

Bosnia-Herzegovina

by Jasna Jelisić

Capital: Sarajevo
Population: 3.8 million
GNI/capita: US\$8,360

Source: The data above was provided by The World Bank, *World Bank Indicators 2010*.

Nations in Transit Ratings and Averaged Scores

| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|-------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Electoral Process | 4.75 | 4.25 | 3.75 | 3.50 | 3.25 | 3.00 | 3.00 | 3.00 | 3.00 | 3.25 |
| Civil Society | 4.50 | 4.25 | 4.00 | 3.75 | 3.75 | 3.75 | 3.50 | 3.50 | 3.50 | 3.50 |
| Independent Media Governance* | 4.50 | 4.25 | 4.25 | 4.25 | 4.00 | 4.00 | 4.00 | 4.25 | 4.50 | 4.50 |
| National Democratic Governance | n/a | n/a | n/a | n/a | 4.75 | 4.75 | 4.75 | 5.00 | 5.00 | 5.25 |
| Local Democratic Governance | n/a | n/a | n/a | n/a | 4.75 | 4.75 | 4.75 | 4.75 | 4.75 | 4.75 |
| Judicial Framework and Independence | 5.50 | 5.25 | 5.00 | 4.50 | 4.25 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 |
| Corruption | 5.75 | 5.50 | 5.00 | 4.75 | 4.50 | 4.25 | 4.25 | 4.25 | 4.50 | 4.50 |
| Democracy Score | 5.17 | 4.83 | 4.54 | 4.29 | 4.18 | 4.07 | 4.04 | 4.11 | 4.18 | 4.25 |

* Starting with the 2005 edition, Freedom House introduced separate analysis and ratings for national democratic governance and local democratic governance to provide readers with more detailed and nuanced analysis of these two important subjects.

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. The opinions expressed in this report are those of the author(s). The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

EXECUTIVE SUMMARY

The overall events of 2009 revealed in greater focus the deep-seated issues of postwar Bosnia and Herzegovina (BiH) under the 1995 Dayton Peace Agreement (DPA). The agreement created a loose, federal state with two highly autonomous entities: the Serb-dominated Republika Srpska (RS) and the Bosniak and Croat-dominated Federation of Bosnia and Herzegovina. Bosnia and Herzegovina was a multi-ethnic republic of Socialist Federal Republic Yugoslavia (SFRY) that declared independence in March 1992 with the dissolution of the SFRY. In 1991, the population consisted of 44 percent Muslims, 31 percent Serbs, and 17 percent Croats. The three largest nationalist parties in the country won the first multiparty election in November 1990, and divided power along ethnic lines before entering the war in the first half of 1992. The war was ended by the DPA, which also defined the Constitution. Ethnic power sharing and the division of the country into two entities was established as a solution to the conflict.

In 2009, BiH continued to struggle with a cumbersome state-level government coalition, making very limited progress in its strategic objective to join Euro-Atlantic structures. Some progress was made in fulfilling the requirements of the European Commission Road Map for Visa Liberalization, but efforts toward European Union (EU) membership stalled, and the RS leadership began to question the previously undisputed goal of joining NATO. Despite the overwhelming support of BiH citizens for joining the EU, political representatives made no serious attempts to address the remaining issues from the European Partnership with BiH, a preliminary reform process conducted under EU guidance. At the same time, the implementation of the Interim Agreement related to the Stabilization and Association Agreement with the EU was satisfactory.

The transition from the Office of the High Representative (OHR) to a reinforced EU presence in the country did not advance smoothly in 2009. Reforms that would further the postwar democratization process and allow for economic and social development, as well as reach the objectives and conditions for the closure of the OHR and its transition to the Office of the EU Special Representative (EUSR) were put on the backburner. Instead, the state-level ruling coalition spent the year in constant disagreement on major issues, including constitutional reform, human rights, and functionality and decision-making at the state level. The coalition engaged in harsh nationalistic rhetoric and openly threatened the dissolution of the state and the repetition of conflict. The RS Prime Minister, Milorad Dodik, spoke of a referendum on RS secession from BiH, while Sulejman Tihić, president of the largest Bosniak party, Party of Democratic Action (SDA), warned that in the case of an RS secession attempt, BiH might resort to violence.¹ Amid the general lack of progress in the nation, what was lacking most was a shared vision among BiH

ethnic leadership for the overall direction of the country, and political will to meet any of the objectives aiming to improve stability and functionality of the state.

National Democratic Governance. Lack of agreement on any substantial issue advancing BiH toward EU membership, and destructive, mutually exclusive, ethnic politics prevented the ruling coalition from making progress in the democratic governance of the country and providing the conditions for full sovereignty, stability, and functionality of the state without international supervision. *Owing to these factors, BiH's national democratic governance rating worsens from 5.00 to 5.25.*

Electoral Process. There was no progress in 2009 toward changing the discriminatory electoral rules preventing some members of BiH society (primarily those not belonging to one of the three constituent ethnic communities) from exercising their full political rights. No firm indication of willingness to address the European Court of Human Rights ruling in the case of electoral discrimination was observable. Additionally, there was a continued lack of enforcement of the decisions on conflict of interest. *Serious attempts to weaken the current legislation caused a general lack of improvement in the country's electoral system, thus BiH's electoral process rating worsens from 3.00 to 3.25.*

Civil Society. In BiH in 2009, there was a significant lack of constructive dialogue between civil society and government structures that would serve to speed up democratization and secure better representation of citizen interests. Society remained polarized along ethnic and religious lines, and still largely left out of the policy-making process. The education system, overwhelmed by political influence and religious propaganda, did not provide the preconditions for positive long-term development. *BiH's civil society rating remains at 3.50.*

Independent Media. Negative trends of intimidation and attempts to limit the freedom of media continued in 2009, as well as strong alliances between political, business, and media elites. The media largely continued to follow ethnic divisions in the political sphere, backing one of the three political options rather than securing real pluralism of views. *BiH's independent media rating remains at 4.50.*

Local Democratic Governance. In 2009, there was little pressure on higher-level government to change its policies regarding local self-governance. The competencies of local-government units do not follow the subsidiarity principle; competencies, as well as revenues, remain at the higher levels of authority without significant participation of local communities in the policy-making process. *Owing to a lack of improvement, BiH's local democratic governance rating remains at 4.75.*

Judicial Framework and Independence. The existence of 14 different Ministries of Justice, each preparing separate budgets, continues to negatively affect judicial independence in BiH. Delays and backlogs in the courts did not substantially

improve in 2009, and political interference remained a concern. However, the War Crimes Chamber of the BiH Court and the Prosecutor's Office of BiH Special Department for War Crimes operated efficiently. Local authorities failed to extend the mandates of foreign judges and prosecutors working on organized crime and corruption, which may seriously undermine the capacity of the State Court and affect current proceedings. *Owing to the continued lack of effort or will to reform and improve the judiciary in 2009, BiH's judicial framework and independence rating remains at 4.00.*

Corruption. The perception of corruption in BiH is high, and the general public seems accustomed to it. There was no serious indication of government readiness to deal with the issue, despite the adoption of an anticorruption strategy and a new state-level law on an anticorruption body, both of which were adopted as a condition for visa liberalization with the EU. *Owing to the authorities' lack of genuine readiness to halt rampant corruption, and their intensified pressure on non-state actors focused on anticorruption activities, BiH's corruption rating remains at 4.50.*

Outlook for 2010. The Bosnian Serb parties continued to reject substantial changes to the constitution based on the 1995 DPA, while proposals for change coming from Bosniaks and Bosnian Croats remained significantly divided. This may have a negative effect on developments in 2010, particularly, the general elections in October. If the current trajectory of poor state parliamentary performance continues, as well as the general blocking of state-level institutions, the domestic political climate will seriously deteriorate, challenging proper state functioning and its overall stability. It is expected that most political leaders will continue to obstruct anything that undercuts their source of power; ethnic politics. If the EU remains without a clear strategy toward each country in the region, especially Serbia, BiH might easily end up on the road to slow dissolution, isolation, and further economic disarray, with a latent potential for the repetition of violence.

MAIN REPORT

National Democratic Governance

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| n/a | n/a | n/a | n/a | 4.75 | 4.75 | 4.75 | 5.00 | 5.00 | 5.25 |

The rotating Presidency of Bosnia and Herzegovina (BiH) consists of one Serb, one Bosniak and one Croat. The Parliamentary Assembly of BiH is composed of two chambers: the House of Peoples, which consists of 15 delegates (5 from each constituent group) and the House of Representatives, which consists of 42 members, of whom two-thirds come from the Federation of BiH (FBiH) and one-third from the Republika Srpska (RS), representing both entities of BiH. FBiH is further divided into 10 cantons, with significant competencies. In addition, there is a self-governing, administrative unit, Brčko, which is formally under the sovereignty of BiH though it remained under international supervision through the end of the year.

In 2009, the Parliament of BiH remained hampered by a lack of political will, as well as inadequate technical and human resources. The number of European integration-related laws adopted was low, with Parliament displaying little policy-making capacity or a habit of regular public hearings. Government institutions, at all levels, continued to be affected by internal political tensions and uncoordinated policy-making.

Since its formation in 2006, the government has been comprised of mutually exclusive, post-conflict interests and has seemed united in disregarding the interests of the public. The authorities have often proven unable to efficiently appoint high-level officials when needed. The work of the Directorate for European Integration has been hindered by the overall political climate and the absence of a director for most of the reporting period. Preparatory steps toward a census in 2011 have been carried out, but a state-level census law, which is crucial to the European integration process, was not adopted by the end of the year. Public exasperation at government ineffectiveness increased throughout 2009, but remained muted in seeming respect for ethnic leaders' preoccupation with ethnic politics.

Numerous analyses indicated that, while supporting an eventual full transition, the high representative was still needed to complete Office of the High Representative (OHR) closure objectives, respond to threats against the Dayton Peace Agreement (DPA), and "to act in place of the national government if it is temporarily prevented from acting."² The very survival of the state was frequently questioned in 2009, which led to the increased interest of the international community.

The entity governments were additionally burdened by the global economic crisis in 2009, with BiH on the brink of economic collapse. The authorities were forced to take out a US\$1.6 billion emergency loan from the International Monetary Fund (IMF) under conditions that BiH make adjustments to speed up

the privatization process, cut wages, and make reductions in social and war-related benefits, which caused great public discomfort and threatened social stability. Public demonstrations by schoolteachers, police officers, pensioners, and war veterans were frequent in 2009.

The IMF delegation to BiH confirmed that the impact of the economic crisis and poor policy decisions were becoming increasingly evident throughout the year. The RS rode out the crisis partly due to funds saved from energy and telecom privatizations, while the FBiH, already on the verge of bankruptcy before the global downturn, continued paying unsustainable benefits to numerous war veterans and victims in spite of IMF demands for “fiscal belt-tightening.” FBiH did not comply fully, and the second IMF loan installment was postponed until the beginning of 2010.

The inability of the governing coalition to act swiftly and competently became obvious at the beginning of 2009, during the region’s hard winter when Sarajevo reported temperatures of -15° Celsius. Despite not having any gas reserves of its own, BiH was the only country in the region absent from the meeting between European countries to resolve the gas crisis held in Brussels on January 9. When criticized, BiH Minister of Foreign Trade and Economic Relations, Mladen Zirojević, stated that the invitation to the meeting read that BiH’s presence was not obligatory. Neighboring Serbia proved more capable in assisting with the crisis than the domestic authorities, lending gas supplies to BiH, which showed potential for improving neighborly relations between the two countries.

Despite these conditions, the ruling coalition made no progress in the field of energy, as noted in the 2009 European Commission Progress Report. Similarly, the State Property Commission appointed by the BiH Council of Ministers failed to complete its work by the deadline, prompting High Representative Valentin Inzko to establish the OHR Inventory Team in September, which would fulfill the technical prerequisite to a sustainable apportionment of state property through a later intergovernmental agreement. The OHR Inventory Team collected the data by November 20, despite being prevented from entering land registry offices in the RS on several occasions.

While the DPA allows for improvements, BiH has already managed to define state functions in some critical areas, such as defense, customs and border management, indirect taxation, and the formation of state judicial bodies. However, this trend slowed down with the formation of the new government after the 2006 election, and came to a full halt in 2009 in a serious attempt to reverse what was achieved in the postwar period. As a result, the country continues to be weighed down by its large and nonfunctioning government, having had 3 presidents, 13 prime ministers, and 180 other ministers since its creation in 1995.

Attempts to reform the Dayton Constitution, even as a minimal package which would only address the harmonization of the constitutional provisions with the European Convention for Human Rights (already part of the BiH constitution), failed in 2009. The European Commission (EC) has clearly stated that BiH would need to reform its constitutional framework to permit its institutions to function

effectively before the Commission could recommend granting BiH EU candidate status. In its October 2009 Progress Report, the EC called upon BiH to proceed with the necessary constitutional amendments without further delay.

The year was marked by a growing sense of urgency among political analysts that BiH is running out of time to resolve its institutional and social paralysis. The situation prompted the United States and the EU, led by the Swedish presidency, to attempt to intervene directly in what has frequently been called the worst political crisis since the war. Consequently, the Butmir Talks, held in October at a military base on the outskirts of Sarajevo, brought together BiH politicians from all sides in order to break the country's political deadlock. Yet, the leaders of the three ethnic communities rejected the proposed package and continued with their maximalist demands, with the exception of the leader of the dominant Bosniak party, the Party of Democratic Action (SDA), Sulejman Tihić, who seemed the most ready to speak constructively about the proposed constitutional amendments. However, RS Prime Minister Milorad Dodik repeatedly pointed to the inability of BiH ethnic groups to live together, stating that in BiH there are clear boundaries between the national groups, which only mix in the economic sector, and that the integration of the peoples of BiH is impossible.³

RS Prime Minister Dodik stated, after the first round of the Butmir Talks, that the RS is not interested in constitutional changes, nor did he see a reason for international mediation in BiH on this issue, thereby rejecting the proposed constitutional reform package.⁴ While the RS rejected the changes to the BiH constitution, the National Assembly of the RS (RSNA) adopted amendments to the RS Constitution in March including: the declaration of Banja Luka as the capital of the RS, establishing the right of the RS to sign special parallel relations with neighboring countries, abolishing the death penalty, and other amendments related to the harmonization of the RS constitution with the European Convention on Human Rights and the European Charter on Local Self-Government.

BiH formally applied to join NATO's Membership Action Plan (MAP), which is an essential stepping stone toward full membership in the organization. In December, the North Atlantic Council decided not to allow BiH to join MAP, "urging its political leaders to continue to work together to pursue national integration and improve the efficiency and self-reliance of state-level institutions." While issuing a positive decision in the case of Montenegro's application, the Council decided that "BiH will join MAP once it achieves the necessary progress in its reform efforts."⁵

The Steering Board of the Peace Implementation Council (PIC) adopted the OHR-European Union Special Representative's Transition Strategy, which includes five objectives—Resolution of State Property, Resolution of Defense Property, Completion of the Brčko Final Award, Fiscal Sustainability of the State, and Entrenchment of the Rule of Law—as well as two conditions. One of the conditions has been fulfilled (BiH signed the Stabilization and Association Agreement [SAA] with the EU in June 2008), while the second condition ("a positive assessment of the situation in BiH by the PIC") remains unfulfilled.⁶

During 2009, BiH citizens continued to show deep distrust in local politicians, and trust in public institutions continued to deteriorate. Instability increased with inflammatory political rhetoric and provocative calls for secession from the RS. The heated political atmosphere continued with RS Prime Minister Dodik supporting the idea of establishing a third, Croat entity in BiH, an idea promoted by the ruling Croat political elite since the BiH war started. The ruling politicians repeated warnings of growing instability, while the legislature proved to be largely ineffective and unaccountable. In its 2009 report on BiH, the EC found “particularly worrying” the statements by the RS political leadership, which challenged the veracity of wartime massacres involving civilian population.⁷

Electoral Process

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 4.75 | 4.25 | 3.75 | 3.50 | 3.25 | 3.00 | 3.00 | 3.00 | 3.00 | 3.25 |

Due to a lack of consensus on constitutional changes that would harmonize the BiH Constitution with the European Convention for Human Rights (ECHR), a discriminatory election law remained in force, barring anyone who does not belong to the three constituent ethnic groups of BiH—Bosniaks, Serbs, and Croats—from running for the presidency or House of Peoples of BiH. In the December 2009 case of *Sejdić and Finci v. Bosnia and Herzegovina* (filed by Bosnian nationals of Roma and Jewish ethnicity), the Grand Chamber of the European Court of Human Rights concluded that this ineligibility “lacks an objective and reasonable justification and has therefore breached Article 14 taken in conjunction with Article 3 of Protocol No. 1” of the ECHR.⁸ The incompatibilities between the BiH constitution and the ECHR were slated to be addressed prior to the 2010 elections and the implementation of the SAA. However, that still had not happened by the end of 2009.

Despite regular elections, there is no genuine rotation of power among political parties representing competing views within the three dominant ethnic constituencies. As the DPA defines each constituency in ethnic or national terms, the result is a political and electoral system with a self-reinforcing cycle. The country’s political psychology starts and ends with fear and blame and is based on mistrust. The population of BiH still feels the wounds of war, and feelings of grievance and fear have usually been expressed through elections.

Ethnic-based parties continue to articulate these sentiments with strong backing from major religious institutions of the Islamic, Orthodox, and Catholic communities in BiH. Dominant media are affiliated with the three, ethnic political orientations and have influenced election results, contributing to the disregard for “bread and butter” issues by giving greater priority to war grievances and divisions. Naša Stranka (NS), a multiethnic political party formed in April 2008 by Bosnian film director Danis Tanović, has tried to build its electoral platform on non-ethnic,

issue-based politics. The party is poorly financed but set to test its political appeal in the October 2010 general elections.

Another new party that appeared on the BiH political scene in the second half of 2009—Alliance for a Better Future of BiH (SBB–BiH)—was formed by media mogul Fahrudin Radončić, with strong ties to the epicenter of Bosniak ethnic politics. SBB–BiH built its image and recruitment strategy on a policy of homogenizing Bosniaks around a leader who would defend their ethnic interests.

There are strong arguments that it is “the very structure of government and legislative decision-making, created through Dayton, which has created this default to ethnic-only politics” in BiH.⁹ As a result, the electoral system is not prone to the formation of political forces that would cut across ethnic lines or open the public space for their promotion.

The general public remained largely outside of political life with a deep feeling of helplessness and lack of potential to affect change through the election process. Minority groups continued to lack sufficient openings to actively participate in the political process. Most people remain outside the political process, and believe that none of the political parties represent their interests. Additionally, the most prominent political options are influenced by economic oligarchies and their related interests.

In 2009, the Central Election Commission of BiH (CEC) sought funding for a project to create a “Unified Election Information System of BiH.” This was intended to continue the interrupted Passive Voter Registration project. The CEC developed a valuable database related to the implementation of the Election Law, Law on Conflict of Interest, and Law on Political Party Financing. However, there have been serious problems with the compatibility of these various laws in the run-up to the 2010 elections.

Conflict of interest, in general, was one of the most controversial fields of the CEC’s work in 2009. After a complaint by Transparency International BiH, the Court of BiH twice ordered the CEC to act on their request and establish the existence of conflicts of interest in the case of Nedžad Branković, then prime minister of FBiH. While in office, Branković was also a shareholder in the fund management company ABDS, and his private interests may have influenced his public role. Branković resigned in May at the request of SDA party leader Sulejman Tihić, after a Sarajevo court charged the prime minister with abuse of power over a property deal.

Additionally, the Court of BiH confirmed the decision of the CEC that found the BiH Minister of Foreign Affairs, Sven Alkalaj, in conflict of interest.¹⁰ The minister served on the supervisory board of a company that had contracts with the ministry for several thousand dollars. Despite the ruling, Alkalaj remained in office and no procedures for dismissing individuals found in conflict of interest were initiated, though the media frequently covered these cases. The CEC also received a report alleging RS President Rajko Kuzmanović to be in conflict of interest because he served as both RS president and president of the RS Academy of Arts and Sciences, financed by the RS budget. The CEC concluded that the case should

be handled by the RS Commission for Establishing Conflict of Interest, which was still not operational nine months after the RS Law on Conflict of Interest was adopted by the RS National Assembly. This left the RS as the only jurisdiction in BiH with no operational mechanism for investigating potential conflicts of interest of public officials.

After this series of rulings of the Court of BiH, the parliamentary majority seemed eager to weaken provisions of the Conflict of Interest Law. The Intergovernmental Working Group's legislative proposal, presented in October, significantly watered down the existing legislation on conflict of interest as assessed by Transparency International BiH, which warned that the new legislation would "make conflict of interest in BiH impossible to prove."¹¹ The BiH Council of Ministers adopted the Law on Prevention of Conflict of Interest in BiH Institutions by the end of 2009, despite TI protests and without requesting Venice Commission opinion on the law before putting it into adoption procedure, as suggested by the OHR, the Organization for Security and Cooperation in Europe, the Council of Europe, and supported by the EU Delegation to BiH. Regardless, the law entered parliamentary procedure on December 24.

Civil Society

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 4.50 | 4.25 | 4.00 | 3.75 | 3.75 | 3.75 | 3.50 | 3.50 | 3.50 | 3.50 |

During, and immediately after the war, government officials were largely uninformed about civil society and the functions of nongovernmental organizations (NGOs). Some cautiously accepted their existence, while others were openly hostile toward nongovernmental structures. Those attitudes have continued to a great extent, particularly with regard to NGOs dealing with corruption issues.

The most prominent is Transparency International (TI) BiH, which has positioned itself as the country's leading think tank and advocacy group in the anti-corruption field. TI BiH has been called to provide expert input in designing legislation and strategy, as well as briefing parliamentarians and other relevant institutions responsible for fighting corruption. However, it continued to work under pressure and was viewed as an organization hostile to the ruling, ethnic, nationalist elite on all sides, filing reports on the prime ministers of the RS and the FBiH.

Another postwar problem in the civic sector has been the excessive and opportunistic growth of NGOs, with some receiving funding far beyond their capacity for good management. By 2009, the most capable NGOs had survived to become credible partners in addressing the real concerns and needs of society rather than being merely donor driven. The Center for Civic Initiatives (CCI), TI BiH, Association of Old Foreign Currency Savers, as well as war veterans' and pensioners' associations were among the best examples of credible partners.

The government is still not fully receptive to policy advocacy by interest groups unless they come from the leading business and religious circles. At the same time, the media is growing more receptive to civil society groups as independent and reliable sources of information and commentary.

Locally led efforts to increase philanthropy and volunteerism are rare, as is the public's active participation in private voluntary activity. Organizations fighting for the rights of women and their participation in the country's social and political life have yet to improve the position of women, especially in decision-making processes. Consequently, out of 17 ministries in the BiH government, there is not a single woman in a ministerial post. There is only 1 female minister in the FBiH and 2 in the RS from a combined total of 34 ministers in both of the entity governments.

Religious groups remain the most influential segment of the civic sector but are so in a rather divisive manner. There are indications that the lines between church and state have become increasingly blurred over the past two decades. Specialists argue that instead of making universal appeals, the activities of religious communities are restricted to ethnic and political aspects, which "continue to divide rather than aid in recovery efforts of former war zones."¹²

In July, a mass brawl broke out in Mostar between a group of local Bosniak (Bosnian Muslim) residents and members of a local, radical Muslim Wahhabi sect leaving a mosque after evening prayers. Several people were seriously injured in the scuffle. One Wahhabi member, 35-year-old Magdi Dizdarević, died from severe head injuries suffered in the brawl. The incident underlined growing tensions between Bosnia's historically moderate Muslims and a small, but visible and increasingly assertive Wahhabi sect. The Islamic community of BiH condemned the incident, blaming it on "islamophobic media."

Additionally, religious institutions continued to lead in articulating public intolerance against sexual minorities. A comprehensive, state-level antidiscrimination law was adopted in 2009 as a requirement for EU visa liberalization, but its scope is limited. The original draft neither prevented nor allowed same-sex marriage and adoption of children in same sex-unions. However, amendments suggested by the Inter-Religious Council of BiH barred same-sex marriage in the BiH Antidiscrimination Law.

The education system at all levels remains problematic. Religious teaching continued at public kindergartens in the BiH capital, Sarajevo, creating divisions among children. Young people continued to be educated within their own ethnic groups, precluding the development of cross-ethnic ties. Postwar BiH is not as multiethnic at the local level as it was before the war, except, to a considerable extent, in the Brčko District. Consequently, children mainly attend schools dominated by one ethnic group. In areas where there is no clear ethnic dominance, schools are divided under one roof, with pupils attending classes in shifts in order to not meet in the school hallways. Ethnic-oriented curricula are present in public schools, as well as organized religious teaching, resulting in explicit separation and exclusion.

Violations of returnees' religious freedoms, such as desecration of cemeteries and religious sites, as well as attacks on religious officials, were reported by BiH

Ombudsman Ljubomir Sandić in 2009. Meanwhile, there was evidence of greater protection for women against all forms of violence. BiH ratified the revised European Social Charter, but as noted in the EC Progress Report on BiH, the implementation of the Charter did not improve during the year.

Independent Media

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 4.50 | 4.25 | 4.25 | 4.25 | 4.00 | 4.00 | 4.00 | 4.25 | 4.50 | 4.50 |

The wave of harassment and physical attacks on journalists that began in 2008 increased in 2009, culminating in a police investigation into the alleged murder plot on Bakir Hadžiomerović, editor of the Federal Television (FTV) political program, *60 Minutes*, which regularly reports on corruption among the government elite.

During the year, the Islamic community was generally quick to label as “Islamophobic” any media outlet that criticized the activities of the Islamic community or its head, Reis Mustafa Cerić, who was viewed as exerting pressure on the freedom of expression and media freedom. Such accusations started openly in November 2008, when Cerić publicly accused the editor-in-chief of the daily *Oslobođenje* of Islamophobia and anti-Islamic behavior. This label was most frequently used against FTV—the FBiH public broadcaster—and characterized as an attempt to silence their reporting. The Islamic community in BiH was frequently criticized in the BiH media for protecting imams accused and sentenced for sexual abuse of underage girls; for making alliances with political, media and financial moguls; and for dictating political developments in the country.

The ethnic orientation of the media, especially print media, has been increasing. Likewise, the Sarajevo-based public broadcasters struggled to secure their independence from ethnic politics. The RS government earmarked BAM 5 million (US\$ 3.1 million) for the RS media, which in a year of economic crisis was largely understood as an attempt to buy their loyalty during the election campaign. The PIC Steering Board noted negative developments in the area of media freedom, underlining “the importance of freedom of expression including a free and independent media, with special regard to the forthcoming elections.”¹³

The implementation of public broadcasting reform, a key European Partnership priority, was further delayed by insufficient harmonization and slow implementation of the legal framework, in particular in the FBiH. There have also been accusations from the Croat community that FTV is Bosniak-dominated and that Croats need their own channel in their own language. Meanwhile Radio and Television of Bosnia and Herzegovina (BHRT), the state level public broadcaster, is floundering.

In general, public broadcasters continued to fight for editorial independence, while privately owned media struggled to protect editorial independence and information-gathering functions from partisan owners. Harmonization of the legal

framework for public broadcasting in BiH has not been fully achieved, and reform of the public broadcasting system has been delayed. The independence of the Communications Regulatory Agency remained seriously weakened by the absence of a properly appointed general director and council.

The public enjoys a range of print and electronic sources of information, at both the national and local level, but these do not represent a range of political viewpoints. Citizens also have free access and use of the Internet as the government makes no attempt to control its use. Reportedly, though, only 27 percent of the population uses the Internet.¹⁴

Local Democratic Governance

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| n/a | n/a | n/a | n/a | 4.75 | 4.75 | 4.75 | 4.75 | 4.75 | 4.75 |

Citizens of BiH have the opportunity to choose their local leaders in free and fair elections. The legislation provides for local elections on the basis of universal, equal, and direct suffrage by secret ballot. Multiple candidates, representing mainly dominant ethnic political forces in BiH, participate in local elections and in local government bodies. However, local winners who are not affiliated with the political factions ruling at the higher level usually encounter obstacles in exercising their authority in local self-governance or in securing financial resources from higher levels of government, in addition to obstacles during election campaigns.

Functional and fiscal decentralization in BiH in accordance with the principles of the European Charter of Local Self-Governance has not been established, except for some progress in the RS. It is a rarity to find competent and motivated staff members at the local level who could improve the quality and cost-effectiveness of services. Local authorities operate with a similar lack of transparency and accountability found at the higher levels of government. The right to local self-governance remains unregulated by the BiH constitution; instead, it relies on the separate legal frameworks of the two entities, with each refusing to implement substantial decentralization.

Some mayors go even further, stating that self-governance in practice does not exist as the higher levels of government keep the competencies and the revenues, leaving local communities dependent on party bosses. Municipalities claim to be deprived of funds if the political option ruling at the local level differs from that of the higher level of government.

Local authorities argue that they are not free to design and adjust institutions and processes of governance to better reflect local needs, nor do the central authorities regularly consult local governments in planning and decision-making that directly affects the local level. The most vocal in this regard was Mayor of Foča, Zdravko Krsmanović, who registered the New Socialist Party in December in Banja Luka in order to “fight crime, support decentralization, and work for EU integration by 2014.”¹⁵

Citizens of BiH are not fully engaged in local electoral processes. Voter turnout at the 2008 municipal elections indicated a significant level of political apathy, especially in cities. Overall turnout at local elections in 2008 was 55 percent, with voters in major cities largely abstaining. The turnout in the capital, Sarajevo, was less than 40 percent, with a similar trend in Tuzla, Zenica, and Banja Luka.¹⁶

Democratically elected local authorities claim not to have the resources and capacity to fulfill their responsibilities, as the collection of taxes, administrative fees, and other revenues are not commensurate with a decentralized system. Analyses of local self-governance in BiH show that municipalities must widen their fiscal base in order to strengthen the quality of services provided. Yet, in 2009, transparent and predictable financial transfers from the entity and cantonal level to the municipal level remained unsecured.

Inter-ethnic relations on the local level are stable. However, some places, such as Mostar, Stolac, and Jajce, remain ethnically divided. For instance, in Mostar, the Croat majority lives in the western part of the city and the Bosniak population in the eastern part. Of the 24,000 Serbs that lived in Mostar before the war, only a handful remain.

The administration of Mostar was in the process of collapsing in 2009. The local Croat and Bosniak parties ruling the city were unable to elect a new mayor (since the elections in October 2008) due to irreconcilable positions on whether the post should be held by a Bosniak or a Croat. Consequently, city workers were not paid for months, affecting more than 500 staff in 42 city institutions; schoolrooms went without heat, firemen went on strike for 150 days, and the national theater was shuttered for lack of financing. Media reported, “The city of Mostar [is] being killed.”¹⁷

In October, the High Representative (HR), Valentin Inzko, instructed the Mostar City Council to elect a mayor by secret ballot within the next 30 days, which was in line with the Statute of the City.¹⁸ The HR stated in November that he would take the initiative in Mostar as citizens’ appeals had fallen on deaf ears. The HR extended the Decision on Temporary Financing to give the councillors time to do their job. Subsequently, the Mostar City Council elected Bosnian Croat Ljubo Bešlić (Croat Democratic Union, HDZ BiH) as mayor on December 18. This was facilitated by the HR’s decision to allow the Council to elect a mayor via a simple majority rather than the stipulated two-thirds majority, which had kept the mayoral post vacant for more than 14 months.

A decision on terminating international supervision of the Brčko District was expected by mid-November 2009. However, preparations for a celebration were halted as not all obligations from the Final Award for Brčko were respected.¹⁹ The RS failed to accept a decision by the HR and passed a plan by which it would establish jurisdiction over the transfer of electricity through the District, which was viewed as a form of serious disrespect toward the Final Award.

According to the Brčko supervisor, American diplomat Raffi Gregorian, the process of ending the supervision could continue only if and when the RS accepts its obligations in line with the Final Award, which is mandatory for all sides. The

entities did not resolve the issues of settling mutual debts, citizenship of district residents, and allocation of succession funds (though issues related to succession funds and mutual debts had initially been resolved in mid-September). The state and local entities only had the obligation to publish the High Representative's decisions in the official gazettes (concerning a set of laws imposed in September by the HR related to citizenship of district residents, electricity supply, and distribution of succession funds). The RS refused to officially publish these decisions during 2009, and in so doing, it effectively refused to implement them, thus international supervision of Brčko continued.

Judicial Framework and Independence

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 5.50 | 5.25 | 5.00 | 4.50 | 4.25 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 |

The constitutional order of BiH, as implemented, does not protect the fundamental political rights of citizens and populations not belonging to the three constituent ethnic communities defined under the Dayton Constitution; thus, to a great extent, they remain outside of government and administrative structures. In this respect, BiH is in violation of its own constitution, considering that “The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.”²⁰

The EC emphasized in its Progress Report on BiH that the enforcement of the decisions of the Human Rights Commission of the BiH Constitutional Court remained an issue in 2009. The backlog of cases concerning human rights violations persisted in 2009 with incomplete enforcement of decisions.

Extradition agreements covering war crimes remained problematic as authorities of BiH and its neighbors failed to address the regional impunity gap created by signing agreements in these cases. The Justice Ministry insisted that the implementation of the state strategy for prosecuting war crimes committed within BiH was proceeding according to plan. However, critics noted the lack of a centralized judicial database that would allow the state authorities to know how many war crimes cases went through the lower courts. A much needed central registry of war crimes has not been created despite the strategy's clear instructions for collection of data, while it was reported that the entity, cantonal, and regional prosecutions had not followed instructions on submitting data. The President of the Helsinki Committee for Human Rights in RS, Branko Todorović, warned that politicians want to slow down the process of prosecuting war crimes, as they themselves might be potential suspects. The PIC urged BiH authorities in November 2009 to speed up the implementation of the National Strategy for Dealing with War Crimes and the National Justice Sector Reform Strategy.

The state appeared to continue to develop separate jurisdictions without a Supreme Court, which would unify the country's legal system. Additionally, the

lack of a State Supreme Court has increased the burden on the Constitutional Court. Its establishment would at least help in harmonizing the different criminal and civil codes in the entities and the Brčko District, as well as provide a needed hierarchy for the country's judicial system.

Access to justice in civil and criminal trials did not improve in 2009. Rather, the justice system remained slow and the perception of the population reflected a general distrust of domestic courts. The judiciary was still not fully free of political control and influence. The problem of ill treatment of detainees continued, while the planned construction of a state-level prison was seriously delayed.

In the same period, action was taken to remove foreign judges and prosecutors from two chambers of the State Court: the War Crimes Chamber and Organized Crime Chamber. RS parliamentarians in the BiH Parliamentary Assembly blocked the Law on Courts, Law on Prosecutor, and the criminal code, which were needed to extend the mandate of the foreign judges and prosecutors in BiH. The leadership of the RS explicitly opposed any extension of these mandates, while parliamentarians from the FBiH mainly supported international staff remaining at appellate levels.

This was the most heated judicial issue in 2009, as few expected Parliament to extend the mandates of international judges and prosecutors. On December 14, the HR, invoking executive powers, extended the mandate of foreign judges and prosecutors working on war crimes cases in BiH until December 31, 2012. Additionally, HR Inzko decided that international judges and prosecutors dealing with organized crime and corruption would also remain in BiH, but only as advisors. The main Bosniak party, SDA, claimed that RS opposition to the mandate extensions was based on the fear of eventual trials against them, in particular before the Organized Crime and Corruption Section. Others, including the media, claimed that RS Prime Minister Dodik wanted to weaken the State Court and prosecutor's office to prevent his own corruption case from being tried.

Corruption

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 5.75 | 5.50 | 5.00 | 4.75 | 4.50 | 4.25 | 4.25 | 4.25 | 4.50 | 4.50 |

BiH did not achieve any significant progress in implementing anticorruption reforms in 2009. Activities in this field, according to TI BiH, were carried out without true political will or a systematic approach. Observers, including TI, reported that anticorruption activities were still uncoordinated, while prosecuting corruption in the courts remained difficult and ineffectual, since those convicted went unpunished or received probation. Still, in March 2009, the BiH State Information and Protection Agency (SIPA) filed a criminal report against RS Prime Minister Dodik and 11 RS politicians and businessmen accused of fraud costing the state budget BAM 145 million (US\$90 million).

While the RS government made some improvements in removing bureaucratic obstacles to business development, the FBiH government made no serious attempt

to do the same and preserved excessive bureaucratic regulations and registration requirements that increased opportunities for corruption.

Abuse of office and criminal allegations were frequent in BiH during 2009, but high-level cases were often left without final verdict. RS Prime Minister Dodik emphasized procedural irregularities, accusing SIPA Deputy Director Dragan Lukač of carrying out a conspiracy against him. The attacks on the state prosecutor started in April; meanwhile, the only outcome of the SIPA Report and state prosecutor's investigation was the removal of inspector Lukač from SIPA.

In the FBiH in 2009, the Bosniak daily *Avaz* published a “map” of an alleged criminal network of major figures in Bosniak politics including the owner of *Avaz*, Fahrudin Radončić; the head of the Islamic community in BiH, Reis Mustafa Cerić; and Bakir Izetbegović, son of late president Alija Izetbegović. The “map” was attributed to the OHR. While the press in Sarajevo not connected to the ruling parties saw nothing new in the “Bosniak criminal map,” Radončić and Cerić entered a campaign against the OHR and HR's principal deputy Raffi Gregorian, characterizing the situation as an “American attempt to put Bosnian Muslims in some sort of Guantánamo.”²¹

Both of the entity government-controlled development banks were accused of illegal activities. The Federation Financial Police inspected the FBiH Development Bank following a warrant served on the bank's director, Ramiz Džaferović, with no judicial outcome in 2009. The RS Investment-Development Bank (IRB) was investigated by the Center for Investigative Reporting (CIN), revealing that the IRB's largest loans were given—with personal approval from RS Prime Minister Dodik—to foreign-backed companies with offshore bank accounts and questionable assets. Many of the loans went to companies with apparent ties to Prime Minister Dodik (for example, a company run by his son Igor and a Banja Luka newspaper giving Dodik favourable coverage) or his government.

Opposition politicians were also under criminal investigation in 2009. The BiH Prosecution ordered the FBiH police to widen its probe into the attempted extortion of BAM 2.5 million (US\$1.5 million) from the director of ASA Holding, Nihad Imamović. In October, the FBiH police filed charges against Social Democratic Party of BiH (SDP) officials—Head of the Sarajevo Municipality of Novi Grad, Damir Hadžić, and his business associate, Husein Hasibović—for blackmailing prominent businessmen in BiH.

Allegations of corruption in BiH received wide coverage in the media. Yet, due to the lack of judicial outcomes, trust in public institutions continued to deteriorate. Auditing was done on a regular basis, according to international auditing standards, but there was no action taken in regard to negative audit reports. In fact, the parliamentary majority of Alliance of Independent Social Democrats, led by RS Prime Minister Dodik, voted against the report of the RS Supreme Auditor Office in 2008 and requested an external audit, provoking fierce reactions from the opposition.

In 2009, the Council of Ministers adopted laws on the anticorruption agency and an anticorruption strategy, with subsequent adoption in the BiH Parliamentary

Assembly by the end of the year. However, there were no serious indicators that these measures would be met with swift implementation.

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- ¹⁸ OHR Press Release, HR Orders Election of Mostar Mayor in Line With Statute, October 30, 2009.
- ¹⁹ The DPA provided for arbitration over the boundary line in the Brcko area between the Muslim and Croat Federation and the Republika Srpska. The Award of February 14, 1997 established an international interim supervisory regime. The Final Award of March 5, 1999 establishes a permanent self-governing Brcko District government that is independent of the two entities.
- ²⁰ Constitution of Bosnia and Herzegovina, art. 2, sec. 2.
- ²¹ Reis Mustafa Cerić, interview, *Magazin Crta*, BHTV, November 3, 2009.

