

SoD Summary

Democracy assessment in Bosnia and Herzegovina

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This is the first assessment of democracy made by the citizens of Bosnia and Herzegovina ten years after the end of the war. Despite the progress made in the establishment of peace, this assessment shows that there still much to do in order to overcome ethnic rivalry and hostility, and to consolidate legitimate and effective democratic institutions.

Key Recommendations

- Constitutional changes that strengthen the state and create a functioning system are needed.
- Unified health care, a law on higher education, and urgent actions addressing the Roma people's basic necessities are required.
- De-ethnification of political parties needs to take place.
- The involvement of international moderators needs to decrease while at the same time increasing the accountability and legitimacy of domestic institutions.
- The police forces need to undergo reform, centralization and depoliticization.
- Laws on local self-governance must be passed in order to enhance communication between citizenship and government.

Origins: Why perform a SoD assessment?

10 years after the first democratic elections held in Bosnia and Herzegovina, the assessment team considered the conditions were ripe for an SoD study. Thus, exhaustive research was performed on how the introduction of democratic institutions is actually faring, and if it is contributing to the creation of a “democratic spirit” in a deeply divided country. It is worth noting that, although there were several assessments on democracy in Bosnia and Herzegovina before, this was the first effort put forward by researchers and experts of the country itself.

The Four Pillars and the assessment

Citizenship, Law and Rights

Nationhood and citizenship

Citizenship of Bosnia and Herzegovina (BiH) is more formal than substantive, based on entity and ethnicity. Main public offices are reserved for members of the three constituent peoples (Bosniaks, Croats, and Serbs). In this sense, the prevailing Constitution and political arrangements do not create conditions for reconciliation of major divisions. The Constitution of BiH allows dual citizenship and virtually excludes the possibility of the arbitrary removal of citizenship although there have been cases of unlawful action to remove citizenship. The Constitution of BiH prescribes high levels of internationally recognized human rights and freedoms; Regulations protecting minority rights and cultures have been approved; nevertheless, the necessary compliance regulations have not been adopted. Ethnic discrimination is widespread throughout the country. Boundaries are a taboo issue, and no consensus exists on them. There is an ongoing discussion about the constitutional framework, although the Parliamentary Assembly has not considered any particular measures.

Rule of law and access to justice

BiH's legal-judicial system is made up of four components, corresponding to the legal frameworks of the BiH state; the entities (Republika Srpska; Federation BiH), and the Brcko District. Despite some centralization of law enforcement during the last years, the multi-tiered governance system complicates the implementation of the rule of law. The High Representative for Bosnia and Herzegovina (HR) is the highest executive and legislative power in BiH, which tends to undermine the authority and legitimacy of BiH officials. The powers of the High Representative, ethnic and political considerations, and financing needs tend to make courts dependent on the executive, particularly at the canton and local levels. Long waiting times, lack of redress procedures for maladministration, problems with enforcing judgments, and inappropriate detention procedures undermine the effectiveness of a fair trial and due process. Criminal prosecution has been deficient, especially in matters of war crimes. This is due mainly to a fragmented police system, and also to corruption and police protection of criminals and organizations, particularly in Republika Srpska.

Civil and political rights

The state and entity constitutions protect the right to a violence-free life, and the death penalty has been abolished¹. Instances of police abuse are decreasing, and accountability of police and the security forces is increasing. Isolated cases of political, ethnic and religious-motivated violence are periodically reported. More than 15,000 people are still registered as missing since the 1991-95 war. Displaced persons have the constitutional right to return to their pre-war homes and to retrieve the properties they were deprived of. Harsh economic conditions and lack of infrastructure pose practical restrictions for freedom of movement, in particular for returnees. Cases persist of the trafficking of women and children for prostitution, although several measures are being taken. In general, freedom of expression is respected by public officials, although threats and isolated instances of violence against journalists and the media have been reported. Freedom of religion and equality of churches and religious communities are guaranteed. Freedom of language and culture are

¹ There is still legal provision for death penalty in the Constitution of Republika Srpska (RS) but no practical provision in the criminal legislation of RS.

guaranteed both for constituent peoples as for minorities; notwithstanding, regulations favouring the latter are not properly enforced.

Economic and social rights

Access to work and social security without discrimination are enshrined by the Constitutions. Nevertheless, there are considerably fewer jobs than in 1991 and unemployment is a chronic problem, and almost half of the population lives on the verge of poverty. Privatisation of state-run companies was intended as solution, but the process has been slow and has not yielded expected results; moreover, privatised companies incur in several irregularities regarding labour and insurance rights. Despite regulations on matters of corporate governance and policy transparency, employees are vulnerable in cases of bankruptcy, and consumer protection is ineffective. The right to work tends to be exclusive for the ethnic majority of a given territory, while displaced peoples are not returning to their pre-war properties. Black market and the informal sector expand continuously in BiH. Violations of retirement and pension rights are widespread. Despite favourable regulations, unions have little effective power vis-à-vis employers. State capacities to provide adequate basic services are undermined by lack of financial and organizational resources. The right to health care is guaranteed by the entities; yet, about 26% of the population is not covered by health insurance, and public infrastructure is not satisfactory to deal with war-related demands. The health situation is critical for the Roma people. There is free and compulsory primary and secondary education, making coverage virtually universal; yet this does not apply to Roma children. The curriculum must promote and protect religious freedom, tolerance and culture of dialogue: yet, some minorities face problems with curricula and language.

Representative and Accountable Government

Free and fair elections

The legislative authority in BiH is a representative parliamentary assembly, composed of a directly elected lower chamber and an indirectly composed upper chamber. The executive arms of authority in BiH are represented by the 3 member Presidency, elected through direct vote and representing the constituent peoples, and the Council of Ministers. The entities have their respective governments, resembling the BiH model. Voter registration is voluntary; its procedures are widely inclusive, allowing for registration in pre-war places of residence and abroad. Voter rolls are not permanent, and voters must register before every election. Procedures for registration of candidates are overall equal and fair. There are clear provisions and requirements to deal with conflict interest, although the accuracy of income information provided by candidates is not audited. All political parties have equal access to the media, although the media usually take sides during elections. and Civic education on voting occurs systematically. Voting is voluntary. *Voter turnout* has continuously decreased, but election results are generally accepted by the authorities and the population. The electoral law establishes a 30% *gender quota*, but it is not respected. Moreover, the composition of the legislature does not represent the social composition of the population.

Democratic role of political parties

Functioning and financing of political parties and campaigns are heavily *regulated*. The rules establishing parties are fairly simple and pose almost no restrictions. Party and campaign financing are publicly funded, and parties may also profit from real estate or culture-related businesses. Financial balance reports must be submitted regularly for scrutiny. Breaches of funding regulations are common, though, and since the end of the war they have been punished through prohibitions and the disqualification of candidates by the authorities. The fragmented, ethnic-based multi-party system has allowed wide representation of interests and ethnicities, but hindered government formation and effective policy making.. This is reinforced by consensual or special quorum decision making rules; thus, laws are frequently adopted due to the High Representative's mediation. Opposition, smaller and non-governing parties are free to organize within the legislature, although they do face budget constraints and limited access to media. Party discipline is not strict, and

regulations give room for frequent floor crossing and seat trading. In general, party membership is effective and participative.

Government effectiveness and accountability

BiH has an oversized, ethnically defined, inefficient state apparatus, which consumes 55% of the country's GDP, lacks the capacity to prepare and enact laws, and enforce them. Parliaments have exclusive control over the discussion and approval of laws, while proposals may come from the Executive and Legislative powers, or from citizens; yet, parliamentary practices have oscillated between incidents and paralysis. In this sense, the Office of the High Representative (OHR) has been central to push forward critical legislation, albeit lacking transparency and accountability. During the last few years, several reforms have increased the capability at the central level, and efforts to professionalize the civil service, separate political and technical functions, and improve legislative and policy development have been made. Absence of reliable information and statistics is a major problem, though. Lack of regulation and procedures make accountability of ministers and members of the Executive a complicated matter, leading to politicization of the civil service. The taxation system is complex, decentralized, and disorganised, and the preparation of the budget requires long negotiations between political forces and ethnic representatives; yet, during the last few years, reforms have allowed increasing centralization and effectiveness in the recollection and allocation of public funds. Freedom of access to information is enshrined in law and is implemented mainly at the state and entity levels; lack of preparation and a culture of secrecy have hindered it at the canton and municipal level. Public confidence in government, leaders, and public institutions is very low, mainly due to the perception of widespread corruption, together with lack of public accountability and effectiveness.

Civilian control of the military and police

After 2003, the armies of Federation BiH and Republika Srpska were put under the control of the state. The Constitution and laws ensure civilian and democratic control of the military, and members of the armed forces are not allowed to engage in political activity. While these laws and provisions are effective, there have been occasional ethnic and separatist manifestations. Security agencies have also been unified. State-level police forces have had to coexist and compete with highly politicized entities and canton level forces; however, during the last few years reforms have been successfully implemented in order to create a state-level unified police structure. Each component of the armed forces (Federation, Republika), as well as the entity-level police forces, is mainly monoethnic, and a majority of the personnel comes from working class families. In all the forces, women are underrepresented. Paramilitary or private armies are virtually non-existent; yet, weapons possession is still very high. There are international mafias operating within the territory, dealing mostly with the traffic of women and children, vehicles and drugs; however, the consolidation of the security services and the work of the Prosecutor's Office have allowed the crime situation to improve.

Minimizing corruption

Funding and approach

The entire research process lasted a year and it involved 14 researchers and over two hundred local experts. Instead of performing the 14 sections in a single go, the assessment team undertook each section at a time.

The researchers then commissioned the independent social research organization Prism Research to put together an expert panel, which included academics, public officials, representatives of civil society, NGO's, and the media. This panel was in charge of evaluating the assessment, and assigning grades to every pillar and indicator. The answers and assessments provided by them were scaled from 1 (very low) to 5 (very high), and a final graph with numerical scores is provided. The experts also suggested a set of recommendations for every aspect.

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Separation between public office and party or personal interests is, in general, effective. Public officers have to declare their financial situation; yet, ministerial advisors do not and there are no clear procedures for their appointment. High ranking officials suspected of involvement in bribery are usually not removed from the public service, despite efforts at reform and institution-building. Political parties are seen as the most corrupt institutions in society, and their influence reaches every economic aspect of society. Privatisation has been rather slow, and politicians have major influence on public companies. As a matter of fact, regulations on public companies and procurement procedures are fairly recent. Freedom of access to information is guaranteed by law, and reports issued by auditing institutions are public and easily accessible. There is widespread lack of confidence in the transparency of the public service, and lack of preparation of public officials and bureaucrats undermines the satisfactory implementation of transparency provisions.

Civil Society and Popular Participation

The media in a democratic society

Broadcasting, electronic media, and media property are regulated, and the *CRA* oversees compliance with these regulations. There is an autonomous public broadcasting system composed of one state and two entity-level broadcasters, each of which enjoy budget independence; however, this budget is not sufficient to support the broadcasting system and political elites try to boycott the existing financing mechanisms. There are no legal restrictions on access to the media and these must allow expression of all ethnicities, cultures, and religions present in BiH; there are technical limitations to this, however, as printed press coverage depends on economic and ethnic factors, and Internet coverage is very small. Women are underrepresented, while some minorities, in particular the Roma people, are usually presented in connection with criminality. The media provides every political party and candidate with equal space and access to coverage, although there is a tendency towards partiality and to focus more on scandals and individual politicians than on actual debate. There are limitations to the access to public information, and fear of assaults and violence, media is moderately effective in investigating government and corporate activities. Moreover, journalists are highly exposed to pressure from media owners. There is frequent harassment of individual citizens, particularly by the printed media.

Political participation

Half of the population is member of a civil society organization, and there are few limits to their establishment. There are no accurate registers of NGO's, voluntary and citizen organizations and no clear legal distinction between these has been established. These organizations are allowed to engage in economic activities related to their declared goals, and there are no rules regarding tax obligations and exemptions: this creates accountability problems, particularly when their revenues account for nearly 4,5% of GDP. Several NGO's and civil associations were created with humanitarian and charity goals, specially during the outburst of the war, and children, youth and minority groups are key areas of NGO activities. The appearance of alternative political and social views is linked to the workings of NGO's and citizen associations, and they have a crucial role in matters of accountability, access to public officials, and the transparency of elections. International assistance has been funnelled mostly through NGO's; yet, fund allocation has usually advantaged multi-cultural human rights advocacy groups, at expense of other relevant groups and interests. NGO's have developed more into operating branches of international organizations than as civil society articulations. On the other hand, government funding tends to be conditioned by ideological and political "suitability" of beneficiary NGO's. A legal framework against gender discrimination has been developed and several affirmative action policies have been adopted; however, women's participation in public office is marginal. Youth, and ethnic and sexual minorities access to public office is also very limited.

Government responsiveness

Public hearings and referenda are envisaged in the legal framework; yet, citizens have few opportunities to present opinions and views, and seem to prefer strikes and other sorts of protests as more effective. Instances of communication between citizenship and elected representatives have not been institutionalized, mainly due to insufficient regulations, lack of appropriate infrastructure of representative bodies, and an underdeveloped culture of participation. NGO's and civil society organizations have had a very important role in establishing information and communication channels, particularly through the development of poverty reduction and development strategies, and by auditing governmental activities. The establishment of the Economic and Social Council at the state level, which includes trade unions, employers and the Council of Ministers, is also taken as a remedy for the scant levels of communication. There is widespread dissatisfaction with the quality of services and treatment provided by public officials, and less than 50% of the population expresses confidence in government institutions, mainly due to lack of communication, nepotism in recruitment processes, and arbitrary discrimination in the provision of services.

Decentralization

BiH is established as a state with a complex decentralized structure, composed of several layers: the central state, with limited responsibilities and powers; the entities, of which Republika Srpska has high levels of responsibility and wide powers; cantons (in Federation BiH), with a strong position and few responsibilities; the Brcko district, and the municipalities, which have a weak position, overburdened with responsibilities and without adequate sources of power and funding. The tendency during the last years has been to strengthen centralisation of several public services at the entity or cantonal levels, but keeping municipalities as main service providers. Free and fair elections determine the composition of the different government layers, allowing for accountability of elected officials. Public competition is now used to supply for municipal public officers, and some municipalities are reforming themselves to increase effectiveness in their delivery. Citizenship and organized groups have almost no role to play in policy making, in spite of favourable legal frameworks for self-governance.

Democracy beyond the State:

International dimensions of democracy

The governance of BiH is totally dependent on the international community. The OHR is vested with maximum authority in order to implement the provisions contained in the Dayton Peace Agreement. The Constitution of BiH is designed as a peace agreement and as a solution to accommodate the three constituent peoples at the expense of effectiveness. The lack of functioning state institutions has required active and continuous intervention of the OHR and other international agencies, becoming a vicious cycle. The level of subordination to foreign organizations is not related to the indebtedness, as the external debt/GDP ratio is approximately 30%, smaller than in other Eastern European countries; the dependence has more to do deficient reconstruction policies. Government relations with international organizations are based neither on transparency nor partnership, but on the "take it or leave it" principle. BiH has ratified several international conventions and international treaties, although it is lagging in the implementation of some, in particular those related to the start of negotiations on a Stabilisation and Association Agreement with the European Union. There is no specialised institution capable of dealing effectively with asylum seekers, and there are disparities between the regulations and the actual treatment of refugees. BiH respects its commitments to democracy and human rights abroad, and has provided civilian and military support for several UN missions, including Haiti, Liberia and Congo.

Links

Full report:

http://www.soros.org.ba/images_vijesti/Istrazivanje%20demokratije/eng/01_democracy_assessment_in_bh.pdf

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