing extravagant junkets for ministers and their closest staff.

Successive audits of public companies have uncovered a culture of corruption and incompetence. These companies – the telecoms, the utilities providers, the forestry conglomerates – should be flagships for BiH's growing economy. Instead, in many cases, they are commercial millstones, dragging other companies down to their own level. This is a scandal and it is costing the people of BiH millions in lost revenue. It's also costing them jobs. When prospective investors see, for example, that a country's phone companies or electricity providers are not competitive, they view that as a barometer of the economy as a whole, and put their money elsewhere.

The failure of the audits, till now, to generate large enough waves, to sustain popular indignation, to engineer root-and-branch reform in the management of government departments and public companies represents a real danger for BiH's economic transition as a whole.

Increasingly, the auditors are doing their jobs with vigor and determination. Audit reports are critical and thorough and they are accompanied by constructive recommendations. Where the authorities choose to ignore these recommendations – and where they get away with this high-handed disregard for procedure – they seriously undermine the credibility of the audit process.

Citizens are confirmed in the view that nothing is really changing in BiH. Those who have been caught with their hands in the till – and have escaped censure or punishment – assume they can put their hands straight back into the till. Mechanisms whereby the auditors' recommendations should be translated into effective action already exist. But they haven't been made to work. At the practical level the role of the Public Prosecutors' Office must be clearly understood. It must be understood by politicians, by the media, and by the public.

The Public Prosecutor takes up – when criminal activity has been exposed – where the auditors leave off. Yet until now the number of criminal prosecutions arising from audit findings has been disproportionately small. It would be exceptionally useful if this conference could discover exactly why that is. Secondly, companies, ministries, political leaders and senior managers all have to understand that the purpose of audits is constructive. The object is to identify management and administrative shortcoming and recommend how these can be fixed. This is a service. I can think of only one reason that audit recommendations are ignored or side-stepped – and that is if the beneficiaries of a vested interest decide that the vested interest will continue to override the public interest.

As I said earlier, the present situation is dangerous. We do not have the luxury of discussing theoretical mechanisms at this conference. Efficient and effective audits are – or ought to be – key instruments in advancing BiH's economic transition. If they are publicly flouted – as they have been – the whole transition project is brought into disrepute.

I trust that this issue will be faced in an honest and forthright way in the course of this

conference. Thank you.

TI BiH also noted that the OHR auditing team did not work with the country's auditing institutions, thereby failing to build the auditing institutions' capacities and potentially undermining their credibility as domestic institutions.¹³⁸ However, subsequent efforts have sought to build their capacities. The 2013 TI BiH report notes that the Swedish National Audit Office (SNAO) has provided consultancy support in BiH (particularly for performance audits). (They note as well that the RS refused to agree to a contract to continue work with SNAO, meaning RS auditors could not benefit from the professional education). The USAID PARE (Partnership for Advancing Reforms in the Economy) project included work with auditors based on a letter of intent signed with the Institute of Internal Auditors in BiH.¹³⁹

The USAID SGIP team notes that a variety of tools are available to assist with the proper use of audits, including *Guidelines for the Review and Analysis of Audit Reports in the BiH Parliamentary Assembly*.¹⁴⁰ In 2014, public hearings were held by the BiH House of Representatives and House of Peoples Budget and Finance Committees, with the committee report discussed in House of Representative Sessions in September.¹⁴¹

[Entity] developed *Guidelines for the Review and Analysis of Audit Reports in the FBiH Parliament* that enable the audits of not only Federation institutions but Federation public companies. (SGIP does not work in the RS.) SGIP notes that in the absence of a regulatory framework at state and entity levels, it is impossible to effectively use the information contained in audit reports.

There is also currently a UNDP supported project that aims to help the BiH Parliament to better use the information that it receives from audit reports.

There is skepticism as to whether the BiH Parliament's lack of use of such reports is related to a genuine lack of technical knowledge or, as some suspect is more likely the case, to a lack of political will. Observers are watching to see if entity or state level MPs will take steps to move forward with audit review and subsequent implementation of findings independent of orders from the party leadership.

6.4.3 Recommendations

USAID has supported auditing institutions in other countries with various results (Sri Lanka,¹⁴² Ghana,¹⁴³ and other countries¹⁴⁴). If this strategy is prioritized, lessons may be

¹³⁸ *National Integrity Systems: Transparency International Country Study Report, Bosnia and Herzegovina 2004*, 52.

¹³⁹ "IIA Cooperation in BiH – USAID PARE," http://www.internirevizori.info/en/index.php?option=com_content&view=article&id=107:iia-cooperation-in-bih-usaid-pare&catid=1:latest-news

¹⁴⁰ Developed with funding from the UK DFID, with technical support from both the USAID Parliamentary Support Program and SGIP.

¹⁴¹ BiH House of Representatives, 72nd Session (September 4, 2014), https://www.parlament.ba/sadrzaj/plenarne_sjednice/predstavnicki_dom/default.aspx?wsrid=35&wsid=985&langTag=bs-BA&pril=b; BiH House of Representatives, 73rd Session (September 25, 2014), https://www.parlament.ba/sadrzaj/plenarne_sjednice/predstavnicki_dom/default.aspx?wsrid=35&wsid=997&langTag=bs-BA&pril=b

¹⁴² Sri Lanka Anticorruption Program: Final Completion Report, http://pdf.usaid.gov/pdf_docs/PDACK636.pdf.

learned from these and other examples. As always, other issues – systemic and political – can have an impact on the scope of targeted capacity building support.

- Target a defined number of institutions (public companies or state/entity bodies) for specific attention, working with local experts, NGOs, and auditors to identify critical actors; develop campaigns to raise attention to these specific and limited targets, including coordinated messaging
- Work with prosecutors to ensure greater use of audit information, in general but particularly with regard to above-noted selected targets
- Visibly support the substantive and proven work of state and entity audit agencies by increasing pressure on officials to act on the information contained therein through public and private fora; consider well-timed ambassador level photo opportunities with auditors, etc.
- Identify regulatory gaps and build on comparative state practices to determine how to best integrate automatic, institutional triggers (potentially including budgeting decisions) that remove the levers of action away from politicians; consider European good practice in this regard; Scandinavian countries (and Estonia) may be good examples.
- Support independent review and investigation of audits of public companies, monitoring (in) action and following up to determine where accountability breaks down.

¹⁴³ USAID/Ghana Country Development Cooperation Strategy, 2013-2017.

http://www.usaid.gov/sites/default/files/documents/1860/Ghana_CDCCS_fy2013-17.pdf

¹⁴⁴ Donna Rosa, “The Anti-Corruption Good Governance Act,” *The Journal of Public Inquiry* (Fall/Winter 2001), <https://www.ignet.gov/sites/default/files/files/f01c01.pdf>

6.5 Reform of Public Sector, Public Administration and Public Companies

Key Problem Areas/Challenges Related to Fight Against Corruption

- Public companies and public tenders are cash cows for the political parties and a cornerstone of patronage
- Public sector employment together with social welfare payments create a web of patronage exploited by parties
- Public sector employment is non-transparent, not merit-based, and often contingent upon bribes
- A bloated public sector hampers the emergence of a vibrant private sector

Key Recommendations

- Develop strategy for reform of public companies that avoids privatization but emphasizes political independence
- Continue efforts to reform public tender processes, but with greater public and private involvement of international community to provide top-down support to bottom-up advocacy
- Continue efforts to reform public employment processes, but with greater public and private involvement of international community to provide top-down support to bottom-up advocacy
- Continue multi-pronged efforts targeted at corruption in health and education, including low-level, day-to-day corruption as well as higher level case prosecution, with greater strategic coordination
- Build business-civic coalition of support for the above-noted efforts

6.5.1 Context

This section considers four issues: public companies, public tenders, public employment, and the specific health and education sectors.

Broadly speaking, the public sector in BiH is massive. Employment comprises one aspect; there are various estimates of the number of people employed: a 2013 article claims approximately 180,000 people employed at all levels of government;¹⁴⁵ a 2014 article claims 184,148.¹⁴⁶ If one adds in social welfare payments (pensions, privileged pensions,¹⁴⁷ etc.)

¹⁴⁵ Gojko Veselinović, “Kako smanjiti broj zaposlenih u državnoj administraciji u BiH?” Radio Slobodna Europa, December 1, 2013, <http://www.slobodnaevropa.org/content/kako-smanjiti-broj-zaposlenih-u-administraciji-u-bih/25185541.html>.

¹⁴⁶ Pero Zelenika, “Svaki trećiz zaposlenik u BiH radi u javnoj upravi,” Vecernji List, August 9, 2014, <http://www.vecernji.ba/svaki-treci-zaposlenik-u-bih-radi-u-javnoj-upravi-954862>

¹⁴⁷ Privileged pensions include veteran-related benefits for war veterans or their surviving family. A 2009 report found the following: “Veteran-related benefits absorb about three-quarters of total spending on non-insurance cash transfers in BH. The share is slightly lower in the Federation of Bosnia and Herzegovina (FBH) than in Republika Srpska (RS) – the two Entities that make up BH.” “Social Safety Nets and Employment Support Project.” Project Information Document (December 22, 2009), 2, http://reliefweb.int/sites/reliefweb.int/files/resources/92676C6642CB2F5A492576D6001944AF-Full_Report.pdf.

indirect support (families, tenders, etc.), then the number of people supported by the state increases significantly as does the scope of potential public sector abuse and party capture.¹⁴⁸ In the absence of a vibrant private sector, the public sector's apparent security makes it the career option of choice among even the young; this is enhanced by Yugo-nostalgic legacies and a continuing discomfort with free-market capitalism. TI's 2013 Integrity Assessment report gave BiH's public sector a score of 35, citing its "bloated and unwieldy" nature, the lack of effective monitoring and control, and pervasive ethnic and party quotas.¹⁴⁹ BiH's public sector received a score of "zero" in terms of its independence.¹⁵⁰

Corruption is linked to the public sector in a number of ways alluded to above. Politicians, current or hopeful, promise jobs or security to supporters in return for their support. This explains the reports of "ballot selfies" in the October elections, as citizens provided proof of their votes.¹⁵¹ It is also broadly known that people will pay to get even low-level public sector jobs.¹⁵² Fear of losing one's pension also ties people to the public sector; pensions are not just for the elderly in BiH, as there is a class of war veterans and war invalids who form a core of party patronage support. The weak private sector is not seen as a viable option for people who have little entrepreneurial experience. As noted by one respondent, "someone may only be receiving 300 km per month, but they are afraid of losing that 300 km per month." Patronage and public sector employment are the lifeblood of the country's political oligarchs.

Box 9: Cultivating Meritocratic Values?

The International Institute for Middle East and Balkan Studies (IFIMES), based in Ljubljana, recently commented on the negative impact of party-based staffing: "A good example of such practice is the staff proposed by political parties for the leading positions in the governments of RS and FBiH and the Council of Ministers of Bosnia and Herzegovina. The proposed candidates obviously lack the capacity to successfully implement the German-British initiative for economic recovery and to achieve a high level of security in the country. Like all previous staffing policies the latest staffing proposals represent yet another lost chance for Bosnia and Herzegovina and all its citizens, as they are not oriented towards the prosperity of society, nation and state but merely pursue personal and party interests. Unfortunately most staffing solutions in the new government bodies

¹⁴⁸ The need for moving towards a needs-based social welfare system, and away from one based in large part on privileged pensions related to the war, has long been acknowledged, and remains a problem. "Planned measures to improve the targeting of social spending – currently accounting for over 14% of GDP and with a significant part related to the 1992-1995 war- remain limited." *2014 Economic and Fiscal Programmed of Albania and Bosnia and Herzegovina: The Commission's Country Assessments*. European Economy Occasional Papers 198, (July 2014), 19, http://ec.europa.eu/economy_finance/publications/occasional_paper/2014/pdf/ocp198_en.pdf

¹⁴⁹ Transparency International, *National Integrity System Assessment, Bosnia and Herzegovina, 2013*, 23.

¹⁵⁰ *Ibid.*, 84.

¹⁵¹ "Selfie na glasačkom mjestu? Evo šta o tome misli CIK BiH," Klix, October 10, 2014, <http://www.klix.ba/vijesti/bih/selfie-na-glasackom-mjestu-evo-sta-o-tome-misli-cik-bih/141010002>; "Zena slikala glasački listić, suprug se potukao s predsjednikom Odbora," Blicportal.com, October 12, 2014, <http://blic-portal.com/zena-slikala-glasacki-listic-suprug-se-potukao-s-predsjednikom-odbora/>

¹⁵² "Svaki šesti činovnik u BiH dao mito za posao," Al-Jazeera Balkans, November 21, 2013, <http://balkans.aljazeera.net/vijesti/svaki-sesti-cinovnik-u-bih-dao-mito-za-posao>; "Mito i korupcija u BiH: Za posao u drzavnoj sluzbi 5.000 Euro!" Radio Televizija Tuzlanskog Kantona, August 14, 2010, http://www.rtvtk.ba/index.php?option=com_content&view=article&id=16256:mito-i-korupcija-u-bih-za-posao-u-dravnoj-slubi-5000-eura-&catid=81:europa&Itemid=197

are still planned with a view to ensure political and financial support at the upcoming election congresses of political parties.”¹⁵³

SDP leader Nermin Niksic recently commented on the possible appointment of DF’s Milan Dunovic as Federation Vice President: “Based on what we’ve seen, I don’t see any problem in this appointment. We didn’t make any requirements regarding someone’s expertise or competencies. I would say that Milan Dunović has the basic human and moral qualities, attitude towards BiH and that is enough for me.”¹⁵⁴

However, other respondents noted that while they agree with the problems of nepotism, bloating, and excessive patronage in the public sector, the *real money* lies in two other aspects of public life: public companies and public sector tender processes.

“For Bosnia’s ruling elites, retaining socially owned companies in public hands provides a particularly important source of economic, political, and social power. By carefully controlling the membership of management boards of public companies, the ruling parties not only maintain a firm grip on key enterprises and their revenues, they also retain the ability to dole out scarce employment, itself a powerful lever of social control.”¹⁵⁵ A 2007 paper on state capture and corruption in Serbia includes a number of findings applicable to BiH as well:

- Division of the government and public sector into fiefdoms controlled by various parties in the ruling coalition, which “has eliminated the mutual political control of the coalition partners”
- Assurance of MP party loyalty through positions on managing boards of public companies
- Assumed ruling coalition right to make appointments to a wide variety of seats in public life, including public companies, state administration, utilities, and other public functions
- Lack of transparency in inter-connections between public and private lives of politicians and their cadres
- Excessive political influence over the judiciary (see dedicated section above)¹⁵⁶

Box 10: The BiH Revolving Door between Public and Private Practice

No society is immune from revolving door employment among individuals with high-level public and private sector experience.¹⁵⁷ In BiH, these practices are common, and are widely reported in the press due to the politics involved.

Rusmir Mesihović, the former Federation of BiH Minister of Health, was elected as the

¹⁵³ “Bosnia and Herzegovina: German-British Initiative Overshadowed by Party Political Games,” *International Institute for Middle East and Balkan Studies*, January 31, 2015, <http://www.ifimes.org/en/8930>

¹⁵⁴ <http://www.klix.ba/vijesti/bih/niksic-nema-prepreka-za-imenovanje-dunovica-za-potpredsjednika-fbih/150203037>

¹⁵⁵ Donais, *Title*, 366

¹⁵⁶ Vesna Pestic, “Stats Capture and Widespread Corruption in Serbia,” *Center for European Policy Studies Working Document 262* (2007), 7-8, <http://aei.pitt.edu/11664/1/1478.pdf>

¹⁵⁷ “The Pros and Cons of the Revolving Door Practice – The Main Argument.” Anti-Corruption Research Network, <http://corruptionresearchnetwork.org/acrn-news/blog/the-pros-and-cons-of-the-revolving-door-practice-2013-the-main-arguments>

Director of KCUS (Clinical Center of the University of Sarajevo) on 13 January 2015. He applied for the KCUS position while still serving as the Federation Minister. The vacancy for the position was opened on 26 December 2014 and, apparently, Mesihović was the only one who applied¹⁵⁸ On 15 January 2015, Federation of BiH president, Živko Budimir accepted the formal resignation from Mesihović, as he stepped down as Minister of Health.¹⁵⁹

SDA has noted that this is just SDP trying to make use of the transition period in the Government to keep the key position in the most important health institution in the Federation.¹⁶⁰ On 28 January 2015, the Sarajevo Canton Government made a decision to start a process with the Central Election Commission in order to determine if there was any conflict of interest regarding the election of Mesihović as the Director of KCUS.¹⁶¹ He will remain the Director while the process is ongoing.¹⁶²

The key issues to consider here include:

- **Was the hiring process truly open and transparent? Was it open in theory, while in reality the decision was so well known that “the fix was in”?**
- **Will there be an impact on the Conflict of Interest review process in light of the reforms to the Conflict of Interest Law?**
- **If there is a Conflict of Interest found, will demonstrate sufficiently that the system worked? Or is there a need to better prevent such cases from coming up in the first place?**

The author of this report recently attended a dinner at which the issue of the politicization of public companies was discussed, specifically the Sarajevo airport. A young representative of SDP stated in a matter-of-fact manner that elections have consequences, and that is it therefore normal that a new ruling party/coalition would have the right to put their people in these key positions. This is simply politics as usual. A recent case of alleged abuse led to the indictment of Suad Dzindo, the director of the Skenderija Center (a public company in Sarajevo) after a whistleblower by a (now fired) company accountant reported irregularities in terms of missing receipts to the cantonal prosecutor. Dzindo has been charged with committing crimes between 2007-2011; it will be an interesting case to follow.¹⁶³

¹⁵⁸ “Rusmir Mesihović novi direktor KCUS-a,” *Oslobodjenje*, January 14, 2015,

<http://www.oslobodjenje.ba/vijesti/bih/rusmir-mesihovic-novi-direktor-kcusa>;

<http://www.avaz.ba/clanak/157694/rusmir-mesihovic-jedini-se-prijavio-za-direktora-kcus-a>

¹⁵⁹ Federation of BiH web site, Minister of Health. See

<http://www.fbihvlada.gov.ba/bosanski/ministarstva/zdravstvo.php>

¹⁶⁰ “SDA zahtijeva od Vlade FBiH da zaustavi proces izbora direktora KCUS-a,” *Klix*, January 15, 2015,

<http://www.klix.ba/vijesti/bih/sda-zahtijeva-od-vlade-fbih-da-zaustavi-proces-izbora-direktora-kcus-a/150115071>

¹⁶¹ “Vlada KS tražila od CIK-a da preispita imenovanje Rusmira Mesihovića,” *Klix*, January 29, 2015,

<http://www.klix.ba/vijesti/bih/vlada-ks-trazila-od-cik-a-da-preispita-imenovanje-rusmira-mesihovica/150128142>

¹⁶² KCUS, <http://www.kcus.ba/uprava>

¹⁶³ “Public Official Indicted for Corruption in Bosnia and Herzegovina,” USAID, January 2015,

<http://www.usaid.gov/results-data/success-stories/public-official-indicted-first-year-whistleblower-protection-law-bosnia>

Election campaigns are often funded with proceeds from these companies,¹⁶⁴ thereby linking this issue to the Law on Political Party Financing. Following the October 2014 general elections, the jockeying for seats and position is underway. For example, mandates in public companies last for four years, and tend to mirror the elections, resulting in significant shuffling of positions following elections. Below is a chart of just 10 public companies, identifying their current general directors, and their affiliations with or membership in political parties. (It should be noted that this information is difficult to find; preliminary online searches for information on previous mandates yielded little.)

Chart 3: Political Party Control of Public Companies

COMPANY	MANAGEMENT	POLITICAL PARTY
BH Telecom	General Director: Mirsad Zaimović ¹⁶⁵	SDA
Aluminij d.d Mostar	General Director: Nikica Ljubić ¹⁶⁶	HDZ BiH
Fabrika Duhana Sarajevo	General Director: Edin Mulahasanović	SDA
Autoceste FBiH	General Director: Ensad Karić	SDP
JP BH Pošta	General Director: Mujo Butković	SDA
Željeznice RS a.d Doboj	General Director: Dragan Savanović	DNS
JP Šume RS a.d Sokolac	General Director: Dragan Grabovac ¹⁶⁷	SP (Socialist Party)
Hrvatska Pošta d.o.o Mostar	General Director: Sanja Sabljic ¹⁶⁸	NSRzB (Lijanović)
JP Autoputevi RS	General Director: Dušan Topić	SNSD
Elektroprivreda BiH	General Director: Elvedin Grabovica	SDP

The entity development banks are also widely viewed as a slush-fund for party interests (see Box II).

¹⁶⁴ Srdjan Blagovcanin, “Bosnia and Herzegovina: Captured State,” *Unfinished Business: The Western Balkans and the International Community*. Eds. Vedran Dzihic and Daniel Hamilton (Brookings Institution and The Center for Transatlantic Relations- SAIS [year]), 81 – 86, http://transatlantic.sais-jhu.edu/publications/books/Unfinished%20Business%20Pdf/ch08_Blagovcanin.pdf

¹⁶⁵ President of SDA Cantonal Board in Zenica-Doboj Canton, more info available at <http://sda.ba/home/kontakti/kantonalni-odbori-sda/>

¹⁶⁶ Apparently a cousin of Božo Ljubić, former HDZ 1990, but now with HDZ BiH.

¹⁶⁷ SP's candidate for Modriča Mayor in the 2012 local elections. See “Laketić smijenjen – Grabovac novi direktor Šuma RS,” *Capital.ba*, April 2, 2014, <http://www.capital.ba/laketic-smijenjen-grabovac-novi-direktor-suma-rs/>

¹⁶⁸ She was listed as NSRzB candidate for the Federation Parliament.

Public tenders/public procurement is a lucrative business that remains highly non-transparent and prone to abuse. Abuse of this process, a more subtle form of white-collar crime, has long been a part of the political oligarchy, and has been almost taken for granted as a normal part of doing government business in BiH. A CIN and SELDI report reviews the number of complaints of irregularities in the procurement process between 2009 and 2012, finding that more than 1000 complaints were justified nearly each year but that there were practically no fines or criminal charges.¹⁶⁹ “When asked if things had changed from post war OC today [sic], the majority of those interviewed stated that it had. The increase of non-traditional OC, such as corruption, financial crime, cybercrime, etc., were all identified as problematic, much of which was not present in post war BiH. Public procurement, privatization, and tender processes were all highlighted in relation corrupt behavior, yet it was said that these crimes were rarely examined or investigated.”¹⁷⁰

Box 11: The Entity Development Banks

The entity development banks (*razvojne banke*) have been described as another source from which officials personally profit that purportedly were established for the public good.

The Development Bank of the Federation of BiH was established in 2008, through the Law on the Federation of BiH Development Bank.¹⁷¹ According to its mandate the FBiH Development Bank should support the systematic, sustainable, and proportional economic and social development in the Federation, in accordance with the Federation’s overall strategic financial and social goals.¹⁷²

The Republic of Srpska Investment-Development Bank (IRBRS) was established in 2006 by the Law on the Republic of Srpska Investment-Development Bank.¹⁷³ The IRBRS’s strategic goals include investment and development stimulation in the RS, agricultural production, SME support, infrastructure, regional development and privatization, and related restructuring.¹⁷⁴ The bank’s start-up funds came from the privatization of Telekom Srpske when \$485 million was raised from its sale to Telekom Srbije.¹⁷⁵

The Federation Development Bank has been at the center of number of corruption and abuse of office scandals. The previous President of the Managing Board of the Development Bank, Ramiz Džaferović is still in proceedings with the Prosecutor’s Office, and is accused of abuse of office during his mandate. He owns an auditing company that prepared audits of companies that he reviewed before he decided to give loans to them from the Development Bank.¹⁷⁶ In 2009 the chief inspector of the Federation Financial Police claimed that Džaferović was blocking the investigation.¹⁷⁷

¹⁶⁹ Center for Investigative Journalism (CIN) and Southeast European Leadership for Development and Integrity (SELDI), *Corruption Assessment Report Bosnia and Herzegovina* (2013), 34.

¹⁷⁰ Brady, Title, 32.

¹⁷¹ Law available at <http://tinyurl.com/mpof4uu>

¹⁷² Razvojna Banka Federacije web site, <http://www.rbfbih.ba/en/txt.php?id=14>

¹⁷³ Law available at <http://www.irbrs.org/azuro3/azuro/uploads/56%2006.pdf>

¹⁷⁴ RS Development Bank web site, <http://www.irbrs.org/azuro3/a3/index.php?id=65>

¹⁷⁵ “Banja Luka Bank, Controlled by PM, Hands out Millions to Family, Allies,” *CIN and RFERL*, August 26, 2009, http://www.rferl.org/content/Banja_Luka_Bank_Controlled_By_PM_Hands_Out_Millions_To_Family_Allies/1807881.html

¹⁷⁶ Lejla Sofradžija, “Otvorena istraga protiv Ramiza Džaferovića: Počela saslušanja u predmetu “Razvojna banka FBiH,” *Oslobodjenje*, February 5, 2010, <http://www.oslobodjenje.ba/index.php?id=321>

Džaferović formerly was accused and charged with abuse of office during his mandate as the Director of the Taxation Office of BiH in 1997 and 1999. High Representative Wolfgang Petritsch dismissed him from the position in 2000.¹⁷⁸ In 2011, the Prosecutor’s Office dismissed the charges citing a lack of evidence. In 2014, Džaferović was dismissed from the Federation Development Bank, and was replaced by Salko Selman, an official from SDA. Article 18 from the Law on the Federation of BiH Development Bank clearly states that no party official can be a member of the Managing Board. Selman, however, stated that he had left all of his positions in SDA when he signed the contract with the Bank. Selman also is alleged to have been involved in organized crime and abuse of office while he was the Prime Minister of Middle Bosnia Canton.

The RS Development Bank has been similarly accused of corrupt and non-transparent practices, including making loans quickly to companies with ties to Dodik and the government, providing a \$2.2 million loan for Dodik’s son, and making loans to recipients via shell companies that often are off shore.¹⁷⁹

Laws on Development Banks

Provision	Law on the Federation of BiH Development Bank	Law on the Republic of Srpska Investment Development Bank
Authorities	The Government of the Federation constitutes the Assembly of the Bank (“the Assembly”). The Prime Minister of the Government of the Federation is ex officio chairperson of the Assembly. ¹⁸⁰	The Government of the Republic of Srpska constitutes the Assembly of the Bank. ¹⁸¹
Managing board	Members of Managing Board cannot perform party-related activities in any political party. ¹⁸²	Members of Managing Board cannot perform party-related activities in any political party, nor can they be members of the Legislative, Executive, or Judiciary branches of the Government. ¹⁸³

¹⁷⁷ “Bosnian Bank Blocks Fraud Probe,” Balkan Insight, March 4, 2009, <http://www.balkaninsight.com/en/article/bosnian-bank-blocks-fraud-probe>

¹⁷⁸ “Removal of Ramiz Džaferović,” Office of the High Representative, July 27, 2000, http://www.ohr.int/ohr-dept/press/pressr/default.asp?content_id=3989

¹⁷⁹ “Banja Luka Bank, Controlled by PM, Hands out Millions to Family, Allies,” CIN and RFERL. August 26, 2009, http://www.rferl.org/content/Banja_Luka_Bank_Controlled_By_PM_Hands_Out_Millions_To_Family_Allies/1807881.html

¹⁸⁰ Law on the Federation of BiH Development Bank, Article 10.

¹⁸¹ Law on the Republic of Srpska Investment Development Bank, Article 12.

¹⁸² Law on the Federation of BiH Development Bank, Article 18.

¹⁸³ Law on the Republic of Srpska Investment Development Bank, Article 18.

There are other Investment/Development Banks in BiH as well, including:

- Investment-Commercial Bank dd Zenica - <http://www.ikbze.com.ba/>
- Commercial-Investment Bank Velika Kladuša - <http://www.kib-banka.com.ba/>
- NLB Development Bank - <http://www.nlbrazvojnabanka.com/>

The education and the health care sectors are frequently noted as two sectors of the BiH economy rife with corruption. In the education sector, the process is generally quite simple: money or sex for passing grades, or, in some cases, speedier diplomas.¹⁸⁴ UNODC shares polling data that shows that around 50 percent of respondents report that public schools are corrupt.¹⁸⁵ ACCOUNT notes that corrupt hiring practices by school directors are a pervasive problem.

Corruption in the health care section is a bit more nuanced and sophisticated, and is manifest in three specific ways. First, there is the straight “bribe for service” phenomenon. UNODC reports that more than half (54 percent) of people who report paying bribes pay them to doctors (31 percent report paying nurses).¹⁸⁶ Second, doctors working in the public health system often also operate private clinics, and have been reported to fairly fluidly bounce between the two (see box). Third, procurement in the health care sector is lucrative, with opaque tenders for everything from toilet paper to medications.

Box 12: Double Dipping in the Health Sector?

A well-known example of at best questionable practice and at worst sophisticated systemic corruption is related to doctors who work in public health facilities and at the same time operate their own private clinics.

According to BiH’s laws regulating health care, doctors who are employed in public facilities are allowed to open and work in private clinics for a certain number of hours per day. However, this privilege is often misused as some doctors reportedly use the opportunity to juggle patients between the public and private institutions. For example, doctors may send patients from private clinics to public facilities to do expensive and thorough health analyses in a public facility, because his/her private ordination does not have the needed equipment. In other cases, public facilities route citizens to private clinics in which private payment is required (rather than reliance on health insurance).¹⁸⁷

In 2004, CIN (Center for Investigative Journalism) published an article analyzing the health sector in BiH and, specifically, this issue. In addition to questionable practices, CIN found

¹⁸⁴ Dino Jahic, “School for Scandal: Corruption Downgrades Balkan education,” *Balkan Insight*. January 20, 2014. [Include link to website]. A “maverick” prosecutor looking into these allegations died suddenly without being able to finish the case. She was reported to have had little support in her efforts, and in fact was often skewered in the media. “The Sudden Death of a Bosnian Prosecutor,” RFERL, August 9, 2011, http://www.rferl.org/content/sarajevo_university_sex_for_grades_scandal_death_of_prosecutor/24291514.html

¹⁸⁵ UNODC, 39, 61.

¹⁸⁶ UNODC, 4.

¹⁸⁷ CIN notes it plans to look at the issue of re-directing patients from public to private facilities in 2015.

that the health sector is very poorly regulated, with little oversight. For example, CIN noted that the Republika Srpska Ministry of Health, when interviewed, didn't actually know the exact number of registered private practices in the entity. While they said they had 166 registered clinics, the Ministry of Labor inspectors inspected 223 private clinics.¹⁸⁸ In 2011 it was reported that the Director of the Banja Luka Clinical Center was “renting” his specialists to a private clinic, with the clinic paying 300 KM to the Center every time a specialist visited.¹⁸⁹

There was a suggestion that more transparency is needed in this process. For example, a web site that lists all public doctors who also own private practices likely would enable citizens to make better informed decisions, and put pressure on decision-makers to better regulate the sector.

The Federation of BiH Ministry of Health already hosts a List of Private Practices.¹⁹⁰ There are other portals that offer more specialized information on private medical providers.¹⁹¹

While a public/private site for the entire country could provide a tool, the following issues should be considered:

- ***Who would build it?***
- ***Who would maintain it, and be responsible for updating it?***
- ***Would this really affect citizens' choices?***
- ***Who would be in a position to use this information to advocate for new regulations? Are there independent medical professional associations that could be engaged in this?***
- ***If there is no mandatory use of such a site, and no requirement for the authorities to provide and update such information, would this be money well spent?***

Even though entities and some cantons have commissions to fight against corruption, public health is one of the areas in which the strategic plans are not fully implemented¹⁹²

6.5.2 Efforts to Date – Selected Review

Various kinds of public sector reform have been initiated over the past two decades including:

- Establishment of civil service agencies at state/entity levels
- Public administration reform, and transparent and participatory budgeting projects through PARCO, the OSCE, and others

¹⁸⁸ “Zdravstvo sa druge strane zakona,” Center for Investigative Journalism, December 10, 2004, <http://www.cin.ba/zdravstvo-sa-druga-strane-zakona/>

¹⁸⁹ “Direktor iznajmljuje specijaliste privatniku,” Blic online, February 2, 2011, <http://www.blic.rs/Vesti/Republika-Srpska/232986/Direktor-iznajmljuje-specijaliste-privatniku/print>

¹⁹⁰ Sarajevo Canton Ministry of Health web site, <http://mz.ks.gov.ba/medicinske-usluge/privatne-ambulante/lista>

¹⁹¹ For example, <http://dental4u.ba/pronadi-svog-stomatologa/ordinacije-gradovi/>; <http://www.fizikalnaterapijamhs.ba/>

¹⁹² Center for Civic Initiatives (CCI) Situational analysis of anti-corruption measures in BiH public health sector, [This link does not work – it is to a local file on your drive] <file:///C:/Users/User1/Downloads/PHD%20Analiza%20-%20final%20SS.pdf>

- Numerous reform and development programs aimed at the cantonal and municipal levels (USAID, SIDA, OSCE, etc.)
- Projects targeted at various (often neglected) regions of BiH (e.g., USAID Central Bosnia project)

These interventions and other capacity building efforts have resulted in few systemic changes. CIN has investigated these efforts and identified few results.¹⁹³ , Transparency International and CIN are implementing a project funded by Sweden to monitor and evaluate current public sector reform efforts (2014-2018),¹⁹⁴ and they have begun to report on issues such as human resource management.¹⁹⁵ The NGO “Tender” has been working for several years to fight corruption in public tender processes.¹⁹⁶ ACCOUNT is approaching this through the public employment angle, and has an initiative to get citizens involved in increasing transparency in public hiring, facilitating complaints, and (ideally) facilitating investigation and prosecution. Everyone knows this happens and that this is at the same time costly, ineffective and perpetuates patronage. Much has been tried. However as the lifeblood of a patronage system this has been resisted.

Substantial EU funds have been spent on projects in various aspects of public governance as well, with the following examples being indicative:

- IPA 2007 project “Development and implementation of overall BiH PIFC strategy” designed to strengthen the financial control environment of public administration. It ended in April 2012.
- IPA 2009 project “Capacity building for the compilation of accounting data within the General Government and statistics of public finance.”
- IPA 2010 project “Coordination of policy making capacities and public financial management” to improve the quality of fiscal policy and the links between policy makers and budgeting procedures.
- IPA 2011 fund: EC allocated approximately 4 million Euros for public finance restructuring, and financial management in compliance with EU standards.¹⁹⁷

In July 2014 the E.U. announced a project entitled, “Strengthening the Public Procurement System in Bosnia and Herzegovina,” which is intended to last two years and to support implementation of the new Law on Public Procurement.¹⁹⁸ (See Box 21 below for review of the Law and the dismissal of civil society proposed amendments.)

6.5.3 Recommendations

¹⁹³ Center for Investigative Journalism, “Public Administration Reform: Money Spent Without Results,” (July 2, 2014), <http://www.cin.ba/en/reforma-javne-uprave-pare-potrosene-a-rezultati-izostali/>

¹⁹⁴ “Public Administration reform Monitoring,” Transparency International BiH, <http://ti-bih.org/projekti/monitoring-reforme-javne-uprave-parm/?lang=en>

¹⁹⁵ “Human Resources Management in Public Administration Structures in BiH – Challenges in Monitoring Reform,” Transparency International BiH, (September 2014), <http://ti-bih.org/wp-content/uploads/2014/09/Human-Resources-Management-in-Public-Administration-Structures-in-BiH-%E2%80%9393.pdf>

¹⁹⁶ See Tender, www.tender.ba

¹⁹⁷ IPA National Program 2011 – Bosnia and Herzegovina. Project Document available at http://ec.europa.eu/enlargement/pdf/bosnia_and_herzegovina/ipa/2011/2_ipa_2011_pfm_final.pdf

¹⁹⁸ “EU continues to support the strengthening of the public procurement system in BiH,” EU Delegation to BiH (July 10, 2014), <http://europa.ba/News.aspx?newsid=7194&lang=EN>

Systemic weaknesses that arise from corrupt practices and abuses of office, as well as the lack of accountability and the lack of political will to build independence and accountability into the system, impede effective public administration in BiH. BiH exemplifies what is known as state capture. “Recent literature defines state capture as the ‘seizure’ of laws to the advantage of corporate business via influential political links in the parliament and government. When the state is captured in this manner, the whole legal system becomes the opposite of what it should be, because it works to the advantage of illegal interests that are dressed up in a legal form.”¹⁹⁹

Considering how much has been done, it would be unrealistic to think that the U.S. can counter the inaction visible for so long if the current political, structural, and electoral frameworks remain in place. However, the author offers the following policy and programmatic options to strengthen the U.S.’s hand, primarily through support for the notion of a public sector based on merit.

- Develop strategy to reform public companies that avoids privatization but emphasizes political independence. Liberal economic approaches to transition have tended to focus on privatization as a solution to both a country’s economic and political transition processes. However, as the results of post-Cold War privatizations have shown, the process can lead to a new set of oligarchs. *The USAID Practitioner’s Guide for Anticorruption Programming* notes this risk: “Some argue that privatization can boost economic development and fight corruption, while others argue that privatization may not improve service delivery and in fact risks reinforcing cronyism if state’s assets are not allocated through competitive and transparent bidding processes. As the privatization of assets is highly vulnerable to corruption and has the potential of raising corruption from petty to high level, some researchers recommend postponing privatizations until a reasonable regulatory system is in place and/or supported by credible international agents.”²⁰⁰ The recommendations below (Section 6.6) offer a reconsidered approach to privatization that remains critical. In the interim, other ideas could be considered as well, including the study of options and efforts to change laws regarding political appointees on public companies in order to strengthen the role of professionals, and tighter conflict of interest laws, etc.²⁰¹
- Continue efforts to reform public tender processes, but with greater public and private involvement of international community to provide top-down support to bottom-up advocacy
- Continue efforts to reform public employment processes, but with greater public and private involvement of international community to provide top-down support to bottom-up advocacy
- Build business-civic coalitions of support for the above-noted efforts

¹⁹⁹ Pestic, Title, I.

²⁰⁰ *The USAID Practitioner’s Guide for Anticorruption Programming* (January 2015), 52.

²⁰¹ Two books could provide some food for thought: *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*. OECD. 2003.

<https://books.google.ba/books?id=FDKCsEN4xEC&pg=PA67&lpg=PA67&dq=public+company+management+norway+%22political+party%22&source=bl&ots=DazchiwJT7&sig=gGc-JTDZZ3TGf8wAQ53tsePddIo&hl=en&sa=X&ei=ICHgVPn-DcTi7Abwk4HoDA&ved=0CBwQ6AEwAA#v=onepage&q=public%20company%20management%20norway%20%22political%20party%22&f=false>; Petr Kopecky, Peter Mair and Maria Spirova, eds., *Party Patronage and Party Government in European Democracies* (Oxford: [name of press] 2012).

- Continue multi-pronged efforts targeted at corruption in health and education, including low-level, day-to-day corruption, as well as higher level case prosecution, with greater strategic coordination
- Support stricter IMF, EBRD, and IPA conditionality in the absence of broader structural reforms; US and like-minded thinkers can begin to build a coalition of support

Some “softer” activities could be considered as well, though these would not have the potential for the needed broader systemic impact.

- If there is interest in getting bright young people to join the civil service, including people returning from abroad, this process must be made easier.²⁰² There is a process called “nostrification” through which people who have earned a diploma overseas must have their credentials verified (*nostrified*) in order to be considered for public sector employment. In other words, a student who received an MA from Harvard must go through a process to demonstrate that the skills and courses they studied, and the diploma, is considered similarly valid as a diploma from an accredited BiH institution. This process is opaque and ripe for corruption; the process, and official translations can cost up to 2-3000 KM. This has been a noted problem for years; however, the problem remains. This process should be streamlined to the greatest extent possible, so anyone who wants to work in BiH does not have to worry about this as an obstacle. Set 2015 as the year to end this process.
- Tie future U.S.-funded study and exchange programs to participants’ placement in a middle-management position in a key institution upon their return. This could be done in advance through memoranda of understanding. Consider developing a BiH-Management Fellowship scheme aimed at bringing qualified, educated individuals living outside of BiH to serve in middle- to higher levels of public administration. If discussions with officials to develop such a program fail, ensure that citizens know. If this proposal is declined, then the opportunities being turned down by BiH officials for their youth should be well publicized. Similarly, work with large international organizations to begin a plan to embed qualified experts in appropriate institutions as these bodies downsize; for example, the OSCE has experts in OSCE political-military issues, or in education, who, when downsized, should be seen as resources by local institutions rather than as threats.

6.6 Business and Economic Environment

Key Problem Areas/Challenges Related to Fight Against Corruption

- Unfriendly business environment, burdened by taxes, fees, lack of harmonized registration processes and lack of public/political support for independent private sector, keeps private sector weak, and public sector employment desirable
- Rigid labor laws are a disincentive to job creation
- Past privatization is broadly viewed as non-transparent; most valuable assets have

²⁰² See the following for a review of issues related to stopping brain drain, and promoting brain gain: Sara Nikolić, Boriša Mraović and Emina Ćosić. “The Scientific Diaspora as the Brain Gain Option: Exploring the Case of Bosnia and Herzegovina,” *ACIPS*, 2010.

already been privatized or will not be (e.g., telecoms)

- Significant corruption in agriculture sector
- Rising concerns of non-transparent political deals with foreign investors

Key Recommendations

- Identify problems in past privatizations to both show citizens that the U.S. understands their complaints, and to determine how future privatizations can be more independent and transparent
- Support BiH as a single economic space to ensure easy mobility of business registration, labor compliance, tax codes, etc.
- Support investigative journalism on foreign investors and ties with political party elites
- Support business-civic coalition supportive of a state level Ministry of Agriculture

6.6.1 Context

Support to BiH's business and economic environment is directly related to the issues of accountability and reduction of corruption for the following reasons:

- The public sector will not be easily downsized unless there are more employment opportunities in the private sector; the Catch 22 is that the public sector may continue to crowd out the private sector if unchecked
- Public sector patronage will not be reduced unless citizens have other employment options
- Citizens who live on the margins of society – from hand to mouth on government salaries – will never form an effective or independent counter to the political elites

A stronger private sector is not just necessary to improve the country and to “raise up all boats,” but to fight endemic and systemic corruption and party capture, for the reasons discussed above.

Strengthening the private sector is easier said than done. As outlined below, there have been many efforts made to improve the country's economy. While all have been well intended, these efforts have sought sub-systemic solutions to BiH's economy problem. They have sought to promote individual and micro-level entrepreneurship within a fundamentally unreformed macro-economic system. The result is more than 15 years of action plans, brochures, and initiatives within the same sclerotic structure. Some of the resulting economic headaches are primarily nuisances – the fee and process to register new business; clashing regulations among the various levels of government; an ever-changing list of para-fiscal fees. However, the core problems of a bloated public sector, weak rule of law, patronage, and the lack of meritocracy remain and are substantial.²⁰³ “The burgeoning public administration in a state with 13 governments seriously hampered economic development.

²⁰³ The author recalls a British participant recounting a London-based investment event for BiH in 2013 at which the Foreign Minister convened a BiH delegation of non-English speaking individuals of less than impressive stature; he was heard to note that he would personally be the middleman between any interested investors and these BiH business people. The notion that a competent group of multi-lingual BiH representatives could not be identified is laughable.

The slow post-war recovery of public security, the weakness of the rule of law, and the persistence of systemic corruption all negatively affected the economy. Massive international support and the presence of tens of thousands of foreigners working in international organizations made a major contribution to the post-war recovery and reconstruction, but at the same time created a foreign-aid dependency and made structural reforms unattractive.”²⁰⁴

Privatization was viewed as a way to take assets out of public control, strengthen the private sector, and pave the way to a more free market economy. It did not have the intended healthy effect. Brady notes that in her research, “it was suggested that the transformation of state interests to private ones paved the way for increased corruption, and crime.”²⁰⁵

Core elements of BiH’s economy remain unreformed. “The case [of BiH] also suggests that political decision-makers still benefit directly from the status quo of a largely unreformed economy, and that there remains within Bosnia a substantial constituency opposed to the types of market-oriented reforms being promoted by the international community.”²⁰⁶ Other scholars take this argument further: “For example, privileged and somewhat corrupt political elements in BiH aid the status quo by supporting the continuance of separate government statistics offices based on ethnic/regional entities. Efforts to share data among those statistics offices, or to merge them into one national office, have been blocked by some ethnic entity-level officials exercising their political authority. The result is unreliable demographic and economic data for BiH, and unreliable data, in turn, undermine efforts to rationalize and decriminalize the political system.”²⁰⁷ Politics and the economy have remained tightly intertwined.

6.6.2 Efforts to Date – Selected Review

There have been many efforts aimed at both stabilizing the country’s fiscal sector, as well as supporting the development of incentives for the birth of small and medium enterprises (SMEs). Donais writes, “In fact, the nationalists’ satisfaction with the status quo has meant that Bosnia’s economic transition process has been driven almost exclusively by the international community. Despite reformist declarations by political parties spanning the political and ethnic spectrum, in practice Bosnia’s elites have fiercely resisted giving up their economic prerogatives.”²⁰⁸ The following list is simply indicative:

- Streamlining Permits and Inspections Regimes Activity (SPIRA) in Bosnia-Herzegovina²⁰⁹
- Enabling Labor Mobility Project (ELMO)²¹⁰

²⁰⁴ Vlado Azinovic, Kurt Bassuener, and Bodo Weber, *A Security Risk Analysis*. (Sarajevo: [Is this the press?] Atlantic Initiative and Democratization Policy Council, 2011), 27.

²⁰⁵ Brady, *Title*, 13.

²⁰⁶ Timothy Donais, “The Political Economy of Stalemate: Organized Crime, Corruption and Economic Deformation in post-Dayton Bosnia,” *Conflict, Security and Development*, 3, 3 (2003), 360.

²⁰⁷ Vilmos F. Misangyi, Gary R. Weaver and Heather Elms, “Ending Corruption: The Interplay among Institutional Logics, Resources, and Institutional Entrepreneurs,” *The Academy of Management Review*, 33, 3 (2008), 757.

²⁰⁸ Donais, *Title*, 366.

²⁰⁹ USAID-SPIRA (Bosnia and Herzegovina) Fact Sheet, http://www.ecdl.org/media/CSB10_USAID-SPIRA_BiHI.pdf

²¹⁰ “USAID investira 12 mil USD u projekat “Elmo” u RS – u,” *Bosnia.ba*, February 28, 2007, <http://bosnia.ba/biz/index.php?sta=3&pid=10682>

- Accounting reform activities (public and private) (USAID)²¹¹
- Numerous ICT efforts (e-commerce, e-governance, etc.)²¹²
- Business registration (DFID)²¹³
- Unified Collection System (UCS) in FBiH and RS.
- IT solution to catch non-filers simplify payroll processing,
- Use of software to allow fiscal analysis in IN RS and FBiH

The current USAID Fiscal Reform Project documentation notes other past efforts, including various indirect tax reform and tax harmonization efforts, and improved payroll processing efficiency.²¹⁴ The Bulldozer Commission aimed to reduce red tape and bureaucracy (see box). The Poverty Reduction Strategy Program (PRSP) was supported by the World Bank and IMF from 2004 to 2007, and included macroeconomic issues and numerous sector strategies (health, agriculture, forests, social protection, etc.) and an Action Plan for the Implementation of Priority Reforms agreed by the Council of Ministers and the Federation and RS Governments. (The slogan was the Stakhanovite, “Let’s support reforms, reforms are worthwhile. Reforms are the path to Europe!”)²¹⁵ The most recent campaign, the “Compact for Growth” is the latest version.²¹⁶

Box 13: The Bulldozer Commission: 50 Business Friendly Reforms in 150 Days

The Bulldozer Commission sought to integrate the business community into efforts to jump-start and revitalize the BiH economy. A core element was the adoption of 50 identified “business friendly” reforms in 150 days.²¹⁷ The Commission sought to make practical changes that were recommended by business leaders and that would not be politically sensitive to officials.

Benjamin Herzberg was involved in designing and implementing the approach, and has written about the experience. “The Bulldozer Initiative **does not aim at making framework changes**. As a bottom-up initiative, it is designed to identify specific business roadblocks that are exclusively focused on the entrepreneur’s experience. As a complementary effort to the large-scale reform efforts already underway, the intent is to amend a few articles in a law, rather than to overhaul the law completely. **This methodology is also designed to minimize political opposition**: by leaving the overall

²¹¹ “Projects, Bosnia and Herzegovina, Accounting Reform,” IBTCI, <http://www.ibtci.com/projects-app/bosnia-and-herzegovina-accounting-reform>; Rudy Runko, “Public Sector Accounting Reform In Bosnia and Herzegovina: News from the Field,” IPA Report, Fall 2002, <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN017991.pdf>

²¹² “How to Build Open Information Societies: A Collection of Best Practices and Know-How. Bosnia and Herzegovina,” <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018493.pdf>

²¹³ Beth Kampschorr, “DFID Eyes Early 2004 for BiH’s One-Stop Business Registration,” *The Balkan Times*, October 16, 2002,

<http://www.setimes.com/cocoon/setimes/xhtml/hr/features/setimes/features/2002/10/021002-BETH-001>

²¹⁴ USAID Contract AID-168-C-14-00001 Fiscal Sector Reform Activity in Bosnia and Herzegovina, 10-11.

²¹⁵ *Bosnia and Herzegovina: Poverty Reduction Strategy Paper—Mid-Term Development Strategy*. 04 International Monetary Fund Country Report No. 04/114 (April 2004), <http://www.imf.org/external/pubs/ft/scr/2004/cr04114.pdf>

²¹⁶ “Compact for Growth” brochure available at europa.ba/Download.aspx?id=1525&lang=EN

²¹⁷ A list of partners and description of the laws is available at the fact sheet, <http://www.ohr.int/ohr-dept/econ/bulldozer-initiative/pdf/eng-bulldozer-brochure.pdf>

equilibrium of the system in place, the methodology allows for a very limited room for maneuver among those who could potentially oppose the reform”²¹⁸ (emphasis added). Local ownership of the issues and the process was deemed critical. To support civil society initiatives for reform, the “Protocol for Prosperity” was agreed, to deepen support and commitment to the Bulldozer process.²¹⁹

In his report on the initiative, Herzberg notes that at the time of his writing (2004), it was too early to assess the initiative’s overall impact. “The initiative’s modest objectives granted it widespread support or, at least, benevolent neglect. By amending some legal obstacles to investment, instead of demanding a radical overhaul of the law, the initiative did not change the underlying liberal approach based on privatization, the retreat of the state, and the trust in FDI as engines of growth, and it minimized the possibility of opposition. Parliaments of both Entities effectively supported it by adopting many amendments to existing laws under the fast track procedure. Over time, however, because no major issues were tackled or spectacular results achieved, the local business community began to lose interest. In the end, the initiative’s most significant impact resides not in the number of laws amended, but in the changed outlook among the business community, which began to realize that the private sector has a legitimate right to demand reform from the government, and that such demands can be channeled publicly through institutional avenues (Omanovic’ 2005: 6).”²²⁰

The 2005 EC Progress Report notes that the initiative was handed over to the Bosnia and Herzegovina Employers Association for the next phase.²²¹ It is difficult to find information on what happened next, though the combination of Ashdown’s departure, the arrival of Christian Schwartz-Schilling and the general decline in reform since 2006/2007 suggests that this effort ended before it could make needed systematic changes.

There have been successes. The introduction of the Value Added Tax in 2006 greatly improved revenues and collection. There is more tax transparency, which should help improve collection and prevent tax evasion. Building upon USAID’s work on direct taxation, the four tax agencies (ITA, FTA, RSTA, and BDTA) have started exchanging taxpayer information as of spring 2014. There is more foreign investment, ranging from several McDonald’s to the announcement of multi-billion Euro real estate development efforts (see Box 15).

Box 14: Tax Debt Web sites

Several sites provide information on debtors who owe a variety of taxes and fees.

I. BiH 100 largest debtors

(PDV): <http://www.uino.gov.ba/download/duznici/pdv%20duznici.pdf>

²¹⁸ Benjamin Herzberg, “Investment Climate Reform: Going the Last Mile The Bulldozer Initiative in Bosnia and Herzegovina,” (Washington, D.C.: World Bank, 2004), 7, <https://openknowledge.worldbank.org/bitstream/handle/10986/14141/WPS3390.pdf?sequence=1>

²¹⁹ Office of the High Representative, Economic Transition Unit. See <http://www.ohr.int/ohr-dept/econ/bulldozer-initiative/more.asp>, 1st September 2003

²²⁰ Robert Belloni. *State Building and Intervention in Bosnia* (London and New York: Routledge, 2007), 106.

²²¹ *European Commission Progress Report for Bosnia and Herzegovina* (2005), 51.

2.

FBiH: http://www.pufbih.ba/images/stories/DUG_PREKO_5000000_KM_NA_DAN_31_12_2014.pdf

3. RS: <http://tinyurl.com/kf6rjvx>

However, the executive summary of the current USAID Fiscal Sector Reform Activity in BiH notes the lingering substantial challenges: “BiH’s weak economic governance, strongly influenced by irreconcilable political interests, instead of financing true economic growth-enhancing activities used earlier fiscal surpluses for unproductive purposes (e.g. irresponsible/politically motivated expansion of the public sector and increases in public sector wages). These were further compounded with generous social spending that targeted war veterans and other forms of privileged social categories to ‘buy’ their electoral/political support.”²²² The Fiscal Project includes a variety of efforts aimed at improved use of ICT to enforce tax compliance and better manage debt, and target tax evaders; simplify payroll processing; build capacity of the state Fiscal Council and Entity Ministries of Finance; and establish registers for para-fiscal fees.

Box 15: Foreign Investment and Political Party Links in BiH?

There is broad agreement that BiH needs investment. However, there are some concerns about the lack of transparency in some foreign investment in BiH, and in particular about the role that party connections may be playing in some of these deals and decisions.

There is a clear political split: the SDA controls most deals from Arab countries, as well as Turkish investment deals through Turkish President Erdogan. The recent announcement of some multi-billion dollars investments in residential/commercial premises in the Sarajevo suburbs (with money from the UAE and Kuwait) with the space to house 40,000 plus residents has raised some questions regarding party ties, zoning issues, land sales/allocations, etc.²²³ There are also additional streams of money coming in from the Turkish opposition Gulenist movement, for example to the International Burch University (also in Ilidza). It is difficult to find out who is behind these deals.

Such deal making is not limited to the Bosnians. There are other concerns as well. All Russian and Chinese investment deals in the energy sector go through Milorad Dodik (Refinery Brod, Thermo-Plants Stanari, and Ugljevik). Questionable Croatian deals are minimal (e.g., Mepas Mall, or Aluminij in Mostar).

Some will argue that any investment is welcome investment. However, individuals are right to want transparency in deal-making that will have a significant impact on the urban, social, and economic landscape. Others question whether investment motivation is purely

²²² USAID Contract AID-168-C-14-00001 Fiscal Sector Reform Activity in Bosnia and Herzegovina, 7.

²²³ “Arapi u općini Trnovo grade turistički grad vrijedan oko 4,5 milijardi KM,” Klix, February 2, 2015, <http://www.klix.ba/vijesti/bih/arapi-u-opcini-trnovo-grade-turisticki-grad-vrijedan-oko-4-5-milijardi-km/150202041>; “Projekat Nova Ilidža: Još jedna investicija obećana u milijardama,” Klix, February 4, 2015, <http://www.klix.ba/biznis/investicije/projekat-nova-ilidza-jos-jedna-investicija-obecana-u-milijardama/150203047>; “SDA načelnik Memić: Nova Ilidža je historijski projekat za cijelu BiH,” Radiosarajevo, August 11, 2014, <http://www.radiosarajevo.ba/novost/161565/sda-nacelnik-memic-nova-ilidza-je-historijski-projekat-za-cijelu-bih>

financial, or perhaps driven by broader political or cultural agendas. Again, this is not unique to BiH; but as a fragile and still divided post-war state, such issues deserve transparency and attention.

Some real questions remain: Can BiH exist as a single economic space within the current constitutional framework? Is there the political will to establish such mobility? How can the new “Compact for Growth” succeed where past efforts (such as the “Protocol for Prosperity”) have failed? What are realistic timeframes for improvement?

6.6.3 Recommendations

The following recommendations offer a selection of targeted and achievable goals both to strengthen the economic environment for investors, and to demonstrate directly to the people of BiH that the U.S. is serious about helping them to overcome surmountable structural obstacles.

- Privatization has been difficult and controversial in all of the countries that emerged from the Cold War “east.” BiH has been no different. A consequence of the post-Cold War rush to privatize companies in order to take them out of public control was the consolidation of economic power by a group of politically connected oligarchs. These oligarchs manipulated the process and consolidate economic control at the expense of true citizen participation and buy-in. However, there is still a strong sense that remaining state enterprises should be privatized.²²⁴ During the 2014 plenums and protests, citizens of BiH expressed anger and dissatisfaction with past privatization (see diagram in the Annex of supplemental materials). While BiH's remaining public companies are most certainly an avenue for patronage, rapid privatization without learning from the mistakes of the past is a recipe for further kleptocratic consolidation. A full macro-economic review of the privatization process to date would take much time and specific expertise. However, a more targeted review of 5 to 10 examples of privatization in selected communities, including, most importantly, the impact of privatization on the local economy and citizens’ opinions on democracy and capitalism, would provide at minimum a road map for a better future process.²²⁵ Such a review should illustrate what “successful” privatization looks like and what a failed process looks like. It would also demonstrate to citizens and activists that the U.S. understands their concerns and wants to do better in the future.
- Future efforts to privatize companies should also be as insulated as possible from political influence and interference. A successful example is the German experience during reunification.²²⁶ A policy paper on how this might be applied to BiH is warranted before further state assets are captured.
- It is difficult to understand how BiH anticipates that it will become a member of the E.U.’s single economic space when it as a country is not a single economic space. BiH

²²⁴ In Bosnia and Herzegovina, improving the efficiency of state-owned enterprises, including through privatization, would also greatly support private sector development. *2014 Economic and Fiscal Programmed of Albania and Bosnia and Herzegovina: The Commission’s Country Assessments*. European Economy Occasional Papers 198 (July 2014), 5,

http://ec.europa.eu/economy_finance/publications/occasional_paper/2014/pdf/ocp198_en.pdf

²²⁵ A starting point could be ACCOUNT’s review of the “10 biggest privatization thefts,” available at <http://www.account.ba/novost/9702/veliko-istrazivanje-10-najvecih-privatizacijskih-pljacki-u-bosni-i-hercegovini>

²²⁶ Kurt Bassuener, “Stop Funding BiH Politicians’ Irresponsibility,” *Bosnia Daily*, January 16, 2014, <http://democratizationpolicy.org/uimages/e-bdaily%203194.pdf>

lacks a single regulatory framework, and true labor and social welfare mobility. BiH has un-harmonized procedures, a fragmented energy infrastructure, and un-harmonized taxes and fees. It is difficult to envision that BiH could wage a successful campaign to attract foreign investment by introducing investors to such a convoluted system. It is possible to invest in BiH; but an investor must *really* want to (or to have other political motivations, as is the case with much public and private investment by individuals from the Gulf states). We have seen that most investors do not. Further, mayors and local leaders need more ability to make regional economic decisions that make sense (e.g., a Herzegovina economic development strategy). The U.S. and its international partners should establish a task force to take the steps necessary to reshape BiH into single economic space. This would help investment in the short-term, and bring the country a step closer to E.U. membership in the long-term. The Foreign Investor’s Council BiH – which has been funded by USAID to draft its *White Book 2012/13* which outlines FIC recommendations for business-friendly reforms – could provide a starting point.²²⁷ Lessons could be learned from the PRSP and the Bulldozer Commission.

- BiH is still an economy highly dependent on agriculture. However, it does not benefit from its agricultural advantages as it lacks even a state level strategy to exploit this key sector.²²⁸ A constitutional amendment to give BiH state-level competencies would authorize the government to establish a Ministry of Agriculture, which would ensure that BiH is not locked out of the E.U.’s export markets. The E.U. has a sound vision for the future of this sector. There is wide popular support among farmers throughout BiH to establish a Ministry of Agriculture. (A state-level Union of Farmers led by a Serb from the RS is advocating for this reform.) Further, agricultural subsidies are rife with corrupt practices (see Box 15).

Box 15: Agricultural Subsidies

- A 2013 Transparency International report identified five cases of irregularities regarding the allocation of agriculture subsidies, mostly linked to the Ministry of Agriculture, Water Management, and Forestry, and Narodna Stranka Radom za Boljitak.²²⁹
- In 2013, out of 21 million KM allocated for subsidies in the Federation of BiH, approximately 2.7 million is alleged to have been allocated for old buildings, fake businesses/business fronts, party colleagues, or the family of Federation Minister Lijanović.²³⁰
- The Republika Srpska Ministry of Agriculture, Forestry and Water Management has received negative audit reports for both 2013 and 2014. The General Auditor claims that subsidies were not allocated in accordance with the protocol, and that many

²²⁷ *White Book 2012/13*. Foreign Investors Council BiH, http://www.fic.ba/pdf/White_Book_2012-13.pdf

²²⁸ See, for example, “Cost-benefit analysis of establishment of the ministry of agriculture, food and rural development of Bosnia and Herzegovina,” Green Council, June 2014, <http://green-council.org/WP/wp-content/uploads/2014/09/CBA-ENG-ZA-WEB3.pdf>; and “Establishment of the BiH Ministry of Agriculture, Food and Rural Development and other structures as a way of achieving economic progress for BiH in the EU integration process,” Green Council, June 2013, http://green-council.org/WP/wp-content/uploads/2013/09/Broshura_engleska-verzija_v3.pdf

²²⁹ “BiH: Korupcije najviše u državnoj upravi,” *Al Jazeera*, March 25, 2013, <http://balkans.aljazeera.net/vijesti/bih-korupcije-najvise-u-drzavnoj-upravi>

²³⁰ “Korupcija u podsticajima za poljoprivredu FBiH: Milioni za nepostojeci biznis,” RuralPortal, November 13, 2013, <http://mne.ruralportal.me/korupcija-u-podsticajima-za-poljoprivredu-fbih-milioni-za-nepostojeci-biznis/>

people/farmers who received subsidy money were not even registered as farmers or agricultural workers.²³¹

- Support investigative journalism addressing foreign investors in BiH, political party connections, and conflicts of interest to determine both the impact on the economic and political environment in BiH, and also the economic and/or political motivations of foreign investors involved in these deals.
- Entrepreneurs – or potential entrepreneurs – in BiH can be tapped to share their stories of investing in the country, and to explain both the hurdles that they faced and the opportunities that have been missed. Their stories could put a human face on the issue of investment, and demonstrate the lost potential. There are networks of business people who could be targeted to provide support to such a campaign.
- Identify business clubs (foreign investor councils, chambers of commerce, etc.) to determine which are independent and forward-looking, and which could serve as additional pillars in business-civic coalitions for reform. Consider their potential role in increasing business practice integrity.

²³¹ “Negativan izvještaj o Ministarstvu poljoprivrede,” *BN Televizija*, February 10, 2015, <http://www.rtvbn.com/333131/Negativan-izvjestaj-o-Ministarstvu-poljoprivrede>; “Ministarstvu poljoprivrede RS ponovo negativan revizorski izvještaj,” *Istinio*, July 5, 2014, <http://istinio.com/index.php/bih/drustvo/item/22104-ministarstvu-poljoprivrede-rs-ponovo-negativan-revizorski-izvjestaj.html>

6.7 Anti-Corruption Institutions (APIKs) and Strategies

Key Problem Areas/Challenges Related to Fight Against Corruption

- BiH has signed on to action plans and strategies for years but with few visible results
- The BiH APIK has no enforcement powers, and was designed so that it cannot work like USKOK in neighboring Croatia

Key Recommendations

- Support efforts by U.S. partners (NGOs, journalists) to monitor work of state and entity APIKs to determine their strengths and weaknesses in specific, targeted terms; identify blockages
- Integrate awareness of APIK and entity bodies' promises and activities into any broader task force initiative

6.7.1 Context

Governments that seek to demonstrate their commitments to reducing corruption frequently adopt anti-corruption strategies, action plans, and commissions. Transparency International points out that governments often create anti-corruption commissions in the wake of corruption scandals, providing some examples of good practice.²³² Hong Kong, Singapore, Latvia, and Indonesia are often invoked as examples. While anti-corruption commissions have become rather popular, especially since the 2012 Jakarta Statement, there is increasing skepticism about their effectiveness.²³³ One expert notes that, “an ACA [anti-corruption agency or commission] should ideally have the mandate of investigation, prevention and education, plus the ability to prosecute,” in the context of an independent and guaranteed annual budget.²³⁴ The reasons for their failure can be many, particularly if status quo political systems recognize threats to their positions, if aims are too high, if there is insufficient and ineffective coordination among relevant actors, and if there is insufficient accountability.²³⁵ It is fair to say that an agency can only be as strong as its weakest link, be that investigation, prevention, or prosecution.

“Although national anticorruption agencies can be critical in preventing corruption before it becomes rampant, not only are they difficult to set up but they often fail to achieve their goals once they have been established. They may be beholden to their political masters that they dare not investigate even the most corrupt government officials; they may lack the power to prosecute; and they may be poorly staffed . . . If major anticorruption initiatives

²³² Transparency International, “Fighting Corruption: The Role of the Anti-Corruption Agency,” (April 28, 2014),

http://www.transparency.org/news/feature/fighting_corruption_the_role_of_the_anti_corruption_commission

²³³ Transparency International, “Best Practices for Anti-Corruption Commissions.” *Transparency International Anti-Corruption Helpdesk*, (March 21, 2013),

http://www.transparency.org/files/content/corruptionqas/Best_practices_for_anti-corruption_commissions_2.pdf

²³⁴ *Ibid.*, 3-4.

²³⁵ Bertrand De Speville, “Failing Anti-Corruption Agencies – Causes and Cures,” ([Was this a paper presented at a conference? If so, please say] ISCTE, Lisbon, May 15-16, 2008, http://ancorage-net.org/content/documents/de_speville.pdf).

are to be firmly anchored, there need to be distinct national government agencies dedicated to curbing corruption. These agencies must command public respect and be credible, transparent, and fearless. They must be subject to review by a free press and by civil society—indeed, they must be accountable to the public. But they must also be given considerable political independence so that they cannot be removed at the whim of an enraged political elite. A prime challenge in many countries is to mobilize the necessary political will to establish such agencies.”²³⁶

The E.U. policy of visa liberalization with BiH was confirmed in 2008 through a road map that included concrete efforts to reduce and fight corruption. While this led to the establishment of an anti-corruption agency with an action plan, this was not the first such effort, nor has it had any appreciable results. The review below is detailed to remind the reader that strategies built upon weak structures will not deliver results.

6.7.2 Efforts to Date – Selected Review

The first anti-corruption strategy for BiH was developed by the OHR in 1999.²³⁷ It consisted of four pillars: *Education and Public Awareness; Eliminate Opportunities; Transparency and Reports; Controls and Penalties*. The strategy focused on the effective collection of taxes and harmonization of tax legislation, but also included a survey of the justice sector, urged monitoring of corruption cases, and supported legislation to increase transparency. The strategy emphasized cooperation among OHR, IPTF, CAFAO and others, and the OHR Rule of Law Department included a Crime and Corruption Unit.²³⁸

An anti-corruption action plan was developed by the BiH Council of Ministers in 2000, but was not adopted until 2004, as a part of the BiH Medium-term Development Strategy (2004-2007).²³⁹ The following were the main goals of the plan:

- Strengthen the Rule of Law
- Have transparency in the public sector
- Strengthen citizens' trust in government institutions
- Advance corporate/business climate
- Strengthen the fight against organized crime

The strategy did not include any deadlines or demands, but issued only suggestions, mainly regarding justice sector reforms and the establishment of new bodies to deal with crime and corruption issues.

The Ministry of Security developed a special strategy for the fight against organized crime and corruption (2006-2009), which was adopted by the Council of Peoples (link unavailable). The European Commission's Progress Report for BiH in 2007 noted the following: “A

²³⁶ Jeremy Pope and Frank Vogl, “Making Anti-Corruption Agencies More Effective,” *Finance and Development*, 37, 2 (2000), <http://www.imf.org/external/pubs/ft/fandd/2000/06/pope.htm>

²³⁷ “A Comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina,” Office of the High Representative, February 15, 1999, http://www.ohr.int/ohr-dept/afd/ac-cor-strat/?content_id=5240#4

²³⁸ OHR Web site, <http://www.ohr.int/ohr-dept/psau/accu/>

²³⁹ Medium-term Development Strategy (2004-2007), III.5., http://www.dep.gov.ba/dokumenti_politika/srednjorocna_razvojna_strategija/default.aspx?id=133&langTag=bs-BA

National Anti-Corruption Strategy and action plan was adopted in 2006, but the implementation has not been satisfactory, due in part to a lack of resources. Overall, Bosnia and Herzegovina has made limited progress in dealing with corruption. Corruption is widespread and remains a serious problem. Strategies and action plans are in place, but they are not properly implemented. More vigorous investigation and prosecution is necessary.”²⁴⁰

The most recent national anti-corruption strategy was in place during the period of 2009 to 2014.²⁴¹ The following were its main goals:

- Develop an efficient system for anti-corruption activities
- Establish a system to prevent corruption in all public institutions and structures
- Build capacities for the fight against corruption at all levels of government
- Raise citizens’ awareness of the risks of corruption and ensure the participation of civil society in all anti-corruption activities
- Establish a state agency to fight against corruption (APIK), which was formed in 2009

As with the earlier anti-corruption action plans, [observers] assessed BiH’s most recent action plan, which was in place from 2009 to 2014, as nearly completely unfulfilled.²⁴²

In addition to these national action plans, there have been other BiH institutional strategies that aimed to tackle the issue of corruption inside their own structures:

- BiH Prosecutors Office Strategic Plan (2006-2009)²⁴³
- State Agency for Investigations and Protection Strategic plan (2012-2014)²⁴⁴
- BiH Direction for Economic Planning (2013-2014)²⁴⁵
- Federation of BiH Ministry of Justice Plan for Fight Against Corruption in 2013²⁴⁶
- Federation of BiH General Plan for Fight Against Corruption²⁴⁷
- RS Strategy for Fight Against Corruption (adopted in 2013) (link unavailable)
- Federation of BiH Ministry of Finances Plan for Fight Against Corruption in 2013²⁴⁸
- BiH Council of Ministers Strategy for the Fight Against Organized Crime²⁴⁹

²⁴⁰ *Bosnia and Herzegovina 2007 Progress Report*,

http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/bosnia_herzegovina_progress_reports_en.pdf

²⁴¹ *Bosna i Hercegovina Strategija za borbu protiv korupcije (2000 - 2014)*.

<http://www.msb.gov.ba/docs/strategija1.pdf>

²⁴² “No seriousness of authorities in the fight against corruption.” Transparency International, Fifth Monitoring report of the Anti-Corruption Strategy (2009-2014) and Action Plan, <http://www.anticorruption-bosnia-and-herzegovina.org/home-mainmenu-1/news-from-bosnia-and-herzegovina/95-no-seriousness-of-authorities-in-the-fight-against-corruption-from-the-start>

²⁴³ Tužilaštvo - Tužiteljstvo Bosne i Hercegovine Strateški Plan 2006 – 2009. March 2006,

http://www.tuzilastvobih.gov.ba/files/docs/Strateski_plan_TBih_2006_2009_PO_BiH_Strategy_BCSI.pdf

²⁴⁴ <http://www.sipa.gov.ba/bs/strateski/strateskibs.pdf>

²⁴⁵ *Akcijski Plan Borbe Protiv Korupcije Direkcije Za Ekonomsko Planiranje (2013-2014)*,

www.dep.gov.ba/antikorupcija/?id=1593

²⁴⁶ *Plan Borbe Protiv Korupcije Federalnog Ministarstva Pravde, January 28, 2013.*

http://www.fmp.gov.ba/useruploads/files/fmp/plan_borbe_protiv_korupcije_fmp.pdf

²⁴⁷ *Opći Plan Borbe Protiv Korupcije.* http://www.fbihvlada.gov.ba/pdf/opci_plan.pdf

²⁴⁸ *Plan Borbe Protiv Korupcije Federalnog Ministarstva Finansija/Financija,*

<http://www.fmf.gov.ba/pdf/Plan%20borbe%20protiv%20korupcije%20FMF-a.pdf>

²⁴⁹ *Strategija Bosne i Hercegovine Za Borbu Protiv Organizovanog Kriminala (period 2009. – 2012. godine).* Bosna i Hercegovina Vijeće Ministara, September 2009,

<http://www.msb.gov.ba/docs/strategija2.pdf>

After years of zero to minimal activity, BiH now has one anti-corruption agency²⁵⁰ at the state level that is headquartered in East Sarajevo. The BiH Agency for Prevention of Corruption and Coordination of the Fight Against Corruption (APIK) was technically formed in 2009,²⁵¹ but only in 2011 was there agreement on the appointment of the director and vice directors. [In [year], Sead Lisak was appointed to be the director of APIK director. Mr. Lisak reportedly does not speak English, and his appointment may reflect problems with public sector hiring and the lack of a meritocratic system. Budgeting issues allegedly have slowed APIK's progress, as has a clear lack of political will; however, APIK sent a proposal of a new strategy for 2015 to 2019 to the Council of Ministers of BiH on 25 January 2015. This proposal includes very broad aims such as strengthening the legal and institutional framework for the fight against corruption in all levels of government in BiH, and coordinating and harmonizing canton and entity strategies with the state level strategy.²⁵² The Anti-Corruption Agency Act provides that entities and cantons must establish their own institutions or develop their own plans for the fight against corruption, which eventually will be coordinated by the state Agency. APIK has no enforcement capacity and can only make suggestions on how state institutions can reduce corruption.

The Entities rely on their strategic plans to guide their fights against corruption in entities' bodies. The following are the bodies competent for the fight against corruption in the entities and Brčko District:

- Republika Srpska: Representatives of the RS Ministry of Justice and the Ministry of Interior
- Federation of BiH: Team for monitoring and coordinating the implementation of the General plan for the fight against corruption²⁵³
- Brčko District: Mayor's office

In addition, the Parliamentary Assembly of BiH has established a Commission for the Selection and Monitoring of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption.²⁵⁴ The president of the Commission is Dušanka Majkić (SNSD). The 2013 APIK Report sent to the Parliamentary Commission notes: "The lack of coordination in the entity levels and Brčko District is a result of not having established entity and BD bodies for the coordination of anti-corruption activities."²⁵⁵

²⁵⁰ APIK, http://www.apik.ba/default.aspx?langTag=bs-BA&template_id=194&pageIndex=1

²⁵¹ *BiH Anti-Corruption Agency Act*, http://ti-bih.org/wp-content/uploads/2011/04/zakon_o_agenciji_za_preveniriju_korupcije_i_koordinaciju_borbe_protiv_korupcije_u_bih.pdf

²⁵² "Nova Strategija za borbu protiv korupcije upućena Vijeću ministara na usvajanje," BiH APIK, January 26, 2015,

<http://apik.ba/aktuelnosti/saopcenja-za-javnost/default.aspx?id=295&langTag=bs-BA>

²⁵³ Federation of BiH government General Plan for the Fight against Corruption, http://www.fbihvlada.gov.ba/pdf/opci_plan.pdf

²⁵⁴ "Komisija za izbor i praćenje rada Agencije za prevenciju korupcije i koordinaciju borbe protiv korupcije." Parliamentary Assembly of BiH web site,

<https://www.parlament.ba/sadrzaj/komisije/ostalo/komisija-korupcija/default.aspx?=&id=41628&mid=2&langTag=bs-BA&pril=b>

²⁵⁵ Report on the work of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, 2013, 27, https://www.parlament.ba/sadrzaj/komisije/ostalo/komisija-korupcija/izvjestaji_o_radu/Default.aspx?id=46686&langTag=bs-BA&pril=b

This overview illustrates the gap between promises and action, between action plans and budgeted resources, between rhetoric and the reality of independent and professional action. It is little wonder that citizens have little trust in public institutions when they have read about such plans for more than a decade and have seen few results. Brady notes the following in her 2012 report: “One allegation in respect of the government implied that they restrict budgets of specific agencies to ensure actions and challenges to the system are ineffective, while still presenting an illusion of conformity at both the national and international level.”²⁵⁶ She continues: “Albeit that the anti-corruption agency was established, with a strategy and action plan, a large number of interviewees doubted it would have any impact as it has no mandate to respond to allegations of corruption. It was believed by many that it should have been given executive powers, but there was no political will for this to happen. Overall, it was suggested that it was designed to be inefficient.”²⁵⁷

The following problems reflect BiH’s politics and structure:

- State level plans have limited reach, few enforcement competencies, and there are very limited budgets and resources to implement them.
- Relevant state level agencies (SIPA, Indirect Tax Authority, auditing institutions, etc.) are often dependent upon high-level political support, and frequently face challenges to their budgets and competencies from entity levels of government (particularly the RS).
- While the RS has a suite of bodies and plans, there is no independent oversight to ensure that these plans are implemented impartially, and few checks and balances to ensure independence.
- The Federation is continually challenged by the struggle for competencies among certain cantons and at the entity level, with Croat-majority cantons seeking autonomy from the perceived Bosnian-dominated entity, and a Croat-centric cantonal coordination approach.

The result is that the systems that are in place are in ethnically homogenous areas in which a dominant political actor or party environment suppresses or minimizes opposition voices, and renders independent institutional actions rare.

The author finds it difficult, based on past experience with state-level bodies, to be optimistic about the BiH APIK, or its potential to make serious progress in fighting corruption. Currently, the law (2009) that established APIK ensures that it has only an advisory function, and no ability to initiate investigation among state institutions, or to be involved at the entity levels. It has no enforcement powers. (The decision to limit APIK’s powers was made to appease Dodik, who insisted that the body have no enforcement powers. The E.U. agreed as a part of a deal to adopt the law and secure visa liberalization.) Excerpts of the latest anti-corruption strategy suggest that it too is long on words and promises, but short on steps to ensure its enforcement and implementation.

The E.U. and U.K. both have plans to support APIK’s capacity building, and it is likely that support may also come from the UNDP and other organizations. A number of other actors also have plans to support the development of anti-corruption strategies at the municipal

²⁵⁶ Brady, *Title*, 5.

²⁵⁷ Brady, *Title*, 37.

level.²⁵⁸ Until there are demonstrable results and commitment, the U.S. should limit its support to this body to coordination through ACCOUNT and other civic bodies, and journalists. If a task force is formed as recommended, it should explore monitoring APIK and identifying possible opportunities to strengthen existing laws and their implementation. It may be some time before APIK gains enforcement powers, but these are needed if there is any hope of functionality and coordination. The polls referenced above suggest that while political parties are opposed to APIK gaining enforcement powers, citizens support a stronger state role. As Brady wrote, “many agreed that the creation of more agencies needed to stop, and that those already in existence needed to be reinforced under a common structure, to ensure resources were used effectively.”²⁵⁹

Box 16: BiH and the Open Government Partnership

The Open Government Partnership (OGP) was founded in 2011 by eight founding governments: Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom, and the United States. “OGP aims to secure concrete commitments from governments to drive open government reform and innovation at the country level, in an effort to stretch countries beyond their current baseline in the areas of transparency, accountability, and citizen engagement.”²⁶⁰

Minister of Foreign Affairs, Zlatko Lagumdžija, sent a letter to the Open Government Partnership in September 2014 noting the country’s interest in joining the partnership.²⁶¹ BiH is in the process of developing an action plan, without which it cannot join the partnership. Lagumdžija has noted in his blog post that he and the Ministry are determined to work in accordance with the main principles of the partnership, emphasizing the importance of transparency in the work of institutions.²⁶²

To fully join the partnership, BiH must accept the Declaration on open government, increase the availability of data on government activities, support public participation in policy making, implement high standards in professional integrity, develop a BiH action plan (including public discussion), and commit to independent reporting on the implementation of the action plan.²⁶³

The key question is how can citizens, civic actors, and international actors use this as an entry point to create pressure on targeted issues, including, for example, to achieve the following:

- ***Strengthen FOIA laws, in particular advocating for ease of access to asset cards***
- ***Increase transparency in public procurement and public sector hiring***

²⁵⁸ ACCOUNT recently had a training workshop with representatives from six municipalities on this topic (Bijeljina, Dobo, Gorazde, Gracanica, Tomislavgrad, Trebinje). The Swedish Embassy noted plans to work at the municipal level on such strategies as well.

²⁵⁹ Brady, *Title*, 33.

²⁶⁰ See <http://www.opengovpartnership.org/about/faqs>

²⁶¹ Open Government Partnership Bosnia and Herzegovina,

<http://www.opengovpartnership.org/country/bosnia-and-herzegovina>

²⁶² Zlatko Lagumdžija, January 24, 2015 (TIME), comment on [Title], *Otvoreno*, [DATE OF BLOG POST], <http://zlatkolagumdzija.blogger.ba/>

²⁶³ “Lagumdžija: MVP će biti inicijator pristupanja BiH Partnerstvu za otvorenu vlast,” Klix, April 14, 2014, <http://www.klix.ba/vijesti/bih/lagumdzija-mvp-ce-bit-i-inicijator-pristupanja-bih-partnerstvu-za-otvorenu-vlast/140414150>

- ***Curtail the use of urgent procedure in parliament which cuts off public discussion***

Such matters could be a part of a concerted campaign of talking points to send a constant and consistent message.

6.7.3 Recommendations

The E.U. and the government of the United Kingdom both plan to spend several millions to enable APIK to become functional, and will be its key supporters. Ideally, the number one recommendation is to *strengthen* APIK's independence and enforcement abilities, and to tie future funding to achievement of this; however, it does not seem likely that the E.U. or U.K. have interest in doing this at this stage. The following limited recommendations seek to provide effective additional measures to assess APIK and its implementation of any future action plans.

- Monitor work of APIK, in general and through coordination with ACCOUNT and other civic bodies, and the USAID Justice sector project; ensure awareness in the course of any task force effort/strategy
- Integrate awareness of APIK and entity bodies' promises and activities into any broader task force initiative

6.8 Demand-Driven Reform

Key Problem Areas/Challenges Related to Fight Against Corruption

- Citizens consistently rank corruption as a problem in BiH, yet there is no significant grassroots anti-corruption movement in BiH
- Pervasive nature of corruption results in a society in which many citizens are directly or indirectly involved in or “benefit” from the status quo
- Civil society is still weak and is characterized by many as excessively project focused, donor dependent, and unable to effect significant policy change
- Leaders have supported and adopted rollbacks in measures aimed to increased civic engagement and trust in government

Key Recommendations

- Continuing the ACCOUNT project or some other formal networking project will likely not make a significant impact on corruption in the absence of higher level pressures from U.S. and others sending and reinforcing consistent message
- More effectively integrate NGOs into overall efforts described throughout this paper (public companies, audit follow up, asset declaration effort, etc.)
- Continue civic efforts to support networking and coordination, but increase focus on specific thematic networked groups; quality rather than quantity
- Continue to support quality investigative journalism, and support with follow up and integration of findings into public and private talking points
- Work to end indiscriminate use of emergency procedure in Parliaments

6.8.1 Context

Many scholars and donors have studied the state of civil society in BiH to understand why BiH’s citizens seemingly have resigned themselves to their inadequate post-war fate, continue to vote for the same political options, and have not significantly “risen up” to challenge a system that is not improving their lives. The box below provides excerpts from a chapter that the author has prepared for a forthcoming book, and summarizes some of the core issue surrounding this issue of whether civil society is a potential answer to BiH’s apparent woes, or whether it is one reason why BiH is in its current position.

Box 17: Civil Society in BiH: The Answer and the Question? 264

“Discussions about civil society by external actors or observers in BiH tend to be focused on structured organizations with a potential interest in and ability to influence public policy – non-governmental organizations (NGOs) or civil society organizations (CSOs).²⁶⁵ External actors tend not to focus on book clubs, volunteers or other informal social networks, let alone civic actors that do not possess a progressive reform agenda. Any broad definition of civil society must also include sports groups and veterans associations, both of which in fact receive a large percentage of BiH civil society funding,²⁶⁶ as well as religious groups and trade unions (both of which have been highly politicized). However, in BiH’s post-war experience, civil society has broadly been viewed by outsiders as a non-partisan (i.e., NGOs not affiliated *formally* with any one political party) potential tool that may help in peace implementation and long-term democratic consolidation (USAID 2004). Therefore, for the purposes of this paper, the term civil society will be used to refer to formal organizations working in the policy advocacy realm.

“A great deal has been written on post-war civil society development efforts in BiH, and this brief summary only reviews some broadly recognized trends. As a result of the large number of donors that flooded the country after the war, BiH NGOs have been developed, groomed, trained, briefed, advised, tested, funded, evaluated, propped-up, defunded, and cajoled. The sheer amount of attention and money spent in efforts to build or strengthen a civil society competent of serving as a counter-weight to the ruling parties means that the environment has been distorted by the influx of aid and (often) good intentions (Carothers 1999; Ottaway and Carothers 2000). The notion of civil society being shaped and debilitated by a dependency trap has been thoroughly discussed, as have other criticisms of the outsized influence of external actors on the emergence of civil society in BiH including the fostering of a project-based mentality; the impact of aid distortion; the focus on civil society as service delivery; a tendency to focus on short-term international “trends” in targeting funding rather than long-term local needs (e.g., heightening interest in anti-trafficking projects even if that is not a stated local need); the competition among NGOs that is created by the scramble for funding; a focus on the urban-elites; the pros and cons of the professionalization of NGOs (and unbalanced relationships between the two); and weak donor coordination (Puljek-Shank and Memisevic 2013; Sebastian 2012; Belloni and Hemmer; Verkoren and van Leeuwen; Belloni 2001; Bieber 2002; Reich 2006; BCSDN 2012; USAID 2004; World Bank 2006). It is not just critics making these observations; for example USAID is itself aware of the continuing challenges in this development sector (USAID 2009; Barnes 2004).

²⁶⁴ “Constitutional Reform Processes in Bosnia and Herzegovina: Top-down Failure, Bottom-up Potential, Continued Stalemate,” in *Statebuilding and Democratization in Bosnia and Herzegovina*, ed. Soeren Keil and Valery Perry (London: Ashgate, forthcoming 2015). Pages not available at this time.

²⁶⁵ While various organizations use these terms in various specific ways, these terms are used interchangeably in this paper.

²⁶⁶ A report from the Center for the Promotion of Civil Society (CPCS) looked at data for 2010, finding that 34.3 percent of grants were made to sports associations, 16 percent to disabled veterans, 21.6 percent to groups providing social services and 28.2 percent to other types of CSOs (CPCS 2010). The OSCE Mission to Bosnia and Herzegovina did independent research on municipal level support to CSOs in 2009-2010, finding that “[o]ut of approximately 60,000,000 KM reserved for CSOs, 70% is allocated to war related associations, sports club, cultural and religious organizations” (OSCE unpublished).

“Anecdotally, NGOs also suffer from a credibility gap with citizens, as a skeptical citizenry often lumps civil society actors in the same lot as politicians, viewing them all as in it ‘just for the money,’ biased and at times even nefariously motivated. Whether these views are based on their direct and real experience with various segments of civil society – the professional or the volunteer; the policy advocates or activists; the independent or pseudo-independent – does not matter, as the monolithic notion of ‘civil society’ means they are all painted with the same brush. As noted above, studies by the Center for the Promotion of Civil Society (CPSP) and OSCE shows that a significant amount of money invested in the NGO sector by the BiH government is given to social care, sports groups, and war veterans associations (CPCS 2010; OSCE unpublished). As the latter two groups often have close ties to political parties, it is reasonable to expect that this practice has an impact on the average person’s thoughts on civil society, as advocacy organizations and think tanks tend to be limited to larger urban areas.

“These criticisms should not suggest that there are no positive aspects of BiH civil society, though this angle has not received as much attention as the more critical research. Whether in terms of service delivery, offering cultural and educational opportunities in communities that would otherwise be unserved, or seeking to change the interaction between civil society and government at all levels, NGOs have been able to make an impact at this level (Belloni 2007; CPCS 2010; Barnes 2004; Sejfića 2006). Anecdotally speaking, externally funded activities – often not at all political – offer small communities in particular opportunities to entertainment or engagement that would otherwise not exist. However, in terms of consolidation or success at the macro or systemic level, successes have often been out of reach. On the policy side, NGOs cannot point to a major legislative ‘win’ that might serve as the basis for some momentum, or help them to demonstrate their capacity and potential.²⁶⁷ In June 2013 a series of civic protests related to the issuances of citizen ID numbers inspired many people to begin to think that perhaps citizens had had enough; however, after several weeks even these demonstrations lost steam, and a law with provisions contrary to the wishes of protestors was ultimately adopted (Zuvela 2013).

“Why have NGOs advocating for political reform been unable to make more of an impact? While some of this is related to organizational weaknesses, the broader environment in which they operate cannot be ignored. The country formalized and structured by Dayton and the state constitution therein were not drafted to ensure maximal engagement by diverse citizen constituencies; the Dayton structure was developed by and for the wartime elites, and has never enjoyed confirmed public legitimacy. While written in 2001, a description of this environment is still applicable in 2013: ‘The lack of transparency and accountability and the dearth of the rule of law and good governance make public scrutiny a chimera. Bosnian civil society has neither the leverage nor the potential resources to perform the task handed over by the international community’ (Belloni 2001, 172). Further, Belloni’s description of the way in which elites maintain the status quo remains accurate a decade later: ‘By fostering community isolation, mobilization and a general

²⁶⁷ When asking BiH observers whether they can identify substantial policy “wins,” one suggestion that is often raised is related to the campaign by the Center for Civic Initiatives (CCI) for the direct election of mayors. The campaign did succeed in changing the law to allow for direct election of mayors, a step seen as having the potential to increase accountability at the local level. CCI receives funding from USAID. However, some critics will point out that CCI had much more support from the U.S. government and other international actors in this endeavor, which greatly increased the chances for success (USAID 2004; OSCE/ODIHR 2004).

feeling of insecurity, ethnic elites legitimize each other and maintain a tight grip on their constituencies. At the same time, internal dissent, as expressed by those who question the existing social order by promoting and defending the possibility of a multi-ethnic polity, is often repressed and marginalized' (Belloni 2001, 173). It is not theoretically *impossible* to think that civil society might play a meaningful role in constitutional reform efforts. However, it is fair to consider that this would be one of civil society's biggest challenges.

"Is international support for civil society driven by a real interest in civil society or is it a more cynical reaction to the failures of working with BiH's Dayton structures and elites (Belloni 2001)? This is an intriguing question in general, but in particular as it relates to efforts to engage civil society in constitutional reform. Further, there is a risk that viewing 'civil society' as a panacea can ignore broader factors related to the lack of democratic consolidation or the inability of a society to reach a lasting peace. A World Bank report looking at the role of civil society in peace-building notes that '[c]onflict is generally driven by macro-level factors' (World Bank 2006, 23), and '[t]he assumption that many local peace initiatives will automatically influence peace building at the macro level has been proved wrong' (Ibid., 25). It is reasonable to think that while civil society should not be purposely excluded from elite level reform efforts, neither should it be expected to successfully shoulder the burden alone in the existing non-conducive socio-political environment."²⁶⁸

The account above notes the example of the summer 2013 JMGB protests, which illustrate the rise of a movement, followed by its political defeat (the ID law adopted was not in line with what protestors had sought), and its dissipation. The February 2014 protests throughout the Federation drew similar rapid interest, culminated in the burning of various government or party buildings in places such as Sarajevo, Tuzla, and Mostar. (These were much reported by local and international news networks; some have made direct links to the governmental system put in place after the war.²⁶⁹) While the protests, and the civic movements known as "plenums" that followed, led to a new burst in civic action, the author observed the following: First, there was a clear demarcation among the protests, the protestors, the plenum events, and what might be called "organized civil society." While at the 2013 JMGB protests one could see many members and leaders of funded civil society participating along with many regular citizens, in the initial protests and subsequent initiatives they were noticeably absent. (Though some individuals participated in some street actions.) It has been noted that when the first plenums in Sarajevo were organized the invitation on social media noted that the events were open to everyone except political parties and NGOs. This in itself demonstrates a certain lack of faith in the sector. While NGOs and political parties were not invited to participate, it was frustrating to see that even from the outside the organized civic sector did not seek to rise on any issue "coattails" to send reinforcing messages and demands to decision makers. (The Austrian Foreign Ministry has sought to bridge this gap, but with little success to date, see below.)

Second, the lack of a structure and leadership of the plenums was viewed as a strength by many participants, and a weakness by others who saw them as formless and without

²⁶⁸ Details on the references are in the annex.

²⁶⁹ Alyson Smale, "Roots of Bosnian Protests Lie in Peace Accords of 1995," *New York Times*, February 14 2015, http://www.nytimes.com/2014/02/15/world/europe/roots-of-bosnian-protests-lie-in-peace-accords-of-1995.html?_r=0

coherent management, strategy, or vision. (The Occupy movements have often been noted as a good practice example by those who prefer this approach, and a bad practice model for those who wonder what tangible successes Occupy had.)

Third, while the plenums in Bihac, Sarajevo, Tuzla, and Zenica succeeded in pressuring the cantonal governments to step down, they did not provide effective follow up to ensure or effectively advocate for or make progress on demands. The election results seemed to solidify the post-war status quo rather than point to some new option. (Consider for example the Tuzla SDP stronghold being ousted by SDA.)

Fourth, while the plenums did convey their demands on key issues (see chart in supplementary materials), there was little consideration of how to get their demands actualized. There was even less consideration of why the political system to date has failed to deliver on valid socio-economic demands, or of how to use the political system to press for the desired changes.

Box 18: The Police and Civic Activists

There have been increasing concerns about police pressure against activists. This was a common complaint during the 2014 protests;²⁷⁰ however, pressure tactics continue in 2015. Activists have reported being targeted for fines due to their presence at demonstrations; they also report concerns about increasing use of security cameras for surveillance.²⁷¹ A representative of the Center for the Promotion of Civil Society (CPCD) notes being visited by Sarajevo Canton police during the week of February 4, and being asked general questions, as well as whether the representative had any information about planned protests.²⁷² (Is this a positive example of a “community policing” approach, or a subtle show of pressure? To answer this question requires special attention and discussion with activists.) Ostra Nula was fined by the RS government for putting up flyers related to the Picin Park protests.²⁷³ The recent RSNA adoption of a new security law that includes social media as a form of public assembly has drawn significant criticism from activists and the international community alike.²⁷⁴

Scholars are studying this movement and will be writing on it in the near future. Some scholars are optimistic, linking the movements to some challenges to privatization cases

²⁷⁰ A number of news reports have been written on this topic, including: “Protesti u Tuzli: Policija rastjerala demonstrante,” Klix, February 6, 2014, <http://www.klix.ba/vijesti/bih/protesti-u-tuzli-na-ulicama-i-danas-nekoliko-stotina-nezadovoljnih-gradjana/140206045>; “Protesti u Tuzli: Policija razbila demonstracije, Širanović pušten iz pritvora!” Oslobodjenje, February 6, 2014, <http://www.oslobodjenje.ba/vijesti/bih/protesti-u-tuzli-demonstranti-gadjaju-zgradu-vlade-tk-kamenicama-jajima-i-bakljama>; “Specijalci potiskuju demonstrante,” B92.net, February 7, 2014, http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=02&dd=07&nav_id=809363; “Police violence against protesters must be investigated,” Civil Rights Defenders, February 23, 2014, <http://www.civilrightsdefenders.org/news/police-violence-against-demonstrators-in-bosnia-herzegovina-must-be-investigated/>

²⁷¹ Nidzara Ahmetasevic, “Big Brother is Watching Us in Bosnia,” *Balkan Insight*, February 5, 2015, <http://www.balkaninsight.com/en/article/big-brother-is-watching-us-in-bosnia>

²⁷² Conversation with CPCD, February 5, 2014.

²⁷³ “Nemoj da ideš ”mojom” ulicom: Sud izrekao presude za ”šetače”,” Moj Kontakt portal, February 5, 2014, <http://mojkontakt.com/2014/02/nemoj-da-ides-mojom-ulicom-sud-izrekao-presude-za-setace/>

²⁷⁴ Elvira M. Jukic, “Bosnian Serbs Adopt ‘Net Censorship’ Law,” *Balkan Insight*, February 6, 2015, <http://www.balkaninsight.com/en/article/bosnian-serbs-adopt-net-censorship-law>

including judicial proceedings.²⁷⁵ However, as of mid-February 2015, it, unfortunately, seems easy to doubt the lasting impact of the 2014 protests: there were few demonstrations organized to commemorate the year anniversary of the uprising, or to seek a new way forward. Demonstrations were sparsely attended, and the week passed with a whimper after much speculation of what the anniversary could portend.

6.8.2 Efforts to Date – Brief Review

The author did not review formal project documents of all or most past USAID comprehensive civil society projects because they were not available. In any case, they would be quite numerous, and a comprehensive review of past civic efforts is beyond the scope of this project. However, the findings of an available 2004 assessment are still broadly applicable to this review.²⁷⁶ The latest iteration of USAID support to civil society development builds on significant earlier multi-year support provided to partner NGOs such as the Center for Civic Initiatives (CCI) and the Center for the Promotion of Civil Society (CPCD), the two NGOs that are coordinating the new five-year “Civil Society Sustainability Project” (CSSP). The E.U. also funds a large framework civil society support project called TACSO (Technical Assistance for Civil Society Organizations),²⁷⁷ and numerous embassies and other donors have supported small and large civil society efforts over the past nearly two decades. The sector has not been neglected.

Demand driven anti-corruption reform is based upon the premise that creating demand for a cleaner, less corrupt system through bottom-up, grassroots pressure will (in time) dissuade officials from engaging in corrupt or seemingly corrupt practices. The theory is that officials will fear consequences – either being voted out of office, or possibly street actions and protests that could tarnish one’s reputation (thereby affecting future electability), or prosecution – and, therefore, will be more accountable. Raising awareness of corruption is a key element of such demand driven efforts.

A number of different kinds of initiatives are supported in this manner: investigative journalism;²⁷⁸ web sites, portals and info-meters/truth-o-meters;²⁷⁹ hotlines, helplines and

²⁷⁵ Uffe Anderson, “The Privateers and the Protestors,” Transitions Online, February 13, 2015, http://www.tol.org/client/article/24684-the-privateers-and-the-protesters.html?utm_source=TOL+mailing+list&utm_campaign=claba79f49-TOL_newsletter_21_11_2014&utm_medium=email&utm_term=0_35d0a711b5-claba79f49-298055094. Larisa Kurtovic has an essay on the inter-linked problems of BiH politics, funded civil society and the plenums in “The Strange Life and Death of Democracy Promotion in Post-Dayton Bosnia-Herzegovina,” *Unbribable Bosnia and Herzegovina—The Fight for the Commons*, Damir Arsenijević (ed.) (Baden: Nomos Southeast European Integration Perspectives (forthcoming), 97-102. Available at academia.edu.

²⁷⁶ United States Agency for International Development (USAID). *Civil Society Assessment In Bosnia and Herzegovina* (June 25, 2004).

²⁷⁷ See <http://www.tacso.org/project-org/BiH/?id=19>

²⁷⁸ In BiH, this includes efforts by the Center for Investigative Journalism (CIN; www.cin.ba), Zurnal (which received some funding from the USAID funded Strengthening Independent Media Project; www.zurnal.ba) and others.

²⁷⁹ Zasto Ne? hosts the *Istinomjer* (Truth-o-meter), at <http://istinomjer.ba/>, and also <http://razglasaj.ba/>; ACCOUNT hosts a web site (<http://www.account.ba/stranica/pocetna>) and has a Facebook platform (<https://www.facebook.com/pages/Account-Antikorupcijska-mre%C5%BEa-organizacija-civilnog-dru%C5%A1va-u-BiH/365559563532964>); CCI hosts Virtual Parliament (www.virtuelniiparlament.ba); there are many others.

apps people can use to report corrupt practices;²⁸⁰ work with NGOs and groups to organize their engagement in anti-corruption campaigns at stand-alone groups or networks; broad public relations campaigns urging people not to pay bribes or taking responsibility in the fight against corruption;²⁸¹ and, public opinion polling and ranking organizations aimed at provide a barometer of how a country compares against itself over time, or against other countries. As described in these pages, all of these efforts have been tried or are underway in BiH. Some efforts are explicitly related to fighting corruption (e.g., ACCOUNT), while other fall under the broader rubric of supporting a healthy and active civil society capable of holding public official to account.

6.8.3 ACCOUNT – An Overall Assessment

The following section aims to provide a broad overview of the ACCOUNT project to date, and to provide context in which to consider broader anti-corruption strategies. This section is not intended to be a formal impact assessment or evaluation. It is structured to both provide broad information on the program for readers who are unfamiliar with it, as well as more targeted insights for those considering the project in more detail.

Following a summary of key elements of the ACCOUNT effort, this review addresses the six questions asked in the “Social Accountability” section of the three-page “First Principles” document provided by USAID.

This overview was developed based on the following activities:

- Review of ACCOUNT project documents, quarterly reports, and web site information
- Interviews with the directors of CRMA and Infohouse, who are implementing the project (as the lead implementer (*nosilac*) and secretariat, respectively)
- Telephone interviews with 7 ACCOUNT network NGOS, according to a semi-structured questionnaire (17 were randomly selected and contacted)
- The broader interviews and document review for the full anti-corruption assessment

6.8.3.1 Basics

ACCOUNT began its work in June 2012, with support to work through June 2015, with \$1,050,000 budgeted. The ACCOUNT work plan notes the following objectives:

“[T]o strengthen and streamline the voice of civil society in BiH anti-corruption

²⁸⁰ On February 2, 2015, the Sarajevo Canton Ministry of the Interior introduced an app that citizens can use to report corruption (see <http://www.anticorruption-bosnia-and-herzegovina.org/home-mainmenu-1/news-from-bosnia-and-herzegovina/119-bosnia-and-herzegovina-citizens-can-report-corruption-and-track-it-online>); Transparency International supports an anti-corruption hotline (0800 55555), which received 1,149 calls in 2014. (See with support from Transparency International opened a hotline for flood-related abuse of office (see “TI BiH: Najviše prijava korupcije u državnoj upravi,” *Fokus*, February 5, 2015, <http://www.fokus.ba/47846/vijesti/bih/ti-bih-najvise-prijava-korupcije-u-drzavnoj-upravi/>); <http://ti-bih.org/pozovite-0800-55555-za-prijavu-slucajeva-zloupotrebe-pri-distribuciji-i-raspodjeli-humanitarne-pomoci-u-poplavom-pogodenim-podrucjima-bih/?lang=en>); the *Krimolovci* Hotline that was launched in early 2014 by SIPA (<http://www.sipa.gov.ba/bs/?full=12965>).

²⁸¹ The EU Police Mission sponsored a campaign called “Jolly Ambassadors” in 2011 to urge citizens and in particular young people to join in creating an anti-corruption culture (“Fighting Corruption Begins With Me!”). (See <http://www.eupm.org/Detail.aspx?ID=46&TabID=8>; the campaign web site, <http://veseliambasadori.org/>, no longer works.)

efforts.”

1. “[T]o encourage and facilitate NGOs to form larger and more inclusive movement[s to] fight against corruption, by establishing an umbrella network of NGOs and other relevant stakeholders dedicated to anti-corruption, under the name “Anti-Corruption Civic Organizations Unified Network ACCOUNT”;
2. [T]o advocate for development, adoption and enforcement of existing and new anti-corruption legislations and policies;
3. [T]o create safe avenues for citizens to report on corruption.”²⁸²

ACCOUNT II was agreed in June 2014, with an additional \$450,000 earmarked for support for the following activities:

- Legal case monitoring coordination and expert team – with Golden Badge, Sarajevo
- Legal team pro bono legal aid and services
- Quarterly media reports/reviews on corruption reporting
- Watchdog trainings

The supplemental funding provided in June 2014 to ACCOUNT notes the following theory of change underlying the project:

“The main assumption of this approach is [that] the role of civil society is crucial for moving anti-corruption reforms forward in BiH. Furthermore, the activities of CSOs have to be consistent in the long term, coordinated, inclusive and professional.

“To accelerate the preparation, adoption and implementation of anti-corruption reforms in BiH it is crucial to have an engaged civil society that:

- “acts as [a] corruption watchdog, exposes corruption cases and criticizes corrupt officials and institutions, including judiciary;
- effectively raises public awareness about the existence, causes and the threats posed by corruption;
- proposes new policies and legislation for better governance based on integrity and accountability;
- protects advocates, reporters, experts and victims of corruption.”²⁸³

6.8.3.2 Activity Highlights

The chart below summarizes just some of the main activities of ACCOUNT as reported in quarterly reports to their Board, and discussions with members. It is not comprehensive.

²⁸² ACCOUNT, *First Year Work Plan, Performance Monitoring and Evaluation Plan (PMAP)*, Version resubmitted (August 8, 2012), Introduction, 2 (no page numbers).

²⁸³ USAID FOG Award No. AID-168-F-14-00003, Anti-Corruption Civic Organizations’ Unified Network II (ACCOUNT II), 6 June 2014, 15-16. The NGO began a project in September 2011 entitled, “Hello health, stop corruption.” “Zdravo zdravstvo, korupcija stop.” *Trebinje Danas*, September 9, 2011, <http://trebinjedanas.com/node/5094>.

The Stop Mobbing web site is at <http://www.stop-mobbing.org/sr/>; however it’s difficult to find reports on their activities or drafts of their findings on the web site, or at a noted web site <http://www.stopkorupciji.info/>, which is not currently functioning.

Initiative	Highlights	Status
Public Procurement	<p>Advocacy with TI BiH and others to urge Parliament to adopt their proposed amendments to the Law; campaign, outreach, etc.</p> <p>Database on 2000 cases of public procurement irregularities/questions.</p> <p>Note: NDI also organized a training workshop on the topics of public procurement, public finances, and budgets in Banja Luka in early 2015, with a trainer from OSF in Belgrade. The work of TI and ACCOUNT were noted.</p>	NGO Public Procurement Law proposals ignored by Parliament
Health Sector	<p>The draft of internal procedures (Rulebook) for combating corruption in the health sector was developed, issued, and distributed to the public health institutions for their review, consideration, and (hopefully) adoption by Stop Mobbing.²⁸⁴</p> <p>Series of debates on health and corruption.</p>	<p>It remains to be seen whether the Rulebook will be adopted by the Ministries of Health; more importantly, it remains to be seen whether they will be used and will begin to change the internal professional culture in these institutions.</p> <p>Participation in debates is reported as good, but it is unclear whether officials, politicians, decision makers consistently attend, and whether their attendance has led to any changes. It may be too soon to tell. However, based on experience in other reform areas, it is not at all uncommon for officials to attend such events but then to return to business as usual.</p>
Legal Assistance	<p>Legal team is in place to provide assistance on corruption claims and cases.</p> <p>In 2013-2014, 66 claims received, of which 14 found to have valid basis for claims. Cases include employment corruption, irregular appointments, legal/property issues, illegal privatization and irregular legal</p>	Of 14 claims pursued, some cases have proceeded to court; reviewed procedures; sent information to relevant ministries regarding property issues (awaiting responses); pulled some cases out of drawers; and initiated work to change some privatization laws.

²⁸⁴ 6th ACCOUNT Quarterly Report, 6

	procedures.	<p>25 new cases are being reviewed by legal team.</p> <p>While claims should be able to be made through every ACCOUNT member, a cursory review suggests that the report forms are not available on members' websites, and in the telephone discussions this issue was not noted by any of the responding NGOs. The cases being received are all clearly important to the claimants. Successful resolution of any of these claims - and full implementation of a decision in their favor - remains to be seen. If there are such successes, they should be broadly advertised to demonstrate a victory of a citizen against "the system." If they are not, then continued follow up should determine whether procedures followed were indeed valid and transparent, and whether institutions were acting in an accountable way. It is difficult to see any changes happening at higher levels of corruption in the system as a "spillover" effect. However, this is a new initiative, and, if continued, new cases could provide a stronger basis for more systemic reform efforts, in a coordinated programmatic-political initiative.</p>
Municipality AC Strategies	Training workshops held in early 2015 with representatives of five municipalities: Bijeljina, Doboj, Gorazde, Gracanica, Tomislavgrad, Trebinje	In process
Public Sector Employment	ACCOUNT published study on public employment practices on five February 2015 ²⁸⁵	In process

²⁸⁵ "PREDSTAVLJENO ISTRAŽIVANJE ACCOUNT-a: Više od polovine institucija vrši direktno zapošljavanje," ACCOUNT, February 5, 2015, <http://www.account.ba/novost/10044/predstavljeno-istravanje-account-a-vise-od-polovine-institucija-vrsi-direktno-zaposljavanje>

	<p>A report filed by Justicia Srebrenik against a former director of the Agency for Hiring Employees of Tuzla Canton for being non-competitively hired posted to the police, a sector group for justice leading organization.</p> <p>Justicia Srebrenik submitted to the Mayor of Srebrenik Municipality a request to change laws and regulations on hiring employees in public institutions.</p> <p>OKC Banja Luka initiated a proposal to change the internal procedures on hiring employees in education.</p>	
Bankruptcy Laws	<p>The proposal on changes to the Law on Bankruptcy Proceedings submitted to the Federation Ministry of Justice by Udruženje za građanska prava (UGP) Sarajevo</p> <p>Reviewing existing Federation bankruptcy laws to more clearly explain proceedings to avoid abuse of the procedure.²⁸⁶</p> <p>Series of public debates</p> <p>Meeting with Federation Minister of Justice (February 19, 2014), Mr. Zoran Mikulić, to follow up on the research findings and recommendations; open letter from ACCOUNT to the Federation Moj (April 24, 2014), importance of involving the civil sector in the Moj intersectoral group emphasized.²⁸⁷</p>	In process
Justice Sector	<p>Public debates in Mostar, Zenica, Bijeljina on police's and prosecution's role in preventing corruption.</p> <p>Network Member Golden Badge to begin an effort in February 2015 (with 12 partner teams) to find out</p>	In process

²⁸⁶ Ibid., 5-6.

²⁸⁷ Ibid., 6-7.

	why prosecutors are not following up on reported cases.	
2014 Floods	ACCOUNT continued to work with the newly launched network member organizations (26) called BRANA, to maintain the points of contact to report irregularities in the distribution of humanitarian aid, since the devastating floods affected BiH in May 2014.	Very few people used it; ACCOUNT believes this is due to lack of trust in small communities hard hit by the disaster. <i>Note: this dynamic is important to keep in mind when considering other hotlines.</i>
Whistleblower Laws	Worked with partners to advocate for successful adoption of state level Whistleblowers Protection Law.	Awaiting implementation phase; entity level laws needed.
Privatization	Conference (04/25/2013) on "The transition, privatization, corruption", organized by the Ministry of Security and Transparency International BiH included the signing of a Memorandum of Cooperation between the Ministry of Security, the Agency for Prevention of Corruption and ACCOUNT. ²⁸⁸	In process
Support to network members	Ervin Turbic of Justicia (Srebrenik) began getting threats due to his activism. ACCOUNT became involved calling for (then) Minister of Security Radoncic to have a meeting in the Ministry with Mr. Turbic to hear about the threats and to promise security. As an added value ACCOUNT arranged to publish a picture in Avaz with the two of them having the discussion, to send a signal that the threats must stop. While Infohouse and CRMA noted this initiative, Mr. Turbic did not note this in the telephone interview.	A link to a photo and article on a meeting that took place is available at the Ministry of Security web site. ²⁸⁹ No further threats have been noted.
Capacity Building Training	Causes of corruption (ethical crises, corrupted heads of health institutions, law incomes, law living standards); manifestations of	In process

²⁸⁸ ACCOUNT (?) Third Quarterly Report, 5.

²⁸⁹ "MINISTAR SIGURNOSTI BiH RAZGOVARAO S PREDSTAVNICIMA ACCOUNT-a I JUSTICIA-e," BiH Ministry of Security, June 12, 2013, <http://www.msb.gov.ba/vijesti/saopstenja/default.aspx?id=9398&langTag=bs-BA>

	<p>corruption in the area of health (donations, bribes, illegal private practices, sick leaves and retirement, etc.); effects of corruption (types of corruptions and their effects, nepotism and corruption); results of corruption survey (practical examples of public opinion of the Trebinje citizens on corruption manifestations and practices); why we speak about corruption.²⁹⁰</p> <p>In addition, there have been other trainings on topics such as public relations with network members, and training in preparation for municipal AC strategy development</p>	
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In addition, ACCOUNT and its partners have published of the following documents :

- Who's Who: including contact information for both institutions and NGOs
- 5 Stories on Corruption in BiH
- 5 Stories on Educational Corruption
- 10 Biggest Privatization Thefts in BiH

Box 19: Whistleblower Law

The Law on Whistleblowers in BiH Institutions was adopted in 2013 (by both Houses), and has come into force. It applies to individuals who work in state institutions. A Federation law was drafted, but has not been adopted.²⁹¹ There is not yet a draft law in the RS.

While the law is still quite “young” and has not been thoroughly tested, there is at least one case. Irina Lovrić was working in the Return Fund of BiH when she reported her director for malversations in 2012. In November 2014, she became the first protected whistleblower and won a case against the Fund and her director for mobbing. The Court ordered her employer to pay her 30.000 KM.²⁹² The court has three months to confirm this decision. ACCOUNT confirms that there is no up to date information on her case.

²⁹⁰ ACCOUNT Quarterly report, 4.

²⁹¹ Federation draft law at http://www.fmp.gov.ba/useruploads/files/zakon_o_zastiti_prijavitelja_korupcije_-_hrvatski.pdf

²⁹² “Uzbunjivači u BiH: Smjene i pritisci zbog prijave korupcije,” *Radio Slobodna Evropa*, February 14, 2015, http://www.slobodnaevropa.org/content/uzbunjivaci_u_bih_smjene_i_pritisci_zbog_prijave_korupcije/2446441_2.html; Elvedina Džakmić, “Irina Lovrić: Antologijska presuda! Prvi slučaj presuđenog mobinga i diskriminacije na državnom nivou,” *Azra*, November 6, 2014, <http://www.azramag.ba/intervju/irina-lovric-antologijska-presuda-prvi-slucaj-presudenog-mobinga-i-diskriminacije-na-drzavnom-nivou/>

6.8.3.3 The ACCOUNT Network

The ACCOUNT Network consists of more than 140 NGOs that have signed up to participate in the network. After the author reviewed the quarterly reports, it is clear that only a limited number are active. The author contacted a randomly selected number of NGOs were contacted for this research; the author selected the NGOs to ensure a mix of entities with high and low profiles, and regional diversity.

The author contacted the following NGOs by phone, email, or both methods. Additional efforts were made with each if they did not respond to the initial contact. Of the 17 contacted, the author successfully reached 7 that were willing to participate in a telephone interview.

Chart 4: ACCOUNT Networks NGOs Contacted

Organization	Response
Justicia	Successful
Udruženja altruista "Ispočetka"	No response
ToPeer	Successful
COD Luna	Successful
AGRORAZVOJ	Successful
PRONI	Successful
Omladinski savjet Bijeljina	Successful
Omladinski centar Vermont	No response
Helsinški odbor za ljudska prava RS	No response
RUHAMA Zenica	No response
Savjet mladih Srebrenice	No response
Demokratski centar Nove nade	"The dialed number does not exist"
Forum žena Bratunac	No response
Vesta Tuzla	Email response: "I am on my way out of the office, and I have a field trip to Zenica tomorrow, so I will not be able to speak with you. The staff that worked on anti-corruption projects and that has cooperated with Account doesn't work in Vesta anymore, so I won't be able to delegate the interview to anyone. Hope this doesn't disturb your further research."
Duvanjke	Successful
Vijeće mladih Cazin	No response
Omladinski komunikativni centar	No response

The researcher calling the NGOs briefly, described the purpose of the contact and discussion, and asked whether they would be willing to participate. The author asked the following questions.

Box 20: Semi-Structured Phone Interviews

1. Why did you join ACCOUNT? What did you expect from the effort?
2. How do you define the purpose and goal of ACCOUNT?
3. What was your NGO doing to fight corruption before ACCOUNT?
4. What has your NGO done as a part of ACCOUNT?
5. What is ACCOUNT's biggest contribution to your NGO's effort in AC? What has been your NGO's greatest contribution to the work of the network?
6. What do you think ACCOUNT should do in the future?
7. Any other comments or suggestions on fighting/reducing corruption in BiH.

The following trends were reflected in the responses:

- NGOs note joining for a variety of reasons: already working on relevant issues, an interest in starting to get involved in such issues, an interest in getting involved as watchdogs
- NGOs that had already been working on relevant issues prior to the launch of ACCOUNT have the best understanding of the initiative, and are the most active
- There are concerns about the sustainability of this initiative, based on respondents' experiences in past network efforts

Some selected quotes follow:

- "We have attended meetings, seminars and educations and filed a case against a corrupt official. It seems to me that ACCOUNT is not serious in exposing corruption cases. It is all just coordination and monitoring, but no action."
- "The most important thing is sustainability. We have had experiences with other NGO networks, after they lose funds, the activities end. It is important to ACCOUNT to keep working with the NGOs, educate them on anti-corruption measures and support smaller NGOs."
- "My experience is that everyone [is] under some kind of pressure, from their communities or the donors. It seems to me that ACCOUNT is being used by the donor for diagnostics only, to gather information that they're normally unable to gather themselves and for the foreign funders to see what is happening in the field, [in] smaller communities in BiH."
- "It is crucial to form a group working on urbanization and city planning, because this is an area very susceptible to corruption, and educate NGOs [about] how to monitor activities such as giving building and working permits to companies and individuals."
- "The main thing ACCOUNT should do is to advocate for the change of laws and legal provisions regarding anti-corruption."
- "The only thing I would suggest is to pressure the Prosecutor's office to accept and push criminal charges submitted in cases of corruption."

- “I believe the most problematic issue is corruption in BiH health sector, I would strongly recommend to tackle these issues, and the sooner the better.”
- “I don’t have any obvious suggestions, but it is very important to change the opinions of normal regular citizens who transfer corruption ‘traditions’ to their children. There is a big problem and a big population of people in this country thinking that corruption and bribery are normal things, in health and employment. This is someone future activities should be directed to.”
- “ACCOUNT should take more seriously the membership in the network, because there are many organizations that actually don’t belong here. For example, I can see some organizations from [blank] that don’t have an employees, ad office or credibility in general. It is insane to gather members only for numbers. Maybe [NGO name] would take them more seriously if they dealt with these issues.” (identifiers removed)
- “There have been only sporadic activities regarding fight against corruption, and we still don’t have a system of monitoring those and other activities, which is a big problem.”

If more information would be of interest, it would be useful to consider a Survey Monkey style anonymous survey, bearing in mind however that such surveys are often ignored by target respondents.

Box 21: BiH Public Procurement Law

In March 2014, the BiH PA House of Representatives passed a new Law on Public Procurement. There was a strong reaction from the CSO sector, as ACCOUNT, Transparency International in BiH, the NGO Tender, and the RS Employers Association and others developed and submitted a draft proposal with the amendments to the Law. However, none of the amendments were accepted and adopted in the new law.²⁹³ The new law generally is characterized as cosmetic; it does not include substantial changes to enhance the transparency of the public procurement process. The newly adopted law does not require any transparency in the process, noting only that the companies and institutions can, if they want, publish a report regarding a public procurement process and procedure.

The amendments proposed by the NGOs included changes regarding timeframes, better planning in public procurement processes (an annual plan could help to avoid ad hoc public procurements), and provisions for maximum transparency, including the requirement to regularly publish procurement information on relevant institutions' web sites. NGOs also proposed removing the provision that requires candidates to pay to receive tender documentation, explaining that is not the practice in other European countries and that in general it lowers the competition in procurement processes. An open letter to the Parliament was prepared by the participating organizations, and provides a good summary of their proposals and their justifications.²⁹⁴

There was a meeting on November 4 with Đinita Fočo, director of the Public Procurement Agency, to review and discuss the proposed amendments. Mrs. Fočo’s said

²⁹³ *Official Gazette of BiH. Law on Public Procurement (May 19, 2014),*
http://www.javnenabavke.ba/legislative/zakoni/Novi_ZJN_BiH.pdf

²⁹⁴ “Open Letter Against Adopted of the New Law on Public Procurement,” April 25, 2014, <http://ti-bih.org/otvoreno-pismo-protiv-usvajanja-novog-zakona-o-javnim-nabavkama/?lang=en>

that “only 5 out of 22 amendments submitted by the Network could be partially or completely included in the Draft Law.”²⁹⁵ The amendments were supported by both the public and political parties before they were introduced to the BiH Parliament.

The final law was adopted in May 2014, in the House of Peoples: 20 delegates voted for the law, 17 against, and 4 abstained. *Zurnal* published an article on the Law on Public Procurement, including a voting list prepared by the civic effort called TENDER, which shows how each representative from every party voted during the vote in March 2014.²⁹⁶ The timing of this story and voting record review likely was related to the pre-election campaign in the autumn, and drew attention to the parties that supported this Law. Among members of the “Democratic Initiative for Europe,” [see above, Section 6.3] SDP nearly unanimously supported the law, as did SNSD, HDZ 1990, and HDZ BiH.²⁹⁷ SNSD delegate Saša Bursać stated: “NGO amendments are all about institutions, not about the context. Everything is observed from one angle only. NGOs should not dictate this country's tempo.”²⁹⁸

It is difficult to tease out a connection between voter choice and this issue, and the effect of the broader anti-incumbency sentiment in many places, within the scope of this effort.

In July 2014 the E.U. announced a project entitled, “Strengthening the Public Procurement System in Bosnia and Herzegovina.” It aims to last two years and to support the implementation of the new Law on Public Procurement.²⁹⁹

6.8.3.4 Specific Questions from the Initial Research Request

Six questions were included in the three-page documents provided to the author by USAID at the beginning of this effort (“First Principles”).

Question 1: How can USAID leverage its special relationship with ACCOUNT to increase citizen demand for transparent and accountable government? What kind of approaches and best practices of engaging CSOs in anti-corruption should be continued in a possible follow-on ACCOUNT activity?

Nearly all respondents were asked how any bottom-up, civic efforts might be supported. The following summarizes the most common responses:

²⁹⁵ ACCOUNT 5th Quarterly Report, 4.

²⁹⁶ “Tenderovo Upozorenje Biračima: Ovo su političari koji su glasali za korupciju!” *Zurnal*, September 26, 2014,

<http://zurnal.ba/novost/18322/tenderovo-upozorenje-biracima-ovo-su-politricari-koji-su-glasali-za-korupciju>

²⁹⁷ Letters of appreciation for cooperation with the nongovernmental sector in the fight against corruption were presented by ACCOUNT to Azra Hadžiahmetović (SBIH), Branislav Borenović (PDP), Nermina Zaimović-Uzunović (SDP), Nermina Kapetanović (SDA), Martin Raguž (HDZ 1990), Marinko Čavara (HDZ BiH), Lazar Prodanović (SNSD). See ACCOUNT web site at <http://www.account.ba/stranica/o-nama>

²⁹⁸ House of Representatives session stenographic notes, available at:

https://www.google.ba/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CC4QFjAC&url=https%3A%2F%2Fwww.parlament.ba%2Fsadrazaj%2Fplenary_sjednice%2FDefault.aspx%3Fwsid%3D39277&ei=FHbVl6qD8O3UdiZgKgj&usq=AFQjCNH8S6wzTxwaR_FzDfToubAxmpshEA&sig2=76cmQ3hj7AYJk2uQajMfVg&bvm=bv.85761416,d.d24

²⁹⁹ “EU continues to support the strengthening of the public procurement system in BiH,” EU Delegation to BiH, July 10, 2014, <http://europa.ba/News.aspx?newsid=7194&lang=EN>

- Provide more consistent top-down support (public and private) to NGOs' information, campaigns, and demands, to increase the pressure on officials to act and react. Currently, such support is often tepid. A more coordinated and long-term program of support reiterating civil society demands would help to create a more conducive environment for reform.
- Provide more consistent support to help identify the blockages in institutions; for example: Why are issues not investigated? Why cases are prosecuted? Call for more accountability, and cut off capacity building support to institutions that are not serious about fighting corruption.
- The legal aid provision is yielding some interesting initial results; while free legal aid is scarce generally, continuing this service will be useful if the project is continued.
- End financial support that benefits an elite that is resistant to reform rather than benefitting average citizens and communities. One NGO respondent noted that if this includes cutting off external support to NGOs, which is fine if it's necessary to cut off the external life support to the status quo.
- There was broad support from civil society representatives for continued financial support to their NGOs and initiatives. Similarly, those organizations involved in investigative journalism recommended increasing support for quality investigative journalism.
- It would be useful to gather feedback from average citizens on the ACCOUNT web page; it can be difficult to navigate. For example, it is unclear whether ACCOUNT or its members have information on where laws relevant to corruption are tracked and monitored; this is not on the ACCOUNT web site. Similarly, relevant laws (e.g., whistleblower protection, etc.) are not on the ACCOUNT web site. (It is possible that this information is available through Facebook pages, or through the various individual members.)
- The value of providing basic capacity building support to network members vs. using those resources on more advanced and targeted efforts should be considered. The ACCOUNT effort should not be a traditional capacity-building effort, but should only offer limited and targeted corruption-relevant training to NGOs that are already otherwise professionally competent.

Question 2: How can ACCOUNT's activities be more coordinated with other anti-corruption activities funded by USAID (such as CSSP, Justice Project, Fiscal Sector reform) and with other donors?

This question is best addressed with another question: Why weren't NGOs and projects engaged in similarly targeted anti-corruption activities regularly coordinating before?

It appears that there are still challenges to overcome regarding coordination of anti-corruption efforts. For example, the two NGOs that are engaged in CSSP's anti-corruption module (TI and CIN) do not seem to be active ACCOUNT members. According to the ACCOUNT web site, CCI is listed among the network participants, but not CPCD. A lingering coordination issue has been noted as well. ACCOUNT launched a report on public sector employment on February 5,³⁰⁰ while a similar report on public administration

³⁰⁰ 488 public institutions were surveyed. <http://www.account.ba/novost/10044/predstavljeno-istravanje-account-a-vise-od-polovine-institucija-vrsi-direktno-zaposljavanje>

perceptions was launched by TI two months earlier.³⁰¹ There have been anecdotal comments that past or possible future competition among key NGOs drives this; this is not unique in the civic sector in BiH.³⁰² The following suggestions may improve coordination between NGOs:

- Focus coordination efforts and meetings not on the broad anti-corruption efforts, but among smaller groups of more dedicated actors working on specific issues, such as tender transparency, public employment, etc. This could involve ACCOUNT members and other NGOs that are not active members, but are interested in the specific topic.
- Focus less on increasing the numbers of network members, and more on focused work with active members on agreed upon priority issues; emphasize quality rather than quantity.
- Regularly meet with representatives of other USAID projects, such as the fiscal project, the energy project, etc., for coordination (according to discussions, this is not happening in any systematic way).
- Consider joint meetings among not only among USAID supported NGOs, but also other relevant USAID projects, and USAID and U.S. Embassy staff, to press for coordination. Advance preparation and then participation would both help to force coordination and information sharing, and provide a forum in which the U.S. mission can ask pointed questions.

Question 3: Based on the views of individual ACCOUNT members, which kinds of activities should ACCOUNT prioritize?

As noted in the selected quotations above, responses are often contradictory; some focus more on monitoring, whereas others focus less on monitoring and more on action. The admittedly limited survey of members reveals that beyond networking and strengthening civil society groups interested in the issue of corruption, there is not yet a shared sense of what the specific core focus areas of the network could or should be.

Question 4: How can credible investigative journalists be incorporated into the new anti-corruption activity to galvanize public sentiment against corruption?

It is important to remember that citizens are already aware of and (generally) against corruption; they simply see it as a part of life, and do not believe there are effective strategies to fight it (beyond the always practical “put them all behind bars” advice).

³⁰¹ 1551 surveys were conducted. <http://ti-bih.org/wp-content/uploads/2014/09/TI-BIH-Percepcija-Javne-Uprave-BiH-2014.pdf>

³⁰² The Justice Network has been seen as one of the more successful efforts at civic networking, in place since 2010. However, some respondents noted that they have heard that this network is falling apart, and their online presence seems to have been static since mid-2014. In 2013, The Association for Democratic Initiatives along with the Center for Human Rights, and the Justice Network in Bosnia and Herzegovina, sent a Joint Report to the UN Human Rights Council on the Justice Network in Bosnia and Herzegovina for the 2nd Universal Periodic Review on Human Rights Situation in Bosnia and Herzegovina. (A report on implementation of the recommendations in the justice sector in Bosnia and Herzegovina from the Universal Periodic Review of the UN Human Rights Council, is available at [www.mrezapravde.ba/mpbh/mpbh_files/file/UPR%20\(FINAL\).pdf](http://www.mrezapravde.ba/mpbh/mpbh_files/file/UPR%20(FINAL).pdf) Although the report focuses mainly on legal aid research and recommendations www.triplecitizens.eu/index.php/pages/news_details/79, there are two pieces on the independence of BiH judiciary and the fight against corruption. On a perhaps unrelated note, the network web site has been hacked by hackers calling themselves the Kosova Warrior Group: <http://www.mrezapravde.ba/mpbh/intro.htm>

That being said, more quality investigative journalism will disseminate a body of evidence that will continually inform citizens, and potentially will be used to begin to build investigations and ultimately prosecutions. Currently two of the main actors in this field are CIN and Zurnal (through CRMA, one of the ACCOUNT implementers). This research has suggested that CIN's journalism practices are more "airtight" than Zurnal's; CIN points out that everything they publish is based on documents, and that, therefore, they have never been sued. However, CIN's focus on deep, print journalism is complemented by Zurnal's production of video/documentary materials.

An assessment of the impact of investigative journalism on demand-driven reform is beyond the scope of this report. However, CIN notes the following examples of their impact to date:

- Reporting on former Prime Minister Brankovic was used by civil society to support protests requesting his replacement; the Sarajevo Canton prosecutors' office drafted the indictment against Brankovic including a quote from the CIN story
- A CIN story on Vahid Heco was used by TI BiH in efforts related to conflict of interest
- A CIN story on pro bono lawyers was used to order changes in selection procedures
- CIN's investigations of Gavrankapetanovic and Causevic stories were the first, and led to investigations
- The CIN asset/property card data base has been quoted and used by parliamentarians in debates over an illegal assets seizure law
- A CIN story on foster care led to some legislative changes and the introduction of control mechanisms
- Stories on illegal concessions initiated inspections and criminal charges in Una Sana canton and Herzegovina-Neretva canton

The stories receive attention. CIN notes that all of their stories are picked up by at least some news outlets. Zurnal notes difficulty in getting broadcasters to pick up its programming, though outlets in Tuzla and Bijeljina have done so in some cases. Purchasing airtime is always an option, although this can be expensive. Whether in the end there is conviction, true changes to laws or demonstrable enforcement of accountability is another matter.

In addition to the broader recommendation to USAID concerning an overall more strategic political approach to fighting corruption, the following recommendations provide food for thought:

- Support follow-up reporting on older reported cases of corruption to identify what (if anything) has happened. If nothing has happened, investigate why, where the blockages are, and apply joint pressure on these pressure points.
- The U.S. and the international community should provide more public support to quality investigative journalism, including calling on the authorities to respond appropriately to the allegations and evidence.
- The U.S. and the international community should integrate investigative journalists' findings into their private meetings with officials in relevant institutions, in a consistent and harmonized way. They must be held accountable.

- If airtime/media space is ever purchased, it should include an opportunity for an interview with the ambassador (or other high level international community representatives) to show awareness of and support for the investigative process and free media.

Question 5: What were the anti-corruption demands that came out of the February plenums? Have they been acted on? Are there potential champions among the young people who protested?

These three questions can be answered together.

An attached schematic represents the main demands from the plenums in 2014. Three of the most common demands were related to corruption:

- Corruption/transparency
- Abuse of salary privileges, white bread benefits by public officials
- Privatization, tenders, and public companies

Apart from some initial apparent momentum and successes,³⁰³ there has been little concrete follow up to the plenum demands. The plenums themselves have more or less fizzled out, though participants in some of the vestigial groups argue to the contrary. They have failed to articulate a clear strategy, and continue to reject leadership structures. A concerted effort funded by the Austrian Ministry of Foreign Affairs sought to support and strengthen the civic movement following the protests by bringing together plenum representatives and NGO representatives in a series of meetings that began in summer 2014.³⁰⁴ The first meeting in Sarajevo sought to articulate some key interests; in spite of well-intended facilitation, the lack of a shared vision was apparent. In September the Austrian Ministry flew approximately 30 to 40 BiH representatives to Vienna for a 4-day workshop. Little was accomplished, and in fact the extent of the rift between “organized civil society” and the plenum activists was increasingly clear. In January 2015 a third meeting was held in Sarajevo. It failed to result in the concrete plans anticipated by the organizers. It was interesting to note that none of the big “traditional civil society” representatives who participated in the Vienna event attended the Sarajevo event, leaving it dominated by the plenum representatives and a few smaller NGO members.

The author did not interview plenum representatives as a part of this assessment. However, the author’s interaction with plenum representatives in the course of the meetings noted above, as well as in other 2014 events organized by embassies interested in providing support, suggests that there are no strong “potential champions.” This is in part related to the representative’s the lack of strategy and concrete vision; it is also related to the participants’ complete rejection of the notion of individual leaders or champions.

The questions that should be asked regarding the 2014 protest experience are the following: While there is an evident lack of trust among the “professional” NGOs and the street

³⁰³ The following cantonal governments were brought down: Sarajevo, Tuzla, Una-Sana and Zenica-Doboj. Tuzla Canton acted on the demand to cut the “white bread” privileges. See E Gorinjac, “Kako ukinuti ili umanjiti “bijeli hljeb” u cijeloj Federaciji,” *Klix*, February 15, 2014, <http://www.klix.ba/vijesti/bih/kako-ukinuti-ili-umanjiti-bijeli-hljeb-u-cijeloj-federaciji/140215042>)

³⁰⁴ The author participated in these three events as an observer.

activists, what prevented the NGOs from working publically on issues raised by the protestors and plenum representatives, if not participating directly in their meetings? What prevented the emergence of many supportive streams of activism on issues of shared concern (e.g., privatization)? What explains the lack of trust in NGOs among plenum representatives or other street activists?

Question 6: What is the value of corruption tracking or public accountability websites like www.morsimeter.com? Catalogue all such websites or past campaigns in BiH and gauge their influence.

As an initial note, the author and USAID agreed that given the scope of this project, and its short timeframe, it would not be possible for the author to catalog all web sites and campaigns. However, the author provides a list of selected web sites in the box below and in the Annex.

Box 22: Websites for corruption complaints

There are various web sites for online corruption complaints, including:

- Republika Srpska Government: <http://apk.vladars.net/index.php?pismo=latinica>
- Transparency International: <http://prijavikorupciju.org/page/index/>
- Center for investigative journalism: <http://prijavikorupciju.org/page/index/>
- Center for Education and Research: <http://www.cerbih.com/prijavi-korupciju/>
- Ministry of Finances and Treasury BiH:
http://www.mft.gov.ba/bos/index.php?option=com_content&view=article&id=793&Itemid=100036
- Agency for food safety BiH: http://www.fsa.gov.ba/bs/?page_id=1967
- Central Election Commission:
<http://www.izbori.ba/Default.aspx?CategoryID=523&Lang=4&Id=1593>
- Ethnic line Zvornik: <http://opstina-zvornik.org/>
- The Ministry of Defense had developed an online tool/web site app for corruption complaints. The Project “Ethical Line” was created for citizens to post anonymous corruption complaints, but the section cannot be found on the Ministry of Defense web site any more.³⁰⁵
- “Ethical line” is now available in the BiH Ministry of Security web site:
<https://etickalinija.ba/Home/About#>

An additional set of relevant web sites and portals is in Annex C.

Bertot, et al. argue that the success of online tools depends on the extent to which they are truly accepted by and adopted by the authorities. “Looking beyond technological issues, the research on transparent and open government points to two critical success factors: 1) a culture of transparency embedded within the governance system and 2) a transparency ‘readiness’ factor—that is, factors on the ground such as technology penetration, technology capabilities and access of government agencies, and social and technology readiness of the populace. . . . Without the two factors operating in tandem, it is highly unlikely that the essential trust between government and those governed will develop and thus truly create

³⁰⁵ BiH Ministry of Defense, <http://www.mod.gov.ba/aktuelnosti/vijesti/?id=29174>

an open and transparent environment.”³⁰⁶

Box 23: IT Solutions to Prevent and Report Corrupt Activities?

One effort that has attracted attention is the development of a software tool to fight corruption that is being developed by the company Net Consulting (<http://netconsulting.ba/>), led by Bojan Bajić. Net Consulting creates ethics programs for use in organizations and institutions, offering services including the following:

- Installations of an effective program against embezzlement and corruption
- Risk estimates
- Development of institutions' integrity plans

One service called “Ethical line” provides a secure means of reporting irregularities within institutions, and is, in fact, financed by the institutions. For example, this has been installed in the Ministry of Defense. Individuals within an institution can file secure reports and complaints. The data are not accessible to the MoD, but to oversight mechanisms, such as the Inspectorate General and the Parliamentary Military Commissioner.

The U.K.’s government is supporting the project “Anti-corruption line in public institutions”, in which the Clinical Centre of the University of Sarajevo, Municipality Zvornik, and Tuzla are included. This project similarly is aimed at raising awareness of the problems of corrupt practices in these health institutions, and offering an avenue for reporting.

It is too soon to tell whether these tools and efforts are having an impact. Supporters of such efforts note that the mere existence of such tools can provide a certain level of prevention, as employees will know that such oversight exists. There is no publically available information on the work of these lines. It will be important to track these over a certain period of time, to determine the number of complaints and reports that are filed, and, more importantly, the institutional responses. If institutions take concrete actions in response to complaints, then it will be worth exploring their broader application. If institutions do not respond, then it will be important to identify how the process broke down, and where accountability lies.

6.8.3.5 Concluding Comments

Although a thorough impact assessment is beyond the scope of this effort, the author’s review of documents and interviews with the key implementers and selected participating NGOs revealed a number of findings and trends. The project is well structured, and the primary implementers are experienced NGO professionals. They have managed to involve a number of NGOs in different communities in the effort, and to begin to link their local interests to broader corruption concerns. Their focus on issues such as public sector employment has resonated with a number of their partners. They have published reports looking at corrupt practices in education and health. They have supported efforts to reform

³⁰⁶ John C. Bertot, Paul T. Jaeger, and Justin M. Grimes, “Using ICTs to create a culture of transparency: E-government and social media as openness and anti-corruption tools for societies,” *Government Information Quarterly* 27 (2010), 269.

legislation, for example, on public procurement and state-level whistleblower protection. They have strengthened the engagement and voice of some already active NGOs (e.g., Justicia in Srebrenik).

It is, however, difficult to tease out correlation and causation. Work on the issue of the law on public procurement was well underway by TENDER before ACCOUNT was established; the same can be said of the whistleblower work (Luna). In these cases, ACCOUNT has served as a value-multiplier for these already active NGOs. (It is important to note that some respondents noted a sense that ACCOUNT was taking credit for work that they had not initiated.) While more than 140 NGOs are technically in the network, as noted previously only a limited number are active, and some seem unsure of the core objectives and purpose of their involvement. (This is not unique to ACCOUNT; there is a long history of NGOs joining networks without genuine interest in or understanding of the networks.) While the adoption of the state-level whistleblower protection law was a success, there is as yet no sense of whether it will be implemented (again following a long trend in BiH), or whether lower levels of government will take this issue seriously.

More broadly speaking, the link between heightened awareness of corruption, transparency, and effectively fighting corruption is intuitive, but not well established. In BiH, there is no doubt that people broadly perceive that there is a corruption problem, read about it in the press, and have often experienced it first or second hand. However, two responses are heard. First, everyone reads about the investigations and indictments in the press, but these investigations and indictments lead to very few convictions, and deals and appeals reduce citizens' confidence in the legal system. Those who are convicted often are suspected of being merely low-level players who are willingly sacrificed while higher-level perpetrators remain free. Second, citizens who are aware of the specifics of corruption do not believe that there is anything they could do to make a difference. What happens after you call a helpline? Low social trust in institutions leads to a sort of learned helplessness and resignation.

There are many web sites that offer large amounts of information already; the CIN web site hosts databases of information ranging from politicians' assets to NGP's spending to political pardon practices.³⁰⁷ While having more such information available may be useful, it is equally important to determine how this information can be more effectively used.

USAID's continued support of the network will not be harmful, and could build on some of the work to date. However, absent broader political cohesion, it is unlikely that such engagement on its own will lead to significant progress based on the experiences of other civil society support efforts over the past years. The experience of the Law on Public Procurement is instructive – this was a well-coordinated, well managed effort by NGOs working together and using the tools available in their advocacy toolbox; however, their proposals were simply ignored. Would the outcome have been different if there had been more top-down pressure from ambassadors, the E.U., and others, in a consistent, constant manner, in public and private fora?

Finally, it is difficult to know whether ACCOUNT would be sustainable without dedicated continued funding; this concern was noted by some respondents based on their past experiences in other networks.

³⁰⁷ See CIN web site, <http://www.cin.ba/en/>

Box 24: An EU Approach to Anti-Corruption Civic Networks

In addition to ACCOUNT, the E.U. is sponsoring a 24-month initiative (which began in January 2014) called Podrska Antikorupciji, with a web site at www.pak.ba. This effort is funded with 448,480 Euro (from IPA 2010 funds).

“The purpose of the project is to support the institutions in BiH to effectively implement the anti-corruption strategies and action plans in cooperation with civil society organizations and business associations.

“The project will focus on strengthening institutional and administrative capacity of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption to effectively fight and prevent corruption, support institutions mandated to combat and prevent corruption on different administrative levels and coordination mechanisms among them, as well as on support of cooperation and coordination among governmental and non-governmental organizations fighting corruption.

“The overall objective of the Project is ‘to contribute to the fight against corruption and effective corruption prevention in BiH’, while its purpose is ‘to support the institutions in BiH to effectively implement the Anticorruption Strategy and Action Plan in cooperation with NGOs and business associations’.”

Noted beneficiaries include CIN, CRMA, CSS, Interlogos, TI, and Vermont. CRMA’s role in PAK is primarily focused on the introduction of anti-corruption education in primary, secondary and tertiary education (a measure noted in the 2009 to 2014 Action Plan for Anti-Corruption Strategy. Both Infohouse and CRMA consider the E.U.’s effort to be complementary.

As of 9 February 2015, no documents or training workshop information had been included in the appropriate section on the site (“Outputs/Deliverables”).

In the scope of this review, the author found it difficult to determine whether this additional effort is truly complementary, whether it is adding any value to ACCOUNT or to existing civic efforts, whether it is another layer of imposed coordination, or whether it is translating into more effective civic advocacy possibilities with the E.U. and member states to create more top-down, bottom-up synergy. If, as recommended, there will be a more coordinated and targeted U.S. task force efforts devoted to this problem, it will be good to identify whether this effort can be more effectively leveraged and focused.

6.8.4 Recommendations

The following recommendations are not intended to solve the significant challenges facing civil society or its relationship with public officials. However, they offers some targeted options. None should be expected sufficient to change the corruption environment in BiH on their own, nor to produce significant changes in the short-term due to broader political realities.

- Select five to seven cases of corruption identified by CIN or others and *follow up* with authorities to determine why they have not led to consequences. Determine the locus of the delay (incompetence, lack of resources, or obstruction) and seek to remedy it through targeted support (e.g., forensic accountants, etc.). Organize a coordinating body to share information on the cases and progress in identifying gaps and roadblocks. This could complement the suggestions for a review of cases and support to prosecution of several high level cases.
- Ensure continued support for investigative journalism that is based on documents and can withstand threats of libel or slander suits. Topics can be shaped by BiH stakeholders, but with input aimed at other goals articulated as a part of any broader strategy. Look at ways to get more of this information to the public; for example, *Žurnal* has difficulty finding outlets willing to broadcast 30 to 50 minute documentaries on corruption. Consider pros and cons of buying airtime, and, if airtime is secured, build in interviews with the Ambassador, and possibly call-in shows, to better engage the audience.
- Continue support to ACCOUNT, but build in stronger political advocacy elements, more aggressive media outreach (through debates, etc.) and direct links with other proposed steps (audits, legal task force, etc.). A greater emphasis on providing legal aid would help to fill a gap; capacity building should be limited to advanced skills on very targeted issues.
- Exert pressure to change Parliamentary laws that allow for the use of emergency procedure without clear limits or guidelines. This practice enables the adoption of legislation without the standard comment period and without possibility of civic consultation. It has been used in instances when Parliamentarians want to avoid the potential transparency that long periods of debate could allow.

Box 25: Use of Urgent/Emergency Procedure

Use of urgent or emergency procedure has often occurred on issues of significant and demonstrated public interest. The first two examples below are significant in light of the concerted civic action on these issues, and the freedom the Parliament had to avoid public debate.

1. The Law on Public Procurement (2013)³⁰⁸
2. The package of laws related to JMBG, Citizenship and Residency (2013)³⁰⁹
3. Amendments to the Law on the Foreign Trade Chamber of BiH (2013)³¹⁰

- Build on the privatization case study review by working with civic actors/citizens in those communities to develop a response to past corrupt practices and contemporary consequences. Seek to build this issue into 2016 municipal elections.
- Track implementation of the state-level whistleblower law, and extend the law to the entity, cantonal, and municipal levels. Tie top-down pressure to bottom-up demand.

³⁰⁸ "Izmjene Zakona o javnim nabavkama usvojene po hitnoj procedure," *Magazin Plus*, July 9, 2013, <http://www.magazinplus.eu/clanak/izmjene-zakona-o-javnim-nabavkama-usvojene-po-hitnoj-proceduri/>

³⁰⁹ "Dom naroda PSBiH: Nisu usvojeni Zakoni o JMBG-u, državljanstvu, prebivalištu i boravištu te javnim nabavkama," *Oslobodjenje*, July 23, 2013,

<http://www.oslobodjenje.ba/vijesti/bih/dom-naroda-delegati-odluuju-o-jmbgu-prebivalistu-i-drzavljanstvu>

³¹⁰ "Nove hitne izmjene zakona u Parlamentu BiH," *Al Jazeera*, July 25, 2013, <http://balkans.aljazeera.net/vijesti/nove-hitne-izmjene-zakona-u-parlamentu-bih>

- Develop NGO/police cooperation in investigations of corruption in targeted sectors (health, education) in communities throughout BiH; work with Justice Project, Task Force, and others to advocate for effective and timely prosecution and effective institutional response.
- Determine what other information is needed to systematically and thoroughly document public practices and increase informational awareness in the hopes of unveiling corrupt practices. For example, more information on the issuing of public tenders, documenting which public sector doctors also run private sector practices, or which university professors teach (full-time) at multiple universities could turn up the pressure on current or future corrupt practices. The current web site environment for activists should be reviewed in order to avoid building new web sites that may not attract traffic and could be short-lived; instead focus on existing sites that can be expanded.
- Develop civic, independent effort to analyze officials' asset/property cards to identify irregularities and initiate formal investigations. Identify laws that allow for easy transfer of assets to family members and close loopholes (see above.)

7. Concluding Thoughts: Why it Matters

Boutros-Boutros Ghali famously made himself extremely unpopular in Bosnia when in December 1992 he said, “I can give you a list of ten places where you have more problems than in Sarajevo.”³¹¹ However, one cannot help but consider his words today. Particularly to those new to BiH, or who parachute in for short-visits between the airport and showcase parts of Sarajevo or Banja Luka, the country appears to be functioning. There are smartphones and full cafes and a seemingly normal though poor southern-European lifestyle. There are many other parts of the world where the situation is hot, flammable and dire: Syria, Yemen, Libya, Nigeria, Afghanistan, Pakistan, and Ukraine.

However, such a view fails to appreciate the extent to which BiH exists in a state of frozen conflict. The issues one reads about in political news today have barely changed since 1991. There is a perception that there has been little justice in BiH, and that the peace not only came at a cost, but is itself tenuous. In 2015, the situation is as grim and tense as at any time since the war. In this author’s experience, at least from 1997 to 2006 there was a sense that the situation in BiH was improving, and that there was light at the end of the tunnel. The powerful reversal in the political atmosphere, divisive rhetoric, and deteriorating social norms and living standards, however, are leading even citizens with good paying jobs to consider leaving, as they believe that there is no hope, no future, for their children.

BiH is at Europe’s doorstep, and does harbor a weak though existent European perspective. It is reasonable for the U.S. to expect that instability in BiH is a European problem and priority. However, the “transformative power of Brussels” has time and time again proven to be a myth. European Union accession processes are designed to prepare a country for E.U. membership; they were never designed to be a conflict resolution mechanism. BiH, Serbia, Kosovo, and even Cyprus demonstrate this reality.³¹²

The U.S. maintains an interest in BiH and the region for strategic, reputational, and spillover reasons. Strategically, a captured, minimally functional state in the Balkans provides fertile ground for illegal activities and transit, including openly illicit transactions and flag-planting by investors from the Gulf states and other countries who seek a perch on Europe’s periphery. Until the past several years, mention of “Dayton,” “America,” or “Clinton” elicited smiles and signs of thumbs-up by people grateful for the U.S.’s role in ending the war; this is no longer the case. As fragile states struggle and in some cases fall apart around the world, there will continue to be debate on whether the best options are partition or integration; liberal constitutionalism or illiberal populism; rule of law or kleptocracy. If democratic, liberal peace-building fails in BiH, it bodes poorly for much bigger and potentially more destabilized regions. It also squanders the hunger for another vision for the country.³¹³

³¹¹ Fouad Ajami, “The Mark of Bosnia: Boutros-Ghali’s Reign of Indifference,” *Foreign Affairs* (May/June 1996), <http://www.foreignaffairs.com/articles/52044/fouad-ajami/the-mark-of-bosnia-boutros-ghalis-reign-of-indifference>

³¹² “[I]t was also noted that the EU will need to redefine their role. The accession process was highlighted as being designed more to tick boxed than to necessarily drive sustainable change. The Instrument for Pre-Accession Assistance (IPA) projects may help it was suggested, but it was not envisaged that their impact would be highly significant.” Brady, *Title*, 33.

³¹³ See Raduta, 2015. Raduta’s analysis of seven public opinion polls shows a broad citizen interest in and hunger for common sense changes not being discussed by political leaders.

Early 2015 offers a good opportunity to press the re-set button, and to tackle the inter-linked problems of corruption, party/elite state capture, and BiH's accountability vacuum. The following suggests an opportunity for grounded, serious, and realistic thinking in BiH:

- A new American ambassador provides an opportunity to demonstrate a new focus of interest and resolve
- A new incoming EUSR (Ambassador Lars-Gunnar Wigemark, Sweden) could offer a new perspective and approach after a broadly failed EUSR tenure
- While the Structured Dialogue on the justice sector is widely viewed as coincident with the time when justice reform not only stalled but began to reverse, the new lead on this matter, Mr. Paquet, could provide an opportunity to stop the backsliding in this critical sector
- An increase in social dissatisfaction, that, while at present inchoate, is ready to be catalyzed by either positive or negative forces
- The 20-year anniversary of the Dayton agreement provides a time not for cosmetic and ill-founded celebration, but for thoughtful reflection

If the U.S. elects to engage, it could shape the way forward. If it elects not to do so, however, it should consider whether it should risk the harm to its reputation by supporting a demonstrably unsatisfactory status quo, or reduce its presence significantly to confirm that this is a European problem.

Annex A - Interview List

Civil Society/Experts

- Dzenana Alajduz, Infohouse/ACCOUNT
- Kurt Bassuener, Democratization Policy Council
- Leila Bicakcic, Center for Investigative Journalism (CIN)
- Petar Bosnic, USAID Fiscal reform project
- Marina Bowder, Organized Crime and Corruption Reporting Project (OCCRP)
- Susan Folger, Chief of Party, Internews SIM Project in BiH
- Christian Haupt, Chief of Party, Strengthening Governing Institutions and Processes in BiH
- Eldin Karic, CRMA/ACCOUNT
- Ivana Korajlic, Transparency International BiH
- Erik Larsen, Regional Legal Advisor, US Embassy, Montenegro
- Ognjen Markovic, USAID Energy Sector project
- Therese Nelson, Rule of Law/Judicial Reform Consultant
- Sanela Paripovic, Deputy Chief of Party, Strengthening Governing Institutions and Processes in BiH
- Biljana Potparic-Lipa, USAID funded Justice Sector project
- Vedad Ramljak, former OHR Economic Advisor; economist at the World Bank
- Meagan Smith Hrle; Justice Sector expert

International Community/Donors³¹⁴

- Austrian Embassy
 - Ambassador Martin Pammer
- Council of Europe
 - Mary-Ann Hennessey
- Embassy of Germany
 - Chris Reissmueller
 - Frank Werner
- Embassy of the Kingdom of Norway
 - Ambassador Vibeke Lilloe
 - Anne Havnor
- Embassy of the Netherlands
 - Loes Lammerts
 - Lejla Fetahagic
- OSCE
 - Francesco De Sanctis, Legal Advisor
- UN Development Program (UNDP)
 - Jasna Dragicevic

³¹⁴ The E.U.'s Delegation to BiH and the British Embassy in BiH were contacted for interviews, but were unable to meet with the author during the timeframe in which she was conducting this effort due to sick leave and other obligations. It would be worthwhile to speak with them if an anti-corruption strategy process moves forward. The Swiss Embassy was contacted. They noted that they do not work on anti-corruption activities in BiH, despite their support for efforts to improve cooperation between police investigators and prosecutors.

- Damir Hadzic

US OTI/ USAID

- Ngiste Abebe
- Elma Bukvic Jusic
- Svjetlana Derajic
- Ankica Gavrilovic-Altumbabic
- Nicolas Hill
- Jasna Kilalic
- Thomas Rojas
- Selma Sijercic
- Ariel Swan

ACCOUNT Participant NGOs (telephone survey)

- Agrorazvoj (Kalesija)
- Duvanjske (Tomislavgrad)
- Justicia (Srebrenik)
- Luna (Rudo)
- Omladinski Savjet (Bileljina)
- Proni (Brcko)
- ToPeer (Doboj)

Annex B: Croatia's USKOK

While Croatia became a member of the E.U. in July 2013, it continues to grapple with corruption. However, it's more "settled" post-war political environment, the fact that there is agreement on the nature of Croatia as a state, and its more functional constitutional and governmental structure all mean that Croatia has exhibited more signs of progress than has BiH.

USKOK (*Ured za suzbijanje korupcije i organiziranog kriminaliteta*; Bureau for Combating Corruption and Organized Crime) is the bureau for combating corruption and organized crime, formed in 2001 in the Republic of Croatia.

USKOK has a foundation in a number of ratified conventions:

Convention	Document
Criminal Law Convention on Corruption	http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm
Civil Law Convention on Corruption	http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	http://conventions.coe.int/Treaty/en/Treaties/Html/141.htm
United Nations Convention against Transnational Organized Crime	http://www.unodc.org/unodc/treaties/CTOC/

According to the law on USKOK, corruption is defined as every criminal act connected to bribery, abuse of office and function, tax or customs evasion, and prevention of proof.³¹⁵

After the formation of USKOK in 2001, the Police National USKOK (PNUSKOK) was formed in 2008. PNUSKOK was formed as a national police body in charge of the most complex forms of organized crime and corruption. It has six specialized departments:

- Organized Crime
- Drug Crimes
- Economic Crime and Corruption
- Crime-Intelligence Analytic
- Crime-Intelligence Affairs
- Special Crime Affairs

With the new law on USKOK in 2009, "uskok courts" were also formed. "Uskočki sudovi" are specialized court departments for trials in court cases brought by USKOK, with 64 judges in total.

State prosecutions in USKOK are conducted by the Director and his/her deputies. The Director is elected to a four-year mandate by the State Attorney General, with the opinion

³¹⁵ Act on the Office for the Suppression of Corruption and Organized Crime, Chapter 2, Article 21, <http://www.zakon.hr/z/166/Zakon-o-Uredu-za-suzbijanje-korupcije-i-organiziranog-kriminaliteta>

from the minister in charge of judicial matters and the Collegium of the State Attorney Office. Upon the end of the mandate, the Director and his/her deputies can be re-elected or returned to their previous posts in the state prosecutors offices. Every employee, officer, the Director, and the Deputies in USKOK are subject to property and other checks. USKOK cannot control the work or the decisions made by other administrative or judicial bodies, or the legality of their actions, unless there is a suspicion of a criminal act.

In 2012, the state Prosecutors office reported 911 corruption crimes; 286 individuals were charged with corruption and 272 got convicted for the crimes.³¹⁶ Mladen Bajić served as the State Attorney General for 12 years, and was not appointed the fourth mandate by the Croatian Government. However, Bajić will remain in the office, obtaining the function of Deputy Attorney General to Dinko Cvitan. It is interesting to note that Cvitan was the Director of USKOK from 2005 to 2014 and was appointed by Bajić.

Former Croatian Prime Minister Ivo Sanader (2003-2009) was sentenced in November 2012 to 10 years in prison on corruption charges.³¹⁷ USKOK officials were engaged in the investigation effort, seeking the highest sentence for his crimes.³¹⁸ Sanader appealed, claiming the charges were politically motivated. In July 2015, the Croatian Supreme Court confirmed the sentence, but reduced it to 8.5 years.

USKOK has been broadly praised, though these same reports note there is still work to be done.³¹⁹ A number of respondents noted that “Bosnia needs an USKOK.” However, USKOK’s strengths include its overall state coordination of resources and efforts to pursue cases, and a state-level mandate that facilitated this work. Such conditions do not exist in BiH.³²⁰

³¹⁶ Anti-corruption in the Republic of Croatia, Ante Orlović, March 2014, 49, <http://tinyurl.com/qgfo7ff>

³¹⁷ Dan Bilefsky, “Former Premier of Croatia is Sentenced for Graft,” *New York Times*, November 20, 2012, a http://www.nytimes.com/2012/11/21/world/europe/former-premier-of-croatia-ivo-sanader-is-sentenced-for-graft.html?_r=0

³¹⁸ “Sanader Interrogated by USKOK in Planinska Case,” Croatian Anti-Corruption Portal, July 13, 2012, <http://www.anticorruption-croatia.org/home/news-from-croatia/155-sanader-interrogated-by-uskok-in-planinska-case>

³¹⁹ European Commission, *EU Anti-Corruption Report: Annex, Croatia* (COM (2014) 38 final: February 3, 2014), <http://www.anticorruption-croatia.org/home/news-from-croatia/155-sanader-interrogated-by-uskok-in-planinska-case>

³²⁰ Serbia has a Council for the Fight Against Corruption, with a web site at <http://www.antikorupcija-savet.gov.rs/page/home/>. This includes reports with summaries of the cases that the Council has sent to the courts to process; however, it seems to lack more complete reports, and updates on the status of prosecutions.

Annex C: Online News, Awareness and Activism

The Table below notes just a selection of web sites that have been developed to engage citizens in political life and try to increase pressure for more governmental accountability.

Istinomjer	www.istinomjer.ba	News, comments, online activism
Razglasaj	www.razglasaj.ba	Elections news, comments, online activism
Glasometar	www.glasometar.ba	Elections app.
Pravo da znam	www.pravodaznam.ba	Free access to information
Budi građanin/ka	www.budigradjanin-ka.org	Raising awareness, news, updates, comments
Ženska posla	www.zenskaposla.ba	News, human rights, online activism
Depo portal	www.depo.ba	News portal, forums, discussions and comments
Buka portal	http://www.6yka.com/	News portal, forums, discussions and comments
Klix portal	www.klix.ba	News portal, forums, discussions and comments
Radio Sarajevo	www.radiosarajevo.ba	News portal, forums, discussions and comments
Doznajemo	www.doznajemo.com	News portal, forums, discussions and comments
Istinito	www.istinito.com	Online magazine, news, forums, comments
Virtuelni Parlament	www.virtuelniparlament.ba	Online magazine, news, forums, comments
Ustavna reforma	www.ustavnareforma.ba	Online tool for communication between citizens and politicians
Bolji Ustav	www.boljiustav.ba	Information on constitutional reform in BiH
Popis monitor	www.popismonitor.ba	Information on BiH constitutions and constitutional reform in BiH
Abrašmedia	www.abrasmedia.info	Web site for monitoring the BiH 2013 Census
JMBG	www.jmbg.org	News portal, forums, discussions and comments
Inicijativa TV	www.inicijativa.tv	Online activism, specifically the law on ID numbers
Akcija građana	www.akcijagradjana.org	Online TV - politics, accountability, monitoring (comments enabled)
24 Sata	www.24sata.info	Online activism, politics, human rights
Oslobodjenje	www.oslobodjenje.ba	News portal, forums, discussions and comments
Avaz	www.avaz.ba	Online newspaper, forums, discussions and comments
Nezavisne	www.nezavisne.com	Online newspaper, forums, discussions and comments
Diskriminacija	www.diskriminacija.ba	Online newspaper, forums, discussions and comments
Novosti RS	www.novosti.rs	News portal, forums, discussions and comments
Ženska alternativna vlada	zenskastranapolitike.hcabl.org/index.php/enska-alternativna-vlada-3	News portal, forums, discussions and comments
Građanke za ustavne promjene	www.facebook.com/pages/Gra%C4%91anke-za-ustavne-promjene/20294179854967	Women's alternative government
Regional Anti Corruption Initiative	www.anticorruption-bosnia-and-herzegovina.org/	Women's platform and constitutional amendments Portal managed by Regional Anti-Corruption Initiative

Annex D: Statement of Work

First Principles

1. Bosnia and Herzegovina is under State Capture.
2. The only way to fight State Capture is to (a) decrease the gains to private individuals or parties who are benefiting, and (b) increase the cost to politicians who are complicit.

Public trust has been whittled away by public institutions. This is seen consistently in polls that show corruption, crime, and jobs are the top three issues facing citizens of BiH.

Are these first principles appropriate? If not, suggest others that are based on evidence.

Big Picture

“There was little progress in advancing reforms to reduce corruption, which continues to affect the entire public sector and remains most acute in the areas of service delivery and access to employment. Political patronage networks are widespread and influence all levels of government. Investigation and prosecution in high-profile cases remain insufficient and the overall level of effective investigations, prosecution and convictions is low. There is little political will to move beyond rhetoric and tackle corruption, including investigations and convictions in high-profile cases.” EU Progress Report 2014

1. Anti-corruption interventions usually fail in the absence of political will. What can be done to build political will in BiH? Are there specific institutions or sectors in BiH that have demonstrated greater political will than others to fight corruption (in light of the February protests, for example)?
2. Should USAID take a structural or sector-specific approach to fight corruption? In which “areas of service delivery” could USAID have a real impact?
3. Who are the champions inside or outside of government committed to achieving results? Interview them.
4. More information is needed to determine the “real” versus perceived level of corruption in BiH. Many corruption studies are based on perception surveys. Could citizens be misconstruing inefficiencies in government as corruption? How can we measure corruption objectively in BiH?
5. What are the levers for effecting structural change? **Prioritize** a list of interventions by (a) their potential impact and (b) their likelihood of success in BiH.

Possible interventions could include:

- Promoting transparent public procurement and financial management practices

- Breaking up the patronage network and creating a merit-based civil service with clear rules on conflict of interest
- Revising the existing legal framework and promoting an independent judiciary
- Building the capacity of law enforcement and prosecutors to investigate and prosecute cases of corruption and increasing cooperation between law enforcement, prosecutors and courts
- Empowering civil society to combat corruption through targeted public awareness campaigns and increasing cooperation among local CSOs, government, business and media
- Supporting the Central Elections Commission in enforcing the law on political party financing
- Increasing access to and freedom of information
- Implementing e-governance systems

USAID is already working in some of these areas, through its rule of law, civil society and fiscal reform projects. Identify overlaps and opportunities for collaboration. How can USAID multiply the impact of its interventions? Be specific.

Enforcement

“The track record of investigation and prosecution in high profile cases of corruption remains unsatisfactory and the overall level of effective investigations, prosecution and convictions is low. The capacity to investigate economic, financial and public procurement-related crimes is weak. There is a strong case for introducing specialisation within the police and judiciary to fight corruption. The proposed law to establish specialised departments within the Prosecutor’s Office and Supreme Court of Federation to prosecute corruption and organised crime cases was adopted by the Federation’s parliament. There is still no effective criminal justice policy, and sanctions for corruption are no deterrent.” EU Progress Report 2014

1. Very few high-level cases of corruption are brought to court, and even fewer are successfully prosecuted. Why? Are the causes of this lack of technical capacity, expertise, financial or human resources, insufficient cooperation between various players (police, prosecutors, courts) or are the causes more of a political nature? What can be done and where does USAID have a comparative advantage?

The state-level Agency for the Prevention and Fight against Corruption is operational but not very effective. The Agency is currently drafting its new anti-corruption strategy for 2015-2019 and has formed a working group including representatives of all relevant government institutions and NGOs.

2. Is the Agency viable? Is it sufficiently independent from political party control? Does it have adequate resources and budget to carry out its functions?
3. How can USAID coordinate more closely with the EU to build the capacity of the Agency?

Social Accountability

1. How can USAID leverage its special relationship with ACCOUNT to increase citizen demand for transparent and accountable government? What kind of approaches and best practices of engaging CSOs in anti-corruption should be continued in a possible follow-on ACCOUNT activity?
2. How can ACCOUNT's activities be more coordinated with other anti-corruption activities funded by USAID (such as CSSP, Justice Project, Fiscal Sector Reform) and with other donors?
3. Based on the views of individual ACCOUNT members, which kinds of activities should ACCOUNT prioritize?
4. How can credible investigative journalists be incorporated into the new anti-corruption activity to galvanize public sentiment against corruption?
5. What were the anti-corruption demands that came out of the February plenums? Have they been acted on? Are there potential champions among the young people who protested?
6. What's the value of corruption tracking or public accountability websites like www.morsimeter.com? Catalogue all such websites or past campaigns in BiH and gauge their influence.

Transparency & Accountability

Transparency means that decisions are made in full daylight and that the people affected by those decisions have access to the information used to make them. Accountability gives transparency its teeth.

1. How can USAID increase the transparency of government institutions in BiH? Should USAID target interventions at the state, entity or municipal level? Would e-governance systems promote transparency or would they be band-aids on wounds?
2. Accountability is closely related to enforcement and rule of law. How can USAID promote accountability as a cultural value in BiH's civil service and private sector? What impact would Open Data laws—like in New York—have on crowd-sourcing accountability?

Additional Thoughts

The EU 2008 [Partnership Document](#) has clear short-term priorities for anti-corruption that include:

- Adopting and implementing a detailed action plan against corruption, based on the national anti-corruption strategy
- Annex B: Croatia's USKOK
- Prosecuting corruption vigorously and adopting a zero-tolerance policy towards corruption
- Ensuring proper implementation of the law on conflict of interests
- Further improving the administrative capacity to implement customs and tax legislation and to fight against corruption, cross-border crime and fiscal evasion
- Developing and adopting a public internal financial control strategy
- Adopting and implementing legislation on public-sector internal control and audit

Where does BiH stand on all these items?

The Democratization Policy Council also recommended establishing a Privatization Review Panel to curb official corruption during privatizations. Should USAID support this recommendation by allocating resources to implement it?

MONITORING AND EVALUATION
SUPPORT ACTIVITY (MEASURE-BiH)

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