



USAID | **BOSNIA-HERZEGOVINA**
FROM THE AMERICAN PEOPLE

BASELINE DATA OF RECORDKEEPING AND CASE FLOW OF BANKRUPTCY PROCEEDINGS

USAID FOSTERING AN INVESTMENT AND LENDER-FRIENDLY
ENVIRONMENT (FILE)

Contract #PCE-I-00-98-00015-00, Task Order #821 of the GBTI IQC

08 December 2003

This publication was produced for review by the United States Agency for International Development. It was prepared by Chemonics International Inc.

Submitted to:
U.S. Agency for International Development

Submitted by:
Chemonics International, Inc.
Emerging Markets Group, Ltd.
National Center for State Courts

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development of the United States Government.

BiH NEW BANKRUPTCY AND LIQUIDATION LAWS

BASELINE DATA OF RECORDKEEPING AND CASE FLOW OF BANKRUPTCY PROCEEDINGS

INTRODUCTION

Pursuant to Section VI(B) of Task Order Number 821 and the related Workplan for the period ending December 31, 2003, FILE has conducted a study that has yielded baseline data on the bankruptcy and insolvency cases currently in the Bosnia and Herzegovina (BiH) court system. In particular, FILE was tasked with collecting baseline data on:

- The number of cases pending in the courts dealing with bankruptcy and insolvency;
- The number of cases filed each year in the courts dealing with bankruptcy and insolvency;
- The number of bankruptcy and insolvency cases finally adjudicated each year;
- The number of enterprises reorganized through bankruptcy proceedings;
- The number of enterprises privatized through bankruptcy proceedings;
- The number of enterprises liquidated through bankruptcy proceedings;
- The duration of the bankruptcy proceedings (broken down between reorganization, privatization or liquidation); and
- The length of bankruptcy enforcement proceedings.

FILE used several methods to gather the requested information. It met and/or spoke with representatives of the Entity- and Cantonal-level Ministries of Justice, with members of the judiciary, and with other knowledgeable individuals to discuss the nature and scope of information available and methodologies for collecting it. FILE also conducted a survey of all sixteen courts having jurisdiction over bankruptcy and liquidation cases - the Federation's ten cantonal courts in Bihac, Gorazde, Zenica, Livno, Mostar, Odzak, Sarajevo, S. Brijeg, Travnik, and Tuzla; the five RS district courts in Banja Luka, Bijeljina, Doboje, Srpko Sarajevo and Trebinje; and the District of Brcko. Through careful monitoring and follow-up, FILE received requested data from 14 of the courts.

This work was done at a time when the court system is undergoing a significant reorganization. There will be sixteen commercial divisions established in certain first instance courts. These commercial divisions correspond to the ten cantons in the Federation, five districts in the RS, and the Brcko District. These commercial divisions will have jurisdiction over bankruptcy cases, as well as other business and commercial cases. This is a change from the present system in which the Federation Cantonal Courts and RS district courts have jurisdiction over bankruptcy and liquidation cases. The reorganization will result in a transfer of jurisdiction in the Federation from the cantonal courts to the newly created commercial divisions in ten Federation municipal courts. Jurisdiction for bankruptcy proceeding remains with the district courts in the RS.

These courts, in which all the bankruptcy and liquidation cases filed under the old law have been pending, maintain their case information data manually, and methods of recording and reporting the data vary from court to court. Because case information is compiled manually, it cannot easily be sorted or otherwise manipulated for reporting purposes. These court-managed databases typically did not include all of the information requested in the Task Order. Thus, FILE personnel would have had to examine individual case files in order to collect complete data. As an aggregate total of 1,299 liquidation cases and 1,408 bankruptcy cases are pending in the Federation and RS, an examination of each file would have been significantly burdensome and time-consuming, and would have detracted from other project activities. Instead, summaries and estimates given by court personnel were used whenever they seemed reasonably reliable.

Also, in connection with the pending transfer of cases to the commercial divisions, FILE was informed that “transferred” cases will be registered as “new” cases in the Federation municipal courts. As a result, a good part of this “baseline” case tracking information may be lost from the current register. The case files themselves should still contain appropriate information from which case histories can be gleaned and the cantonal courts should preserve, not destroy, the existing bankruptcy registers.

Data was not collected from Srpsko Sarajevo, where the judges previously handling bankruptcy matters were not reappointed and the new President did not have sufficient administrative staff to assist on FILE’s request; and Trebinje, where the *Lautenberg Amendment’s* restrictions apply.

BANKRUPTCY

Information obtained from the courts indicates that bankruptcy judges are currently working on both:

- old cases initiated under the prior bankruptcy law, where the trustee has been appointed and has taken upon his/her obligations;¹ and
- new cases initiated under the new bankruptcy law.

1) OLD CASES (CASES INITIATED UNDER THE OLD BANKRUPTCY LAW)

This group of cases can be further divided into two subgroups: (a) cases initiated under the old SFR Yugoslav Law and the Federation Bankruptcy Law (The Law on Enforced Settlement, Bankruptcy and Liquidation, published in Official Gazette of the former SFR Yugoslavia #84/89 / *Zakon o prinudnom poravnanju, stečaju i likvidaciji*, Sluzbeni glasnik SFRJ #84/89); and (b) cases initiated under the Old Bankruptcy Law introduced in the Federation (Law on Bankruptcy and Liquidation, 11 June, 1998).

Under the SFR Yugoslav Bankruptcy Law, the SPP (Sluzba/ Zavod platnog prometa) - the Payment Service System - initiated bankruptcy proceedings automatically under certain circumstances when a company stopped paying its obligations. The costs of these proceedings were covered by state funds. This type of automatic filing, with costs covered by budgeted funds, will not occur under the New Laws.

The cost of proceedings can be a significant factor in a bankruptcy system. An inability to pay these costs is one reason why the number of pending cases has increased. Bankruptcy proceedings initiated upon a proposal of SPP are suspended if interested parties have not undertaken any actions to continue them within 3 years from the date the new Bankruptcy Law was adopted (see Article 235 of the Law on Bankruptcy Proceedings²). A substantial number of cases will be dismissed because creditors will not show interest. This is extremely important for the RS, where the number of bankruptcy cases is 7 times that in the Federation.

Based on the significant number of old cases and related costs of publishing notice in the Official Gazette, the court in Banja Luka, for example, published the announcement required by Article 235 for only 37% of the total number of cases filed by SPP. In only 10 cases (about

¹ Transitional and final provisions of Bankruptcy Law:

Article 233 (both in Federation and in RS Bankruptcy Law):

"Bankruptcy proceedings which were initiated before this Law came into affect shall be concluded in compliance with the regulations which were in effect until the day this Law came into affect, if the decision on the opening of the bankruptcy proceeding has been made and if the bankruptcy trustee has taken over his duty according to the provisions of the previous Law."

² (1) Bankruptcy proceedings initiated upon a proposal of the SPP (FBiH and RS), which were not opened, shall be suspended by the court, in which if the interested parties have not undertaken any actions with the objective of the continuation of the proceeding, within the last three (3) years from the day this Law is adopted, the court shall invite, through an announcement which shall be published in the "Official Gazette of the FBiH", all interested parties to undertake the proceedings within 30 days from the day of the announcement, and the costs of the announcement shall be advanced from the budget.

(2) If the interested parties request in written form for the proceedings to be executed, the court shall continue with the proceeding, and it shall consider that the interested parties are the submitter of the proposal in the sense of Article 4 of this Law. The decision referred to in the previous Paragraph shall be published in the "Official Gazette of the Republic of Srpska".

(3) If no interested parties submit a proposal for the execution of the proceedings within the term given, the court shall suspend the proceedings. In case the unsatisfied party should file an appeal to the decision referred to in the previous paragraph, the bankruptcy judge shall approve the appeal, put the decision on suspension out of effect, continue the bankruptcy proceeding, and regard the submitter of the appeal as the submitter of the proposal in that proceeding.

1%) did creditors ask the court to continue the bankruptcy proceeding in accordance with the New Law.

2) NEW CASES (CASES INITIATED UNDER THE NEW BANKRUPTCY LAW)

The “new cases” include all bankruptcy cases initiated after the enforcement of the new bankruptcy laws in the RS after January 01, 2003 and in the Federation after July 1, 2003. While only a small number of cases under the New Law were registered in the first eleven months of 2003, it may be anticipated that a greater number will be filed in 2004 due to the “implementation” of the New Laws, which has not yet occurred.

Another cautionary note relevant to the survey data is that in some courts, a large number of bankruptcy cases are “resolved” by the courts simply by dismissing them, either because the submitter of the proposal did not pay the filing fee or did not provide additional documentation requested by the judge.

Based on the information provided, no enterprises were reorganized or privatized through bankruptcy proceedings. One reason is that, in many cases, stakeholders (mainly creditors) have not been educated on the benefits achievable through reorganization.

ANALYSIS OF THE DATA COLLECTED

Various limitations on access to, and availability of, the information requested in the Task Order have been identified in the prior introduction. Despite these limitations, the Bankruptcy Law team was successful in collecting relevant data from all relevant courts in the Federation and RS, with the exception of the courts in Srspsko Sarajevo and Trebinje (which was unavailable for the reasons explained above). The data collected on bankruptcy and liquidation cases comprises the following categories of information for the period 2001-2003:

- **number of cases filed each year in the courts dealing with bankruptcy and insolvency;**
- **number of cases finally adjudicated each year dealing with bankruptcy and insolvency;**
- **number of cases pending in the courts dealing with bankruptcy and insolvency;**
- **number of cases filed each year in the courts dealing with voluntary liquidation;**
- **number of cases finally adjudicated each year dealing with voluntary liquidation;**

The remaining information requested has been addressed in different parts of the foregoing text, a summary of which follows:

- **number of enterprises reorganized through bankruptcy proceedings;**

To the best knowledge of the Presidents of all Courts that have provided FILE with information, no enterprises have been reorganized through bankruptcy proceedings. The reasons frequently cited for the lack of reorganizations include: lack of practice (it's a new concept that has not been explored); huge responsibilities for inexperienced trustees; lack of insurance coverage for trustee actions; reluctant bankruptcy judges (who are concerned that their decisions may be challenged); inexperienced and uneducated creditors; blockage by workers who are concerned about the impact on their pensions; and lack of government support or initiation of pilot cases.

FILE was recently informed, however, that a case pending in Doboje may be considered for reorganization. The FILE Bankruptcy team has discussed possible outcomes for this proceeding with the judge in charge of the case, and he is very skeptical of the prospects for reorganization due to the short deadlines in the law for submitting the reorganization plan by the Trustee³. The main roadblock for submitting a plan on time is the unclear title of real estate and the time needed to verify and clear title with the land and cadastre registers.

³ **Article 143 Submitting a plan**

(2) If the Creditors' Assembly has instructed the Bankruptcy Trustee to prepare a reorganization plan, the Bankruptcy Trustee is obliged to submit it to the Bankruptcy Court within 30 days of the creditors assembly. The deadline for submission of the plan may be extended by the court, where appropriate circumstances exist, for an additional 30 days, a reasonable time. The bankruptcy trustee, in a counseling capacity, the Creditors Committee, if established, and the debtor-individual shall co-operate in the preparation of the plan

- **number of enterprises privatized through bankruptcy proceedings;**

To the best knowledge of the Presidents of all Courts that have provided FILE with information, no enterprises have been privatized through bankruptcy proceedings. In addition to the reasons cited above, another limitation on the use of bankruptcy proceedings to privatize businesses is the lack of “political will” for initiating such actions. The lack of political will is the product of many factors, including unresolved social and other worker-related issues.

- **number of enterprises liquidated through bankruptcy proceedings;**

Given the information received in response to the two prior questions, it appears that all bankruptcy cases filed and resolved are cases where enterprises have been liquidated through bankruptcy proceedings. However, responses to FILE’s inquiries highlighted a large number of cases that have been dismissed by bankruptcy judges because the filings were technically insufficient or failed to provide sufficient evidence for opening a bankruptcy proceeding. The exact number of enterprises liquidated through bankruptcy proceedings cannot be determined without undertaking a burdensome and time consuming manual review of case files due to the manner in which the information is recorded and maintained. FILE can undertake such a manual review if USAID believes it to be necessary and appropriate.

- **length of bankruptcy proceedings broken down between reorganization, privatization through bankruptcy proceeding and liquidation, and**

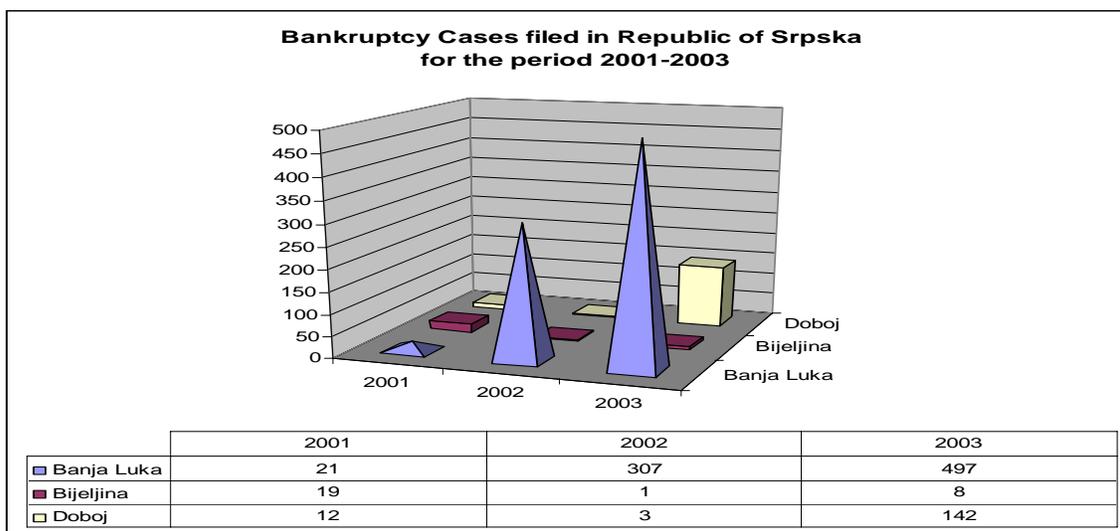
There is currently no reliable data to report on the length of bankruptcy proceedings. As indicated in the responses to prior questions, there do not appear to be any examples of reorganizations or privatizations under the old bankruptcy regimes, and the information necessary to determine the length of liquidation proceedings can only be gathered through the burdensome and time consuming process of manually reviewing individual case files. The matter is further complicated by the fact that three different bankruptcy laws were effective during different parts of the survey period; thus, any data collected would likely be of limited utility, as each law had different procedures and/or timelines for action for what are otherwise similar proceedings.

- **length of bankruptcy enforcement proceedings.**

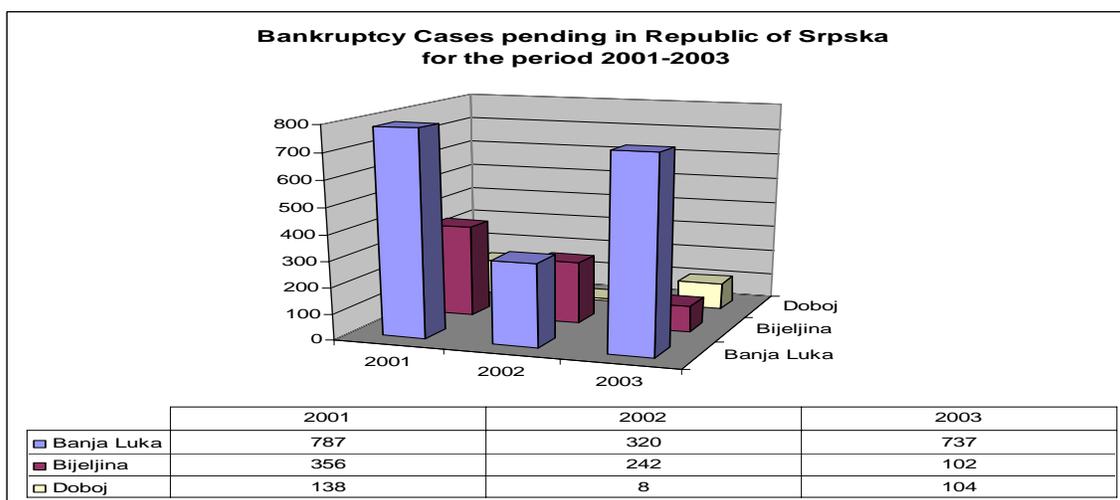
Based upon the responses FILE received to its inquiries and survey, it appears that information on the length of bankruptcy enforcement proceedings is not readily available or maintained. Such information is not included in the courts’ bankruptcy registers. Instead, once the bankruptcy case is finally resolved, it is considered closed and archived. Enforcement proceedings are separate from the bankruptcy proceedings, and are registered and executed by the courts’ enforcement divisions. The enforcement divisions have an enormous number of records in their registers, and the information is not collected or maintained in a manner that would allow for the extraction of relevant bankruptcy data without the significant commitment of time and resources beyond the reporting period contemplated in the Task Order. FILE recognizes the importance of this information in evaluating the efficiency gains in implementing the new bankruptcy regime, and will continue to explore alternate options for obtaining the data. For

example, a further analysis of this information could be made once the courts are automated and there is a link between different divisions, courts and instances.

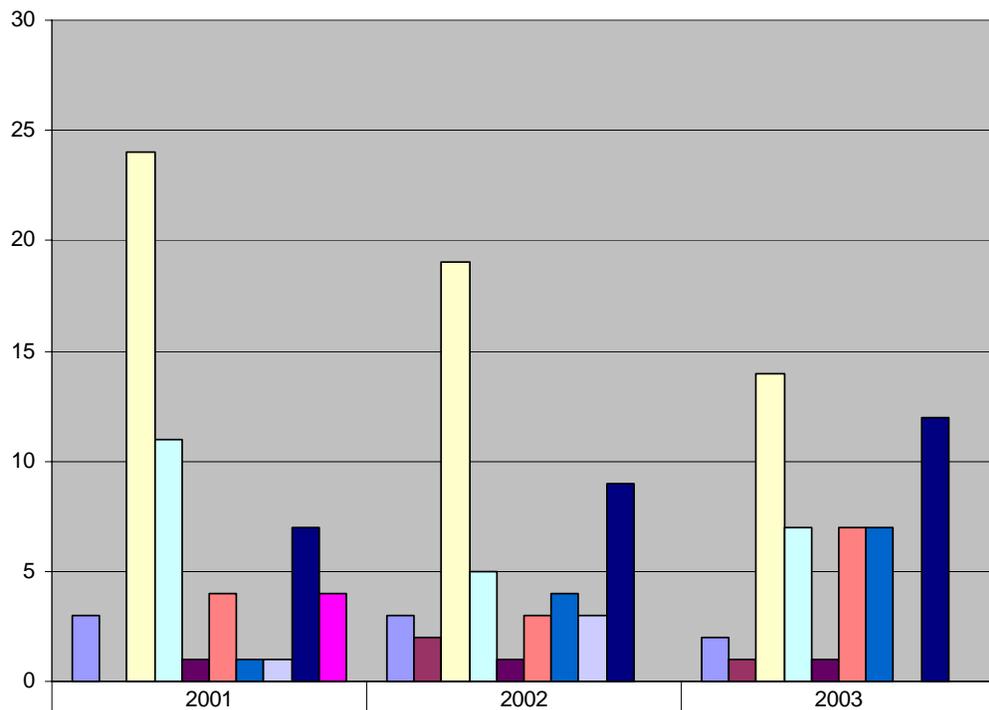
ANALYSIS OF THE BASE LINE DATA



The information above clearly shows that the number of cases filed in Banja Luka dramatically increased in 2002, while it remained essentially the same in certain other courts (Bijeljina and Doboj). In 2003, the number of cases filed in Banja Luka continued to increase, and the number of cases filed in Doboj jumped dramatically (a 4600% increase in cases filed compared to a 61% increase in Banja Luka). There is no simple explanation for these events. Given that bankruptcy cases must be filed in the jurisdiction in which the enterprise was registered, one would expect that the number of cases filed in Banja Luka would continue to outpace (in absolute numbers) the number of cases filed in the other two courts, simply because the majority of registered companies are registered in Banja Luka. A possible factor is the deteriorating economic and business environment in the RS over the past two years. This analysis cannot be complete without analyzing the general trend in the number of pending cases for the same time period, which is set forth below.



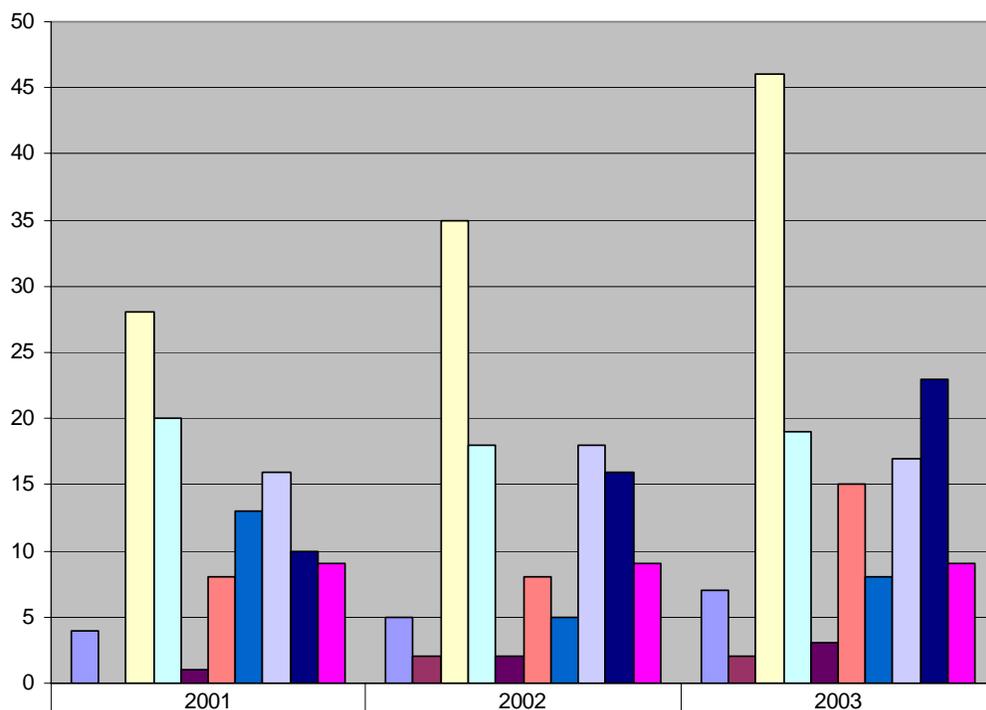
Bankruptcy Cases filed in the Federation in the period 2001 - 2003



	2001	2002	2003
Bihac	3	3	2
Odzak	0	2	1
Tuzla	24	19	14
Zenica	11	5	7
Gorazde	1	1	1
Travnik	4	3	7
Mostar	1	4	7
Siroki Brijeg	1	3	0
Sarajevo	7	9	12
Livno	4	0	0

During the same time period in the Federation, the situation is more or less the same for all courts, with the exception of Tuzla. The court of Tuzla shows a gradual decrease in filed cases. It could be that all cases that had to be filed have already been filed. The increase of filed cases in Sarajevo follows the logic of the increased in Banja Luka. Like the RS, the analysis cannot be completed without analyzing the general trend of pending cases, which is set forth below.

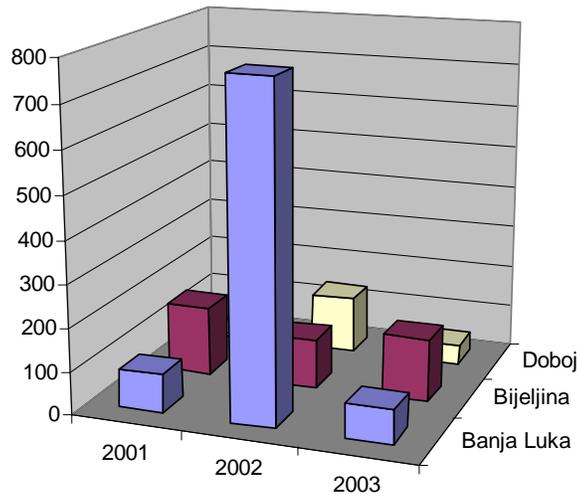
Bankruptcy Cases pending in the Federation in the period 2001 - 2003



	2001	2002	2003
Bihac	4	5	7
Odzak	0	2	2
Tuzla	28	35	46
Zenica	20	18	19
Gorazde	1	2	3
Travnik	8	8	15
Mostar	13	5	8
Siroki Brijeg	16	18	17
Sarajevo	10	16	23
Livno	9	9	9

Here the pattern differs from that in the RS. However, the downward trend in pending cases is positive only for Travnik and Mostar. The rest of the cantons more or less kept the same status of pending cases throughout the years under study. Tuzla and Sarajevo not only have the highest number of pending cases, but also show the greatest increase (in raw numbers) in pending cases.

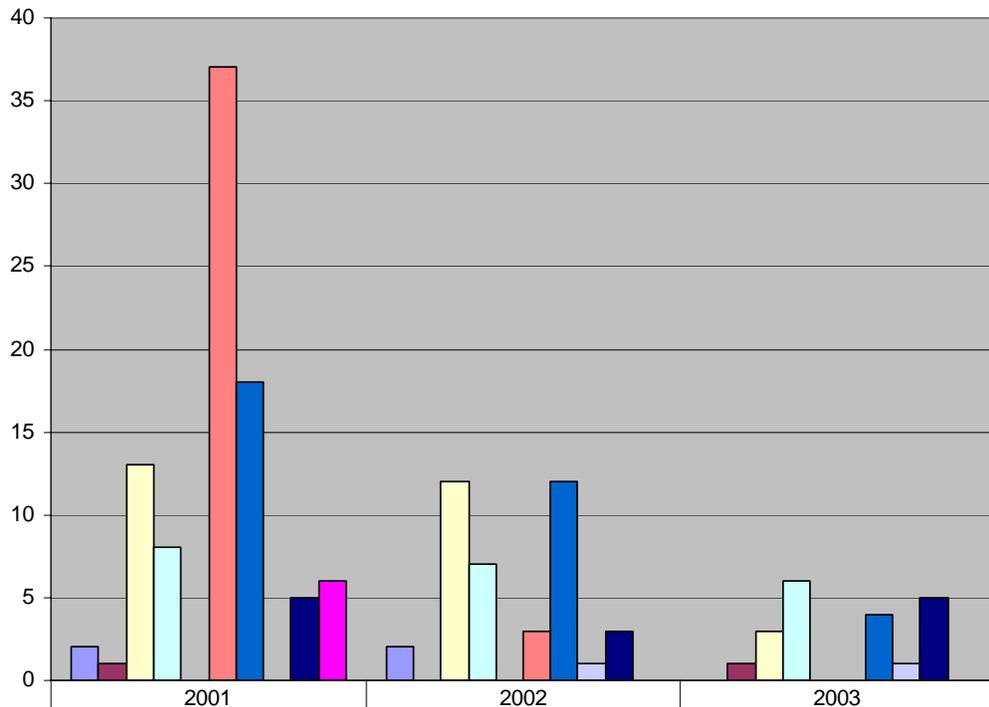
**Bankruptcy Cases resolved in Republic of Srpska
for the period 2001-2003**



	2001	2002	2003
■ Banja Luka	90	774	80
■ Bijeljina	162	115	148
■ Doboj	9	133	46

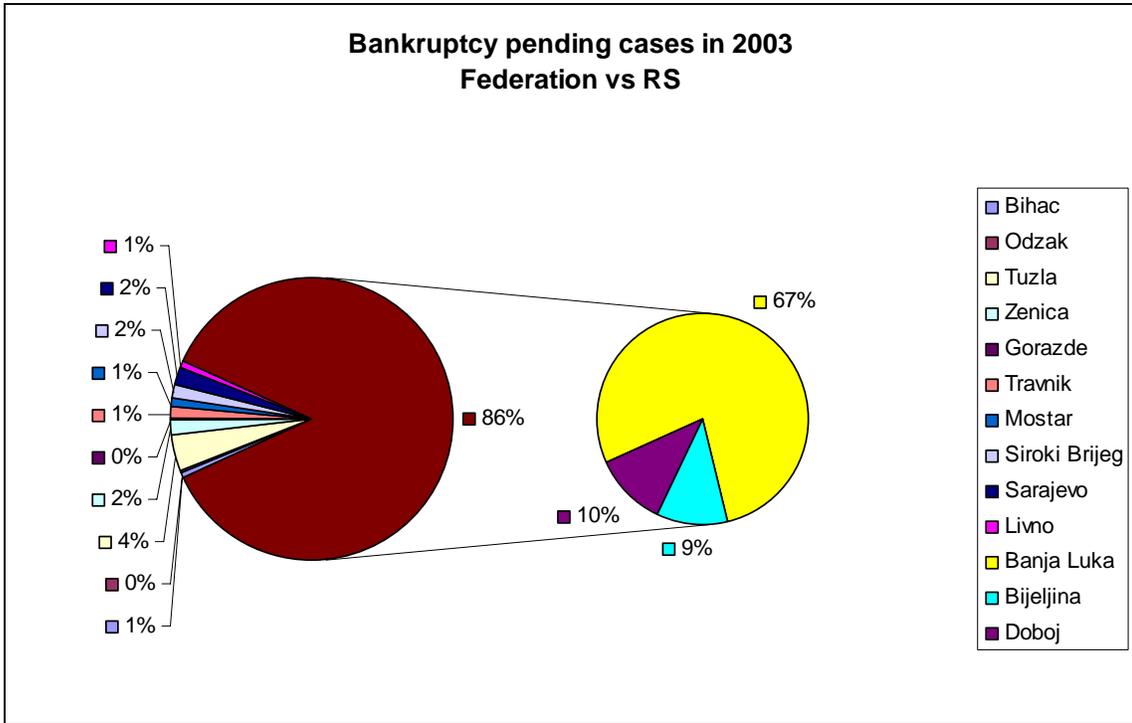
The data for the RS shows that the court in Banja Luka had a substantial number of cases resolved in year 2002. The court in Bijeljina, compared to the other two courts, was resolving on average the same number of bankruptcy cases each year from 2001 through 2003. At this point, there is no conclusive explanation why in 2003 Banja Luka has resolved 774 cases, which outperforms all other courts. In conversations with bankruptcy judges from that court, FILE has been informed that the court dismissed many cases due to the lack of creditors' evidence or due to unpaid bankruptcy proceeding tax, fees and charges. Additionally, the majority of pending cases were filed under the old bankruptcy law and meet the requirement of Articles 233 and 235 of the new bankruptcy law (where the court, at the government's expense, should re-announce the case in the Government Gazette). No provision was made for such expenses in the government budget in 2002. Since the announcements cannot be financed, the number of resolved cases fell in 2003.

Bankruptcy Cases resolved in the Federation in the period 2001 - 2003



	2001	2002	2003
■ Bihac	2	2	0
■ Odzak	1	0	1
■ Tuzla	13	12	3
■ Zenica	8	7	6
■ Gorazde	0	0	0
■ Travnik	37	3	0
■ Mostar	18	12	4
■ Siroki Brijeg	0	1	1
■ Sarajevo	5	3	5
■ Livno	6	0	0

The analysis shows a fairly equal distribution of resolved cases among all cantonal courts. The exception is Travnik, which resolved the highest number of cases in 2001, only to have its performance rapidly deteriorate over the next two years. The same could be said for Mostar, where pending cases are an issue.



The last part of the analysis compares the pending (unresolved) cases in BiH. The graph shows that 86% of the overall number of pending cases are pending in the RS, and that 67% of that number are pending in Banja Luka. Two other RS courts (Bijeljina and Dobo) also have more cases pending than the leader in the Federation (Tuzla).

RESULTS AND CONCLUSIONS

The baseline study provides significant empirical data regarding a number of important issues relating to the bankruptcy regime in Bosnia and Herzegovina.

First, as simply and academic exercise, the collection of bankruptcy data from the courts raised numerous concerns regarding transparency and public access. Despite the FILE project's success in collecting a large amounts of information, it became clear that the "manual" system of collecting and maintaining information would make it difficult if not impossible for the average person to obtain the same information. As such, we saw a definite need for improve recording-keeping and updated systems in the courts.

Second, the study highlighted the large number of pending cases that were filed, but remain unresolved, under the old bankruptcy law. As a consequence, the successful implementation of a new regime, will required the transfer or refilling of these cases under the new law. A plan for smooth transition of these cases is currently under consideration.

Finally, the data gives some true insights into the time it takes to resolve a bankruptcy case under the previous system. This in turn, provides additional support for the need of the FILE program and its focus on training and implementation. Due to the wide-spread nature of the bankruptcy regime, which including judges, creditors, trustees, accountants, business and individuals, it is imperative that the campaign for improving the bankruptcy system reach a vast section of the population. As such, a broad public education program will be needed in order to help the various stakeholders to understand the full benefits of the new bankruptcy program, with special emphasis on the reorganization process.

Appendix I Source data Bankruptcy proceedings

BASELINE STUDY

BANKRUPTCY	FILED CASES			IN PROCESS			RESOLVED CASES			PENDING CASES		
	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003
REPUBLIC OF SRPSKA												
Banja Luka	21	307	497	877	1094	817	90	774	80	787	320	737
Bijeljina	19	1	8	518	357	250	162	115	148	356	242	102
Doboj	12	3	142	141	141	150	9	133	46	138	8	104
Srpsko Sarajevo												
Trebinje												
TOTAL (RS)	52	311	647	1536	1592	1217	261	1022	274	1281	570	943
FEDERATION OF BiH												
Bihac	3	3	2	6	7	7	2	2	0	4	5	7
Odzak	0	2	1	1	2	3	1	0	1	0	2	2
Tuzla	24	19	14	41	47	49	13	12	3	28	35	46
Zenica	11	5	7	28	25	25	8	7	6	20	18	19
Gorazde	1	1	1	1	2	3	0	0	0	1	2	3
Travnik	4	3	7	45	11	15	37	3	0	8	8	15
Mostar	1	4	7	31	17	12	18	12	4	13	5	8
Siroki Brijeg	1	3	0	16	19	18	0	1	1	16	18	17
Sarajevo	7	9	12	15	19	28	5	3	5	10	16	23
Livno	4	0	0	15	9	9	6	0	0	9	9	9
TOTAL (Federation)	56	49	51	199	158	169	90	40	20	109	118	149
Brcko District		31	1		31	22		10	20		21	2
TOTAL BIH	108	391	699	1735	1781	1408	351	1072	314	1390	709	1094

Appendix 2 Source data Voluntary Liquidation proceedings

BASELINE STUDY

VOLUNTARY LIQUIDATION	CASES FILED			IN PROCESS			SOLVED CASES			UNSOLVED CASES		
	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003
REPUBLIC OF SRPSKA												
Banja Luka	30	136	68	58	166	144	28	90	90	30	76	54
Bijeljina	38	63	28	74	103	86	34	45	35	40	58	51
Doboj	2	7	20	7	13	24	1	9	13	6	4	11
Srpsko Sarajevo												
Trebinje												
TOTAL (RS)	70	206	116	139	282	254	63	144	138	76	138	116
FEDERATION OF BIH												
Bihac	78	96	86	91	119	114	68	91	89	23	28	25
Odzak	8	35	18	10	40	21	5	37	11	5	3	10
Tuzla	143	261	196	165	285	288	141	193	150	24	92	138
Zenica	149	108	102	194	140	142	162	100	83	32	40	59
Gorazde	63	17	5	70	76	61	11	20	2	59	56	59
Travnik	45	42	24	56	48	32	50	40	24	6	8	8
Mostar	53	73	42	100	114	89	59	67	42	41	47	47
Siroki Brijeg	2	1	0	21	22	20	0	2	0	21	20	20
Sarajevo	135	149	151	242	239	263	152	127	89	90	112	174
Livno	0	0	2	0	0	2	0	0	1	0	0	1
TOTAL (Federation)	676	782	626	949	1083	1032	648	677	491	301	406	541
Brcko District		11	2		11	13		0	11		11	2
TOTAL BIH	746	999	744	1088	1376	1299	711	821	640	567	555	659