

USAID / DEMOCRACY OFFICE
SARAJEVO

**Analysis on Local Governance Legal Jurisdiction and Practice
in Bosnia and Herzegovina**

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August 28, 2000

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Executive Summary

Introduction

From April to June 2000, USAID conducted a research project on Local Governance Jurisdiction and Practice in Bosnia and Herzegovina (BiH). The purpose of this analysis is to improve the Mission's understanding of local governance structures in BiH, the differing layers of jurisdiction, and how effectively these structures operate on the ground. This analysis lays the foundation for the design of a future USAID program that seeks to improve the functioning of local governance in BiH by meeting needs that are not otherwise met through other international assistance programs.

In April 2000, USAID analyzed all relevant legal texts including among others Constitutions at the State, Entity and Cantonal levels, laws of local self governance, revenue allocation laws and relevant international reports (see attached bibliography for comprehensive list of examined documents). In order to analyze the extent to which the legal framework translates in practice on the ground, extensive fieldwork was conducted between May 15 to 31, 2000. Site visits to 29 separate local governments were conducted, which included meetings with Mayors, Cantonal Governors, Municipal Councilors, members of Bosnian civil society, and the international community.

Conclusions

A. General

- Enforcement and monitoring of the implementation of decisions made by local authorities in some areas (i.e. construction, inspection, labor market, local business, etc.) is inadequate.
- There is inadequate interaction between citizens and their local governments in terms of monitoring, advocacy and simple communication.
- Government employees lack adequate training and skills to ensure proper functioning of local government.
- Municipalities are given many mandates for things but not the necessary funds transfer or ability to raise revenues to fulfill them adequately. Consideration for balancing of those two elements was not adequately addressed in the preparation and passing of specific laws.
- Mayors enjoy an overwhelming amount of authority and power within the Municipality, beyond that intended for the position, resulting in overshadowing others who should be involved in Municipal governance activities.
- Citizens need to better understand the structure and responsibilities of local government.

B. Local Government in the Federation

- Local authorities are not fully aware of their roles and responsibilities because they lack sufficient information on the new and amended laws affecting the regulatory environment within which local government must operate.
- In practice Cantonal legislative and executive institutions are the primary units of local governance in the Federation. They maintain centralized and concentrated power and

use Municipalities as mere instruments to advance Cantonal policy rather than empowering them in their policy-making and budgetary oversight role.

- There is no systematic difference between responsibilities taken by Cantons with Croat majority and Cantons with Bosniak majority and those with special regime of governance.
- A significant percentage (about 60%) of Municipal revenues come from higher governmental levels.
- Relationships between Cantons and Municipalities are unclear.
- Local governments are not influential in decision making at higher levels of Government.
- Ad hoc planning and decision-making in many municipalities has resulted in irrational development not tailored to the long-term development needs of the community.
- Local government authorities with whom USAID consulted expressed the need for increased technical assistance related to public finance, particularly regarding the changes in fiscal management practice that will result from the abolition of the Payment Bureaus and introduction of international public finance standards and methodologies, as well as the establishment of regional treasuries

B. Local Government in the RS

- Unlike in the Federation, Municipal officials in the RS have received limited technical assistance in financial management and public administration.
- There is a wide diversity of laws that affect local governance in the RS, which impedes the effective Municipal government functioning.
- The lower level of economic development in many Municipalities of the RS (particularly in the Eastern RS except Bijeljina) results in lack of basic service delivery, which exacerbates the already poor governance capacity in the area.
- Legal representation of Municipalities is inadequate.
- According to local officials interviewed, the Entity Government in the RS does not practice favoritism or discriminatory treatment, but needs improvement in its overall transparency and accountability.
- Political infighting among competing parties often leads to ineffective Municipal operations or even political deadlock.
- Municipalities have neither authority nor responsibility over police forces and local officials complain about Entity's inability to secure public peace and order at the local level.
- Municipal officials in Western RS noted that the RS Entity government often does not fulfill its own responsibilities as defined by law, and instead pressures Municipal governments to meet these needs without providing the proper resources (i.e. payment of overhead costs for hospitals, schools, etc.).
- Uniform co-financing of certain activities, such as secondary education, is overly burdensome for poorer municipalities.
- Municipal officials would like the Entity to improve the efficiency of its tax collection, particularly for those revenues that will later be shared with the Municipality.

Introduction

A. *Background and Purpose*

USAID in BiH is considering the possibility of designing and funding a local governance assistance project. Such a project would provide assistance to local governments in both the Federation and the RS. This assistance would be a critical component of USAID's overall Democracy Office strategy to promote democratic institutions and practices at the local level throughout BiH and ensure on-going sustainability following USAID's departure.

Governing institutions in BiH are undergoing a transition from single party dominance to more democratic practices. Critical in this process are Municipal and Cantonal institutions which govern closest to the average citizens. Their work tends to be most scrutinized by the citizenry, but also most directly connected to meeting urgent community needs and providing critical services. Without transparent and accountable local governing structures and authorities that are trained to perform their role in a democratic society, citizens will have no satisfaction with the government response to their needs.

From the political perspective, the most recent Municipal elections showed positive gains for moderate, pro-Dayton forces. Even in the RS where the SDS won in most municipalities, moderate parties such as the SNSD uniformly increased their gains and made important in-roads in municipalities where support was previously absent.

With the political environment more propitious for increased work in local governance, USAID undertook this research as a first step toward moving into a new programming area of democracy assistance. This research is meant to provide increased information about local governance jurisdiction in BiH as per the legal framework, as well as provide some insight into concrete governance practices on the ground.

B. *Approach*

The analysis in this report is the result of a process involving the following phases:

1. Collection of information on the existing legal framework;
2. Selection of sample local governments based on pre-defined criteria;
3. Collection of information on governance practices through various interview techniques;
4. Analysis of all collected information;
5. Development of principle findings.

Legal Framework in BiH

The Dayton Agreement structured BiH as the union of two entities, the Federation of BiH and the RS. It also provided for the legal framework underlying the principle governmental, legislative and judicial institutions of the Federation and RS.

There is also one special unit of local self-governance in BiH, the District of Brcko.

A. *Federation of BiH*

1. Governing Structures

There are four levels of government in the Federation. These include the Federation itself, Canton, Municipality and City.

The Federation consists of ten Cantons. Five Cantons contain a majority Bosniak population (Una-Sana, Tuzla, Gorazde, Zenica-Doboj and Sarajevo), three have a majority Croat population (West-Herzegovina, Canton 10 and Posavina Canton) and two have a “special regime” where there is no clear majority (Middle-Bosnia and Herzegovina-Neretva Canton). According to OSCE data there are 84 municipalities in the Federation and two cities (Sarajevo and Mostar). In the Federation a City consists of two or more municipalities but is a separate level of governance.

2. General Legal Framework

The basic legal framework for local governance in the Federation is set by the Constitution of the Federation of BiH. It assigns several functions to the Federation Government, which includes:

- Conducting foreign affairs
- Organizing and conducting defense of the Federation
- Citizenship
- Making economic policy, including planning and reconstruction and land use policy on the federal level
- Regulating commerce
- Regulating finance and financial institutions
- Combating international and inter –Cantonal crimes and cooperating with Interpol
- Allocating electronic frequencies
- Making energy policy and providing and maintaining related infrastructure

Responsibilities to be shared by the Federation and Cantonal governments are the following:

- Ensuring and enforcing human rights
- Health
- Environmental policy
- Infrastructure for communications and transport
- Social welfare policy
- Implementing laws and regulations concerning citizenship
- Immigration asylum
- Tourism and use of natural resources

Responsibilities specifically listed in the Federation Constitution as being assigned to the Cantonal governments include the following:

- Establishing and controlling police forces
- Education policy
- Cultural policy
- Housing policy
- Regulation and provision of public services
- Regulating local land use

- Regulating and promoting local energy production facilities
- Radio and television facilities
- Social welfare policy and services
- Cantonal tourism policy and developing resources

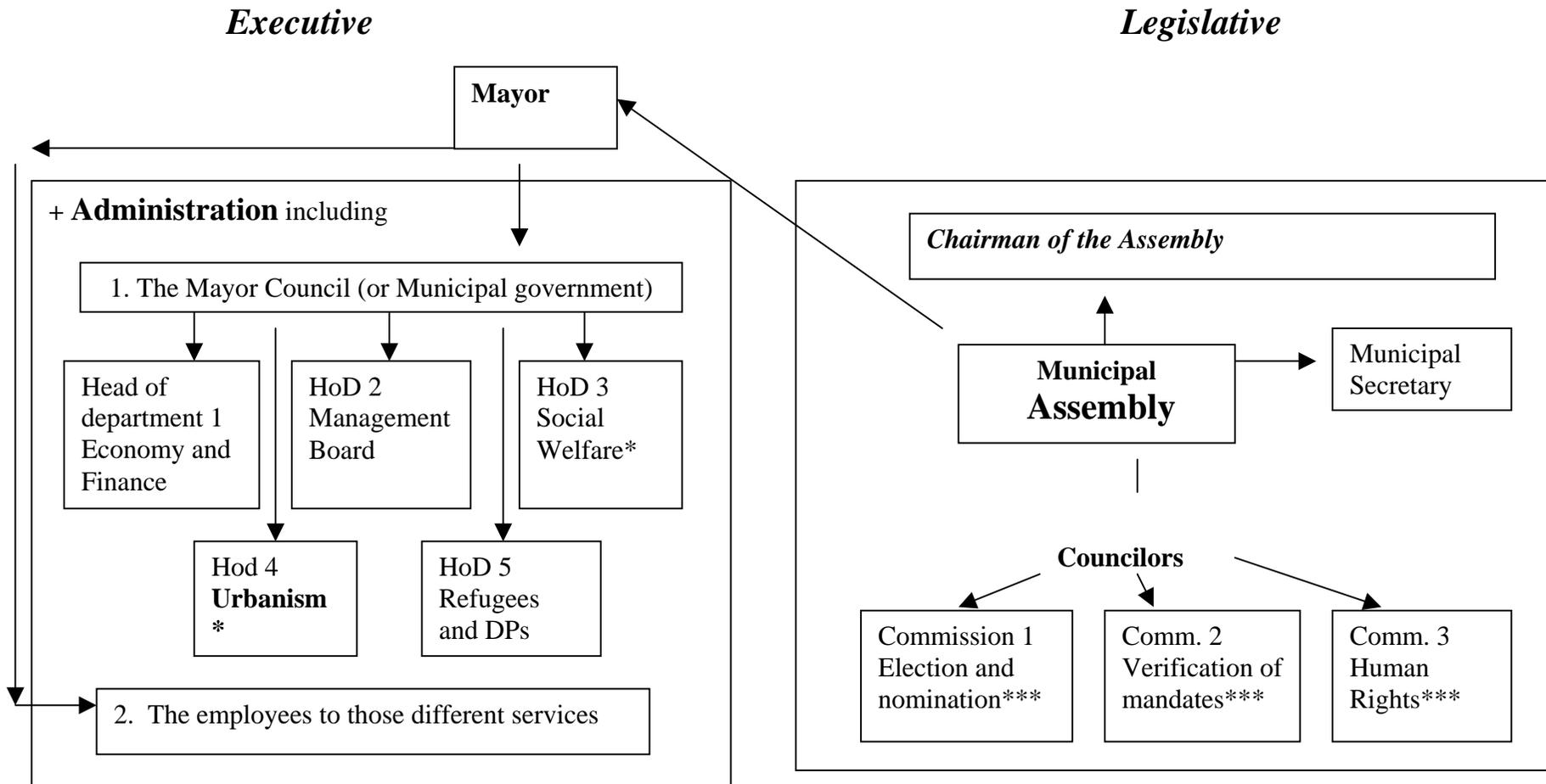
Each Canton also promulgated their own Constitution, in accordance with that of the Federation, which further define the legal jurisdiction of the Canton. It also defines structure, authorities and responsibilities of Cantonal, Municipal and City judicial, executive and legislative institutions.

Eight out of 10 Cantons developed laws on local self-governance based upon specific articles found within the Cantonal Constitutions and the Federation Constitution. Laws on local self-governance regulate the legal status of the Federation Municipalities and the Cities as units of decentralized governance, their internal bodies, property and Municipal financing as well as other issues of importance. In addition, these laws provide for a relatively clear scope of work of the Municipalities and the Cities, which foresee a direct role of citizens to participate in the decision-making processes.

In addition, Municipalities and Cities in the Federation developed Statutes that are also in accordance with the Federation and Cantonal Constitutions. Statutes provide for additional information on the functioning of the Municipality.

Based on the above noted texts, a schematic drawing of Local Government organization in the Federation is shown below under Chart A.

Chart A: Municipal Organization: The Federation of BiH and Republic of Srpska¹



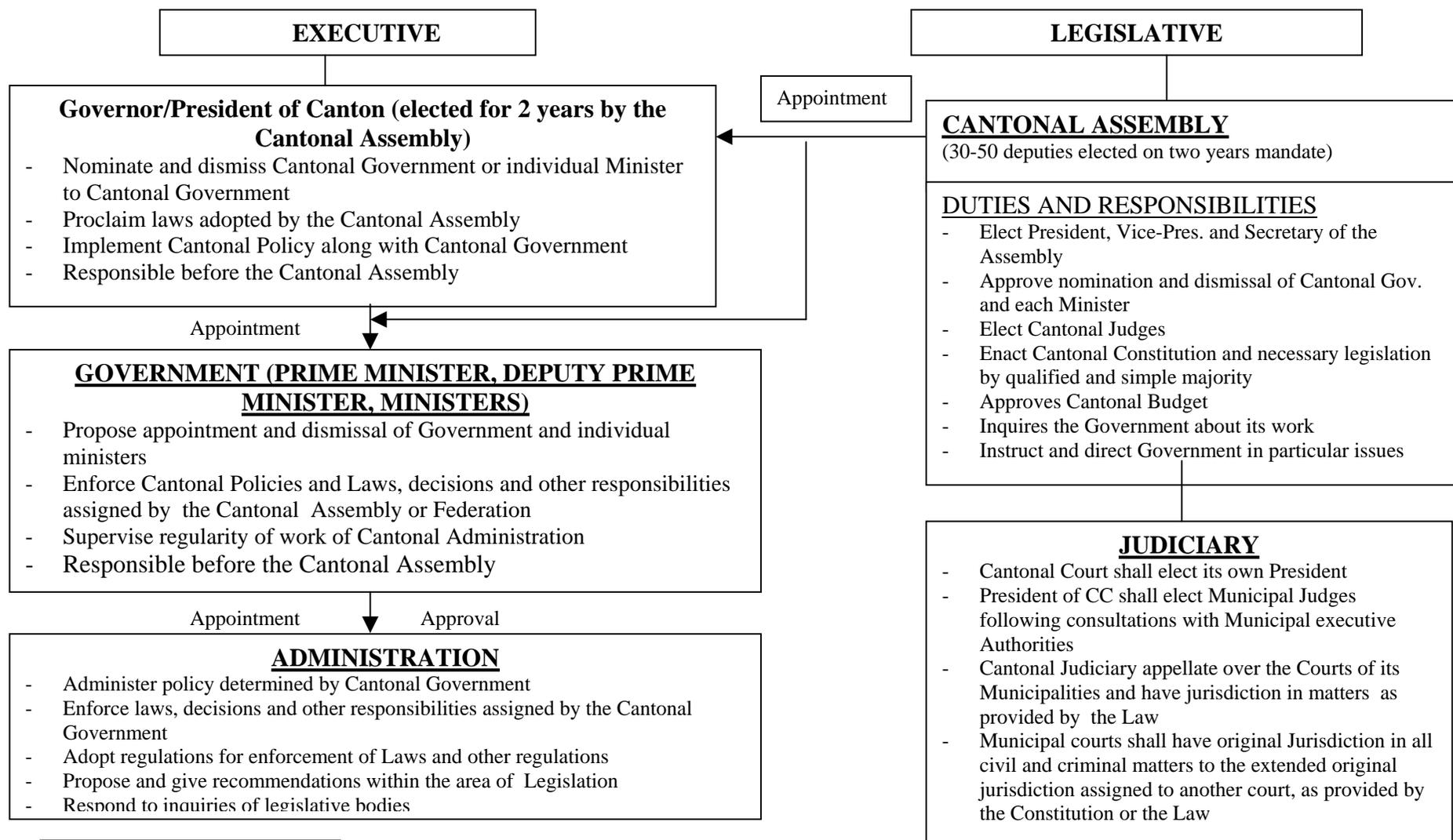
*The names and number of department are specifies in the Municipal statutes and detailed in the systematization plan

**The entire staffing of the Municipality must reflect the pre-war ('91 census) population structure

***The names, number and composition of the assembly commissions are specified in the rules of procedures of the Municipal assembly

¹ Source: OSCE Implementation Office Sarajevo

STRUCTURE OF CANTONAL AUTHORITIES ²



² Source: OSCE Implementation Office Sarajevo

3. Municipal Jurisdiction

Responsibilities of municipalities are in principle set by the Cantonal Constitutions and laws on local self-governance. However, at the time during which this research was conducted, Posavina and Herzegovina-Neretva Cantons had not yet adopted laws on local self-governance. Municipalities in these two Cantons operate based on modified Municipal statutes.

From a jurisdictional perspective, municipalities in both Bosniak and Croat majority Cantons are empowered with basically the same responsibilities. When one examines the Cantonal Constitutions, laws on local self-government and various Municipal statutes there is no systematic difference in responsibilities between municipalities in Cantons with a Bosniak majority and municipalities in Cantons with Croat majority or Cantons with special regime.

Municipal governance is basically the same in both Bosniak and Croat majority Cantons. Any differences mostly depend on global policy and development in the Canton, and economic factors and geographic position.

A comparative chart of Municipal jurisdiction by Canton is shown in Table C. In general, however, Cantonal legislatures have devolved the following authority to the Municipal level:

- Protection of human rights and fundamental freedoms, in accordance with the Federation Constitution
- Child care, education, work and employment, social insurance, culture, sports, protection of animals and plants
- Urban-housing policy of Municipal importance
- Management of Municipal property
- Public utilities and other services, as well as the local infrastructure
- Local radio and TV stations
- Management and promotion of Municipal tourism
- Zoning and construction land to be in accordance with law
- Ensure public order, security and peace
- Protection of hygiene and health
- Maintain public records (i.e., birth, deaths and marriage certificates, voter registers etc.)
- Maintain census of DP's, refugees and evicted persons
- Establish budget and regulate taxes not covered at other levels of government
- Measurements and real estate cadaster
- Promotion of local business
- Administer humanitarian activities
- Take care of the organization of settlements
- Create public enterprises, institutions and other legal entities to satisfy economic and social interests of the population
- Fire protection
- Mitigation of natural disasters
- Management of housing reconstruction, in coordination with Canton and Federation, in support of repatriation of DPs and refugees

There are currently only two Cities in BiH, Sarajevo and Mostar. Federation Cities have the following jurisdiction:

- Public transportation
- Common infrastructure
- Urban planning, finance and taxation policy
- Other tasks transferred from Cantons or the Federation

In addition to the above, the City of Mostar also has jurisdiction over the following:

- Economic policy unless otherwise regulated by Federation or Cantonal legislation
- Mostar airport

4. Judiciary

The Law on Judicial and Public Attorney Function in the Federation of BiH, prepared by OHR, regulates all aspects of judiciary system. Cantons need to develop laws and regulations in accordance with this law. Cantons also have full jurisdiction over the judiciary at all local levels including financing, salary payments, etc. Municipalities can provide non-binding opinions on the selection of Municipal court judges. The Minor Offense Court is a mainly administrative court that is part of the Municipal administration.

5. Legislative Authority

Municipal Councils in both the Federation and RS are legislative bodies at the Municipal level. Councilors are elected for four-year periods, with the next election due in October 2004.

In theory, the legislative process is fairly straightforward. First, a policy idea can be initiated by the mayor, government officials, Municipal councilors, citizens' organizations, and local communities. Second, the Mayor drafts a bill in co-operation with his government and technical experts and commissions. The bill can be put before the public for continued consultation and debate. Third, the Mayor or his government submits the bill to the Municipal Council. Finally, the Council discusses the draft bill and rejects or adopts it.

Municipal Councils are required to:

- Prepare and adopt the Municipal Statute by a two-thirds vote
- Establish and interpret decisions and other regulations
- Establish the rules of procedure
- Select and replace the President, Secretary of the Council and the Mayor and members of the working bodies of the Municipal Council
- Establish the budget, report on budgetary spending, and adopt annual financial report
- Establish development programs
- Regulate Municipal revenues
- Establish public enterprises and manage institutions for discharge of economic and social activities of Municipal interest
- Call for referenda
- Raise public loans, public contributions and Municipal credit
- Establish and regulate administrative offices
- Identify and change names of neighborhoods, streets, squares, bridges etc.
- Carry out other tasks under the law and Municipal Statute

6. Executive Authority

Executive authority resides with the Mayor of a Municipality or City. The Mayor reports to the Municipal Council on annual basis or frequently at council's request.

According to law on local self-governance and Municipal statutes, the Mayor has the following powers:

- Implement Municipal policy, enforce Municipal laws, and discharge tasks transferred to Municipality from the Canton and Federation
- Appoint and replace as needed Municipal officers and support staff
- Ensure cooperation between Municipal officers and ombudsmen
- Report to the Municipal Council and public
- Inform the Cantonal Assembly and/or the competent Cantonal authorities about implementation of policies, laws and international agreements delegated to the Municipality
- Establish committees to execute decisions and proposes solutions for problems within Municipal jurisdiction
- Supervise Municipal departments and performs other duties as established by the Statute and other relevant Municipal regulations
- Mayor reports to Canton on all tasks transferred to Municipality from Cantonal government

B. Republika Srpska

1. Governing Structures

The Republika Srpska (RS) has three governing levels: the Republic itself, the Municipality and the City. There are currently 62 municipalities in the RS. Unlike in the Federation, Cities in RS are nearly equivalent to municipalities.

2. General Legal Framework

The RS Constitution defines the legal status, authorities and responsibilities of Municipalities and Cities. Unlike in the Federation, governing jurisdiction in the RS is very centralized, with the bulk of authority remaining within the purview of the Entity.

According to the RS Constitution the Entity is responsible for the following:

- Upholding the integrity, constitutional order and territorial unity of the RS
- Defense and security
- Declarations of a state of emergency
- Constitutionality and legality
- Property, legal status of enterprises, organizations and associations and chambers
- International economic relations not otherwise transferred to institutions of BiH
- Banking and taxation
- Economic, scientific, technological, demographic and social development
- Development of agriculture and zoning
- Organization of work of Entity bodies

- Public services
- Labor relations and safety standards, employment, social insurance and care
- Health care
- Soldiers and invalid protection
- Youth care
- Education
- Cultural promotion
- Environmental protection
- Public information

The Law on Local Self-Governance in the RS serves as the primary regulatory framework for Municipalities and Cities. This includes the manner of and conditions for their establishment and funding and the relationships between the local and Entity-level institutions. The Law also has certain provisions describing ways in which citizens may become directly involved in local governance such as involvement in referenda, public hearings, rallies, etc.

Municipal Statutes are in accordance with the RS Constitution and the Law on Local Self-Governance.

3. Municipal Jurisdiction

According to the Law on Local Self-Governance, RS Municipalities have the following jurisdiction:

- Enactment of a development program
- Urban planning
- Annual budget and balance sheet
- Oversight of urban construction sites and business premises
- Oversight of local infrastructure and other public Municipal facilities
- Culture, education, health and social welfare, public information, handicrafts, tourist trade and catering services, environment protection and other areas
- Execution of laws and other regulations entrusted to the Municipality
- Establish and regulate agencies, organizations and services to meet the needs of the Municipality
- Other Municipal business established by the Constitution, the Law and Statute of the Municipality

City and Municipal Statutes supplement the above responsibilities with the following:

- Primary health care of people and animals
- Humanitarian and social assistance
- Development of culture, sports and maintenance of sports facilities
- providing material preconditions for pre-school and high school education
- ensuring work of local media
- Environmental protection

Scheme of Municipal organization in RS, by OSCE decision, is to be the same as in the Federation.

4. Judiciary

The judiciary is the full responsibility of the Entity. However, a Minor Offense Court is funded through the Municipal budget. This is an administrative rather than a judicial body.

5. Legislative Authority

Legislative power resides within the Municipal or City Council. According to law on local self-governance, Councils are responsible for the following:

- Municipal Statute and other general acts
- Local economic development plans and investment promotion
- Annual budget and financial statement
- Physical and urban planning programs
- Control of public revenue when authorized to do so under the law
- City construction land arrangement program
- Names streets, squares, parts of inhabited places, and declare Municipal holidays etc.
- Decide Municipality's membership in associations, unions and other organizations
- Plan for use of public areas
- Appoint Mayor, Speaker and other leadership positions
- Municipal loans
- Adopt Mayor's annual report
- Establish public and communal enterprises and institutions
- Float public loans and voluntary contributions
- Convene referendums
- Provide opinions on changes to Municipal boundaries
- Perform other activities as specified in the Constitution, law and its Statute

6. Executive Authority

Mayor of the Municipality or City is a combination of representing and executive function. Mayors in the RS are responsible for the following:

- Submitting the Municipal Statute to the Municipal Council
- Informing the Council about all important issues related to the Municipality
- Implementing Municipal policy
- Establishing and regulating Municipal administration bodies
- Appointing and dismissing officials holding special authorization
- Establishing cooperation with other Municipalities, Cities and international organizations
- Approving statutes of enterprises and institutions founded by the Municipality
- Informing the Minister of Management and Local Self-Governance by 31 March of the present year on the work of the Municipal executive and legislative bodies
- Submitting a draft Municipal budget for verification by the Minister in charge of local administration if the Municipality is using additional resources from the budget of the Entity
- Concluding contracts on behalf of the Municipality
- Making second-instance decisions on appealed first-instance decisions by the Municipal administration, unless those fall under the jurisdiction of a republic body

- Performing other activities as proscribed by the law, the Statute and the MC Rules of Procedure

The legislative process in the RS is the same as in the Federation.

Inter-governmental Financial Relationships

A. Federation

1. Revenue Assignments

The Entity is responsible for establishing tax policy and administering and collecting taxes. The allocation of this revenue is governed by an Allocation Law, promulgated in 1996, entitled, “The Law Regarding the Allocation of Public Revenue in the Federation of Bosnia and Herzegovina.” Under this law the Entity is assigned responsibility in collecting customs duties and special excise taxes. Cantons, on the other hand, were assigned authority for collecting revenues from sales (turnover), wage and corporate profit taxes. Municipalities’ roles in raising revenues were to be subject to determination by the Cantons. Following Entity guidance, most Cantons allocate 20% of sales and wage tax revenue to the Municipalities in which they are collected. Some Cantons have institutionalized this arrangement through passage of Cantonal legislation, while others allocate revenue to the Municipalities as part of the annual budget process. There is variation in the exact amounts /or percentages assigned to municipalities. For example, the West Herzegovina and Canton 10 Cantons assign relatively higher percentage of total revenues to their municipalities.

A comparative chart of revenue assignments by Canton is displayed in Table B.

2. Expenditure Assignments

The “Federation Allocation Law” also addressed the question of expenditure assignments, albeit with some greater ambiguity. The Entity is assigned expenditure responsibility for all Federation institutions and ministries, including “institutions and bureaus which are of significance for the Federation in the areas of health, education, social care, science, culture and sport.”

The Cantons were assigned responsibility for Cantonal institutions, health care, education, culture, social needs, and “other needs determined by the Canton authority.” Expenditure responsibilities of Municipalities are subject to determination by the Cantons. In general, Municipalities are responsible for Municipal infrastructure, utilities, business licensing and regulation, pre-school and child care, fire protection, and social assistance. Police functions are lodged at the Cantonal rather than Municipal level.

Table C contains additional information about the assignment of expenditure responsibilities between Cantons and Municipalities in the Federation.

Table B: Comparative Revenue assignments to Municipalities in the Federation of BiH by Cantons

(necessary data taken from the Memo of U.S. Department of the Treasury, Office for Technical Assistance in BiH, prepared for Members of International Advisory Group, March 2000)

<i>Revenue Assignments</i>	<i>Una Sana</i>	<i>Posavina</i>	<i>Tuzla-Podrinje¹</i>	<i>Zenica-Doboj</i>	<i>Gorazde²</i>	<i>Middle Bosnia</i>	<i>Neretva</i>	<i>West Hercegovina</i>	<i>Sarajevo³</i>	<i>Herceg-Bosna⁴</i>
Turnover taxes on specific services and domestic products	20%	20%			20%		40%	25%	20%	25%
Turnover taxes on services, goods & domestic products	20%	20%			20%		40%	25%	20%	25%
Turnover taxes except items subject to Tariff No. 1			20%	30%		20%				
Payroll tax	20%	50%	20%	20%	20%	20%	40%	50%	20%	40%
Profit tax	50%	30%		100%	50%	100%	50%	20%		20%
Citizen tax	100%	50%	100%	100%			50%	50%		
Real Estate and proprietary rights turnover tax	100%	50%		100%		95%	50%	50%	30%	70%
Property tax		50%				80%				
Lottery and gambling taxes	100%	50%		100%		80%	50%			100%
Agriculture profit taxes	100%			100%		80%			70%	100%
Advertisements and external sign taxes		100%								100%
Catering business taxes						80%	50%			100%
Capital transfer tax		50%				50%				
Tax on copyright, patent and technical improvements income	100%	50%		100%		80%	50%			
Other Cantonal and miscellaneous taxes	100%				50%	100%				100%

Table C: Comparative Schedule of Responsibility Assignments to Municipalities by the Federation Cantons

	Municipality Authority/Responsibility	Una-Sana	Zenica-Doboj	Tuzla	Sarajevo	Gorazde	Canton10	Posavina	West-Herzegovina	Middle-Bosnia	Neretva Herzegovina
	1	2	3	4	5	6	7	8	9	10	11
1	Protection of human rights and fundamental freedoms	x	x	x	x	x	x	x	x	x	x
2	Child care, education and upbringing, work and employment, social insurance, culture, sports, protection of animals and plants,	C, M	C, M		C,?	C,M	x	C	C	C,?	C
3	Urban-housing policy of importance for the Municipality	x	x		C,!	x	x	x	x	x	
4	Management of the Municipal property;	x		x	x	x			x	x	x
5	Public utility and other services, as well as the local infrastructure;	x	x	x	x	x	x	x	x	x	
6	Local radio and TV stations	C		C	C	C			C	C	
7	Municipal tourist-resources;	x		x		x			x	x	
8	Utilization and administration of local construction sites and environment protection	x	Z	x	x	x	x	x	x	x	x
9	Ensure public order and peace;	x	X		x		x		x		
10	Provide supplies and services to citizens		X				x			x	
11	Administrative tasks within the Municipal self-government scope of work			x	x				x		
12	Protection of hygiene and health care,		C	y			x	x		x	
13	Record keeping on the status of citizens and voter registers			x		x			x	x	
14	Establish the budget and regulations on taxation policy on Municipal level		x			x	x	x		x	x
15	Performance and maintenance of measurements and real estate cadaster;					x			x		
16	Insure security of citizens and property;								x		
17	Manage public property;		x	x			x	x	x		
18	Management of local trade and improvement of local business;		x						x	x	x

	1	2	3	4	5	6	7	8	9	10	11
19	Taking care of the organization of settlements;			x					x		
20	Establish regulations for exercise of the powers of Municipality;		x				x	x	x	x	
21	Tasks transferred from the competence of the Canton and F BiH			x		x					
22	Creates public enterprises, institutions and other legal entities to satisfy certain economical, social, communal and other social interests and needs of the population							x		C	x
23	Fire protection	y		x						C	x
24	Prevention against natural disasters and measures for overcoming of consequences										x
25	Reconstruction of the damaged and destroyed houses in coordination with Canton and Federation and supports repatriation of DP's and refugees;									x	
26	Make the records and census of DP's, refugees and evicted persons, according to a special Law;									x	
27	Determine and spend the rent raised in utilization of construction land;								x		

(Responsibility Assignments to Municipalities in the Federation continued)

Note C: Co-finances services of pre-school, cultural institutions, public enterprise, established by Municipality, public areas maintenance, local electronic media, sports association, primary health care according to revenue assignment law

Note M: Material costs of primary education, and pupils' transportation and scholarships even not stated within the statutes

Note Y: Municipality finances but not stated within local government self-governance law

Note Z: Implements Cantonal regulations on zoning

Note ?: Municipalities shall implement Cantonal policy on education or shall provide local services in education and/or assume such responsibility upon request by municipalities

Note !: Municipalities shall implement Cantonal policy on urban-housing or shall provide local services on urban-housing and/or assume such responsibility upon request by municipalities

Comments:

- Comment 1: The assignments of education are not clear because the Cantons generally provide primary education services regardless whether education services might have been assigned to the municipalities and the municipalities sometimes, but not always, provide pre-school education services
- Comment 2: None of the laws specifically delegate inspection or fire suppression services even though such services have been or are being actually provided by the municipalities.
- Comment 3: There doesn't appear to be any rational basis of assigning revenues based upon what might be required to finance Municipal service responsibilities; and in fact, the laws assigning revenues were generally adopted long before the laws were adopted on municipalities' self management and local autonomy.
- Comment 4: In some instances, the laws establish that the Cantons and their respective municipalities co-share certain responsibilities with regard to certain services, but the divisions of responsibilities are completely absent. This also applies to protection of human rights and fundamental freedoms pursuant to the constitution of the Federation of Bosnia and Herzegovina.
- Comment 5: There appears that there may be an inconsistency with the delegation of responsibility to the municipalities for public peace and order while the police organizations are on Cantonal levels.

B. *Republika Srpska*

1. Revenues

The situation in the RS is simpler because of the absence of intermediary governing levels such as Cantons. Several tax laws govern revenue distribution. The “Law on Citizen’s Income Tax³” stipulates that personal income tax be allocated 74% to the Entity and 26% to Municipalities. Taxes on private economic activities are allocated 70% to the Entity and 30% to Municipalities. Taxes on agriculture, forestry, copyrights, licenses and real estate income are all 100% to the Municipality.

The “Law on Excise and Turnover Tax⁴” stipulates that turnover tax be divided 70% to the Entity and 30% to Municipalities, except in the event that there is a city composed of several larger communities. (This applies only to Banja Luka at present), the division is 65% entity and 35% to the city. The excise taxes are allocated 100% to the Entity.

The revenue structure for municipalities in the RS is quite similar to those in the Federation. In the Federation, Cantonal revenues come from the taxes levied at the Entity level rather than at the Municipal level.

2. Expenditures

The expenditure responsibilities of Municipalities in the RS are similar to that of Municipalities in the Federation. Municipalities maintain urban infrastructure and operate (through separate companies) water and sewer services. RS Municipalities provide 40% of the material costs of secondary schools and some material costs for primary schools, and subsidize kindergartens.

RS Municipalities provide social assistance through Social Work Centers, which they establish. Municipalities are also involved in urban planning activities. They issue business licenses and provide regulation of commercial activities.

Findings on Local Governance Practices in BiH

A. *Local Government in Bosnia and Herzegovina in general*

- Enforcement and monitoring of the implementation of decisions made by local authorities in some areas (i.e. construction, inspection, labor market, local business, etc.) is inadequate. The lack of corresponding mechanisms, risk of personal safety, corruption, slowness and/or inactivity of other legal and public institutions involved reduce efficiency and effectiveness of actions intended.
- There is inadequate interaction between citizens and their local governments in terms of monitoring, advocacy and simple communication. The decision making process of local government is overly influenced by political parties in power and are often made behind closed doors. In some cases, representatives in the Municipal Council or Cantonal Assembly are not fully cognizant of government decisions and are discouraged from

³ Republika Srpska Official Gazette No. 23/98

⁴ Republika Srpska Official Gazette No. 25/98

investigating about the activities of government. Transparency of work at local levels of government (both Cantonal and Municipal levels) is superficial at best. The process offers few possibilities for detailed information on activities of government.

- Government employees lack adequate training and skills to ensure proper functioning of local government. Tasks are often undertaken by unqualified employees. Local government employees are often hired based on their political affiliation rather than their technical competence.
- Municipalities are given many mandates for things but not the necessary funds transfer or ability to raise revenues to fulfill them adequately. Consideration for balancing of those two elements was not adequately addressed in the preparation and passing of specific laws.
- Mayors enjoy an overwhelming amount of authority and power within the Municipality, beyond that intended for the position, resulting in overshadowing others who should be involved in Municipal governance activities. This cycle is perpetuated as Municipal department officials disengage from the decision making process when their expertise is not solicited or incorporated. Roles and responsibilities within Municipal offices need to be better clarified in order to decrease ambiguous relationships that result in ineffective tasking, which adversely affects municipalities' abilities to problem solve.

B. Local Government in the Federation

- Local authorities are not fully aware of their roles and responsibilities because they lack sufficient information on the new and amended laws affecting the regulatory environment within which local government must operate. There is a general lack of appropriate and necessary legislative documents and regulations on local governance. For example, Municipalities in Posavina and Neretva Herzegovina Cantons have not yet passed laws on local self-governance and instead operate on the pre-war Statutes modified by the OSCE. These Statutes are considered inadequate for the current system, as they use some terms and legal entities that no longer exist, which causes difficulties in implementation of planned activities. This legal vacuum also provides latitude for public officials to misuse the functions of their office and ultimately engenders corruption. This in turn erodes the role of the government and citizen confidence in the political process and exacerbates tensions particularly in divided communities.
- In practice Cantonal legislative and executive institutions are the primary units of local governance in the Federation. They maintain centralized and concentrated power and use Municipalities as mere instruments to advance Cantonal policy rather than empowering them in their policy-making and budgetary oversight role. Interestingly, this was the general perception during the interviews with both Cantonal and Municipal officials. Municipalities outside of the Cities can appoint pre-school principals, primary health care directors, and management boards of utility companies. They may only express opinions on appointment of judges to Municipal Courts and Principals in primary and secondary schools.
- There is no systematic difference between responsibilities taken by Cantons with Croat majority and Cantons with Bosniak majority and those with special regime of governance. Municipalities' responsibilities are uniform to a great extent; differences mostly depend on global policy and development of the Cantons, and economic and geographic position of municipalities (see Table B).

- A significant percentage (about 60%) of Municipal revenues come from higher governmental levels. Cantonal and higher levels of governments make ad-hoc decisions regarding revenue allocation to Municipalities. Municipal funding levels therefore tend to fluctuate from year to year.
- Relations between Cantons and Municipalities are unclear. Municipalities continue to have little to no autonomy from Cantons. Cantonal governments oversee activities that logically would otherwise be the responsibility of Municipality. The Federation Constitution is fairly clear on emphasis toward devolution of power to the Municipal level on matters of local concern. Article V.1.2. states, “Each Canton is authorized to delegate or confer its responsibilities to Municipalities in its territory or to the Federation Government.” These responsibilities include education, culture, tourism, local business and charitable organizations, radio and television, particularly in those Municipalities whose majority population is other than that of the Canton as a whole. At the same time, other legal documents on transferring certain responsibility to Municipalities are unclear regarding allocation of necessary funds. (Laws on local Self-Governance in some Cantons just state the potential transfer of responsibilities without any obligation of the Canton to do follow-up.)
- Ad hoc planning in many municipalities has resulted in irrational development not tailored to the long term needs of the community⁵. The vacuum that arises from this lack of foresight has encouraged external factors (international community, higher level of political authorities, NGOs) to implement projects without consultation of local authorities. When implementation of such projects falls short of expectation, however, local authorities are left with full responsibility for projects they did not develop or support. This further exacerbates the problem of reactive rather than proactive Municipal development.
- Local government authorities with whom USAID consulted expressed the need for increased technical assistance related to public finance, particularly regarding the changes in fiscal management practice that will result from the abolition of the Payment Bureaus and introduction of international public finance standards and methodologies, as well as the establishment of regional treasuries.
- Local governments are not influential in decision making at higher levels of Government. The opinion of local governments was not considered necessary. Any decision making that is permitted tends to be heavily influenced by ruling parties.
- Citizens need to better understand the structure and responsibilities of local government. Increasing civic education regarding functioning of local governments would have positive impacts. Not rare was situation that citizens, not introduced well to the practice of local governments, used to address their issues to local government that had no authority to be involved.

B. *Republika Srpska*

- Unlike in the Federation, Municipal officials in the RS have received limited technical assistance in financial management and public administration. Municipal officials and staff have received no training over the past 10 years, and work is based on outdated and antidemocratic practice. Municipalities were introduced to a new electoral system in which the mayor served the same function throughout BiH.

⁵ Information taken from OSCE report on MIFI program

- There is a wide diversity of laws that affect local governance in the RS, which impedes the effective Municipal government functioning. Laws and regulations in the RS are based mostly on those of the FRY and outdated laws under the Former Yugoslavia. Further complicating the existing legal framework are the host of new laws in BiH, RS laws passed during the war, and OHR and OSCE regulations that are also being applied. All previous laws that are not directly in conflict with the RS Constitution are still in effect, but it is not clear who or which institution assesses the validity of the law. Conflicts of a political nature on the Entity and local level create an additional burden.
- The lower level of economic development in many Municipalities of the RS (particularly in the Eastern RS except Bijeljina) results in lack of basic service delivery, which exacerbates the already poor governance capacity in the area.
- Legal representation of Municipalities is inadequate. Municipalities in legal proceedings vs. the Entity are to be represented by the Entity Public Attorney and not by an appropriate legal representative of the Municipality.
- According to local officials interviewed, the Entity Government in the RS does not practice favoritism or discriminatory treatment, but needs improvement in its overall transparency and accountability.
- Political infighting among competing parties often leads to ineffective Municipal operations or even political deadlock. Political conflict also often impedes responsible governance and normal operations. Freedom of speech and human rights are also issues at the local level.
- Municipalities have neither authority nor responsibility over police forces and local officials complain about Entity's inability to secure public peace and order at the local level
- Municipal officials in Western RS noted that the RS Entity government often does not fulfill its own responsibilities as defined by law, and instead pressures Municipal governments to meet these needs without providing the proper resources (i.e. payment of overhead costs for hospitals, schools, etc.).
- Uniform co-financing of same activities such as secondary education, is overly burdened for poorer municipalities.
- Municipal officials would like the Entity to improve the efficiency of its tax particularly for those revenues that will later be shared with the Municipality. There is no mechanism that local government can apply to control or enforce payment of eligible taxpayers.

Comparison of RS and the Federation municipalities' responsibilities

Responsibilities of municipalities in the Federation and RS are similar. Their comparison is shown in the table below.

Table D:

Service Category	Type of Service	RS Municipality	Federation Municipality
Health Care	Primary	X	X (co-finance with Canton)
Education	Pre-school Primary Secondary	X X (co-finance) X (40%)	X (co-finance)
Transportation	Local roads (intra-city) Public Transportation (intra-city) Private transportation (intra-city)	X X X	X X X
Environmental	Air/water Pollution Water /Forestry	X X	X X
Housing	Of Municipal Importance (OMI)	X	X
Solid waste, water , sewer, fire suppression	OMI	X	X
Land Use/Zoning	OMI	X	X
Licensing Regulation	OMI	X	X
Culture	OMI	X	X
Tourism	OMI	X	X
Social welfare	OMI	X	X

Note: Education and health care system in RS is managed on regional basis under national umbrella and municipalities are contributing by the uniquely stipulated rate without any authority to influence policy making or implementation. Cantons in the Federation are mostly responsible for those issues.

Field notes from the visits to Local Governments

A. *Federation*

In total, 22 local governments were visited: six Cantons (Gorazde, West Herzegovina, Neretva-Herzegovina, Una-Sana, Posavina, Canton 10) and 16 Municipalities. The following are notes taken from the site-visits.

Zenica-Doboj Canton

Visited Local Governments: Zenica and Visoko

Revenue sharing formula gives all taxes related to legal entities to Canton. Situation in the distribution of power has changed on last Municipal elections in several communities in Zenica-Doboj Canton.

Newly elected mayors and changes in the Municipal parliament of Zenica, as well as in other municipalities where opposition parties won the last elections, may, by their planned activities, provide for the work of the government be more accountable and transparent. Management capabilities were not highly demonstrated during the interview except the willingness to do a thorough analysis of the situation in the Municipality and work hard on its improvement.

Communities where no significant distribution of power or changes in the ruling structure occurred still need to exercise a greater level of accountability and transparency.

Communication between Municipalities and the Canton and their influence on and involvement in the decision making process is inadequate. Municipalities are sometimes asked to maintain responsibilities not listed in the law as either Cantonal or Municipal ones. Democratic forms are in place but the practice of democracy is not noticeable.

Middle Bosnia and Neretva-Herzegovina Canton (Mixed population Cantons)

Local Governments visited were: Neretva-Herzegovina Canton, Mostar City and two City Municipalities (Sjever and Zapad), Capljina, Travnik, Vitez and Kiseljak

While the research was taking place, the municipalities in Neretva-Herzegovina Canton were operating without a Law on Local Self-Governance and by old statutes modified by instructions of the OSCE and based only upon the Cantonal and Federation Constitution. Revenue sharing formula states that 50% of all Municipal revenues belong to the Canton except for turnover taxes on goods and services, 100% of which belong to the Canton.

The City of Mostar as a special community operates by its own Interim Statute that stipulates exclusive responsibilities of the City. These include: finances and tax policy; urban planning; infrastructure (water, power supply); economic policy; public transportation including railway and Mostar Airport.

The City Administration is not very effective. Common infrastructure projects are subjected to a great deal of political influence and obstruction. This creates great losses for the community, distracting and turning away potential donors. The situation seems much worse in other areas such as return and property return or budgetary issues, characterized by no joint efforts towards progress of the community as a whole.

Lack of citizens' confidence in governmental structures and the political process is perpetuated by manipulation by the two nationalistic parties SDA and HDZ. These parties exacerbate tensions in already divided communities in this area. Municipalities on the East and West side of the City have different interpretations of their responsibilities towards the City. Political discipline imposed by SDA and HDZ in decision making seems to be important and obligatory for Municipal governments and on both sides. Government transparency and citizen participation are minimal. Freedom of speech and human rights are issues here. Recent political movements are allegedly representing the political willingness of ruling parties to get along in working to the benefit of the City.

Municipalities in Herzegovina-Neretva Canton are unclear about their responsibilities. This is due to a lack of appropriate regulations and the non-systematic work of the Cantonal authorities. Also, the common practice of revenues raised within the Municipality being transferred to the Canton and Federation and only a small percentage of those revenues being returned to the Municipality was a source of complaint.

Middle Bosnia Canton is characterized by many as a fiscally divided community. The revenue sharing formula allocates 80% of the most important revenues to the Canton with only 20% remaining in the Municipality. The existence of separate Municipal accounts and parallel financing cause the government some difficulty. The functioning of local governments is not quite harmonized and passing of necessary documents might be very difficult mostly because of the unclear meaning of "vital interests" for one of the nations in that area, which might be any issue that one party considers as such. There is a readiness to adopt new practices and methodologies, but confidence building among officials and the population should also be addressed. Qualified staff and trained personnel within local governments are inadequate. Political appointments take precedence over merit-based ones.

Besides common responsibilities, Municipalities in Middle Bosnia Canton also share responsibility with Canton and Federation governments in managing the reconstruction of war damaged infrastructure, and the return of refugees and displaced persons.

Sarajevo Canton Municipalities

Visited municipalities: Novo Sarajevo and Centar Municipalities, and City of Sarajevo

The revenue sharing formula allocates 70% of revenues, and allegedly 20% of turnover taxes except high tariff items to the Canton. The City of Sarajevo receives 30% of real estate and property rights turnover tax, which previously belonged entirely to municipalities.

The City of Sarajevo has only a formal position and, while the City administration is still working on its internal structure, it has no real actual power. Municipalities in this Canton also have no real autonomy. The Canton mainly has the authority to supervise all activities that are under the exclusive jurisdiction of Municipalities and also to share the corresponding revenues (infrastructure, communal services, transportation, etc.) There is a feeling of discriminatory treatment exercised by the Canton towards some Municipalities based upon political motives. Transparency is low at Cantonal and Municipal levels. Recent changes in the ruling structure may bring some changes in public administration practices in the Municipalities.

Canton 10

Local Governments visited: Livno Municipality and Canton 10.

The most important Municipal revenues are allocated to the Canton at 70%. The situation in this area is very difficult. The Canton is not functional because of inter-party power sharing conflicts of HDZ, the most powerful party in that area. The legislative, judicial and executive branches misuse their functions, and officials are corrupt. Municipalities, which seem to be rather disorganized, do not meet their responsibilities. Transparency is also very low and citizen participation inadequate. Professional capabilities of officials employed within the local government are not satisfactory. Political affiliation and nepotism dictate hiring practices.

West Herzegovina Canton:

Local Governments visited: Canton and Posusje Municipality

The revenue sharing formula gives the Canton more than 50% of the revenues shared between the Canton and Municipality.

There is no change in distribution of power. The Canton plays the main role in local governance and Municipalities are not very strong. Municipalities have too many responsibilities and too few resources. The Canton is forced to subsidize Municipalities in completing their tasks. Municipalities lack control over certain infrastructure investments and donations occurring within the Municipality. This causes difficulties in long-term planning.

Implementation by Municipal authorities is not quite satisfying. Citizens' participation is low and the governments need to work on transparency and accountability. There is an inconsistency in delegation of specific responsibilities (i.e., securing public peace and order while police are lodged at Cantonal level). There is an expressed willingness to participate in seminars and training regarding management and financial practices. Municipalities have little influence in the decision making process .

Una-Sana Canton:

Local government visited: Canton and Bihac Municipality

Revenue sharing formula gives all taxes related to legal entities to Canton and everything else is going to the Municipality.

The Municipality must finance some activities not stated within the local self-governance law (i.e., Bihac Municipality finances fire brigade). There are also activities the Canton should perform but in which the Municipality has had to intervene (i.e. keeping primary schools working or renewal of houses for returnees).

There is an overlap of responsibilities between the Municipality and Canton in cases such as inspections. Local Government officials in this Canton are relatively competent to do their job efficiently. Transparency and accountability may improve following positive results of Municipal elections where opposition parties gained increased power.

Municipalities are not included in decision-making processes and influence of political interests dominates.

*Bosnia-Podrinje Canton (Gorazde)**Local governments visited: Canton and Gorazde Municipality*

Revenue sharing formula gives 50% of revenues to the Canton that should logically go entirely to the Municipality. This Canton is financially weak and the Federation used to allocate grants to improve its liquidity. Municipalities are often provided subsidies from the Canton in order that they meet their responsibilities. Municipal officials expressed a strong interest in participating in seminars and training on public administration and financial management. Gorazde Municipality has participated in OSCE's MIFI program.

*Posavina Canton:**Local governments visited: Canton and Orasje Municipality*

Although small, this Canton has good financial strength and competent management. The underlying economy is not very strong. Revenue sharing formula gives most of the revenues to the Canton. The Law on Local Government Self-Governance is not yet passed. The Municipality operates under the old modified Statute. Municipal responsibilities are in some cases overlapped with Cantonal ones. There is also a lack of clear regulations dividing responsibilities. Management is competent regarding financial policy and open for co-operation. Officials are aware of the requirements of the job even if this is not clear from the law.

*Tuzla Canton:**Local government visited: Tuzla and Gracanica Municipality*

Revenue sharing formula gives most of the revenues to the Canton (80%). Municipalities have a small portion of their own revenues and operating in general seems to be centralized in favor of the Canton.

Old governance habits are still prevalent in Municipalities. Municipalities are not uniformly structured. Implementation of decisions is difficult as well as controlling activities. There is low transparency of Cantonal activities. Local-self management is only declaratorily presented. Municipalities have to deal with responsibilities not stated by any Law (i.e. accommodation of displaced persons). Municipality does not have much influence and involvement in decision making process. There is no clear legal division of responsibilities (i.e. Tuzla Municipality, primary health care shared responsibilities but not stated by law). Progressive parties may improve the situation in places where they kept or got in power.

B. Republic of Srpska

*Local Governments visited: Trebinje, Visegrad, Bijeljina (East RS); Doboje, Laktasi, Banja Luka, Prijedor (West RS)**City of Banja Luka*

Banja Luka is the largest and most progressive community in RS. It has the status of a City, which is not much different from the Municipality, except that it receives 5% more in turnover tax than do Municipalities. Competencies between Municipalities and Cities are almost the same in the RS. The City Assembly and City Mayor, by law, have the same

authorities and responsibilities as the ones in the Municipality. Because educational, health care and other Entity level institutions are located in Banja Luka, the city is forced to provide for their normal operation although no additional resources were allocated.

The City has the authority to appoint the management board of local utility companies, pre-school institutions and primary health care facilities. This is not the case for power supply and telecommunication units. The City provides non-binding opinions on elections of principals for primary and secondary schools.

Regulations on disposing of the City's property are not resolved properly. Documentation is neither orderly nor complete. The City administration expressed the need for more effective arrangement of land policy. Decision making processes will need greater citizen participation. Interviewed officials demonstrated willingness to have the City participate in processes within public administration assistance projects. Competent administration exists within the current legal and practical framework.

Trebinje

Trebinje is the most developed Municipality in the South Herzegovina region.

There is a pervasive conflict between the Entity and local government authorities. Interviewed officials emphasized insufficient co-operation with the Entity. They claim that political interests block information flow and the Entity delays transfers of resources from to the Municipality.

The budget is not adequately structured and is politically manipulated. Freedom of speech is not utilized much and government accountability is low. OSCE PRC recommended efforts to change and improve public administration and financial management practices especially because that might influence other communities in the region.

Visegrad

Very poor Municipality. Untrained staff of low quality. Municipality hardly satisfies basic responsibilities. Political conflicts at the local level are commonly expressed in decision making. OSCE considers this Municipality as worthy of efforts to support processes on democratization of that area. Municipal management is eager to be included in any kind of international support projects and was very receptive. Those interviewed objected to the low interest of the Entity Ministries for conducting fieldwork in the Municipality, as well as the lack of transparency. Citizens' participation in the decision-making process is low.

Bijeljina

Financially the strongest Municipality in Eastern RS. Management demonstrated competency and is willing to co-operate in future projects. More than half of professional employees are university educated. There is an awareness of political constraints in decision making. Objected to the quality and transparency of the Entity Government's work in passing laws.

Municipality has no mechanism to implement control and supervise activities of Municipal importance.

Doboj

Local government is not very effective. Low government transparency and accountability. Local government officials have been publicly involved in corrupt activities. Freedom of speech and human rights are an issue.

Political and personal profit interests are influential in decision making. Citizens' participation in political processes is low. Willingness to participate in the program was high.

Laktasi

Progressive community located close to Banja Luka. Competent and very receptive management. Good financial management skills and very open to introduction to new governing practices. Officials had realistic sense of circumstances the local community operates within. Community has participated in OSCE's MIFI Program. Municipality has no mechanism to implement control and supervision of activities of Municipal importance.

Prijedor

Decision making process at Entity Level non-transparent. Representatives in the Entity legislature have little contact with electoral base. Municipality forced to take on additional responsibilities due to the ineffectiveness of Entity institutions. Difficulties in implementation by authorities. Illegal construction occurs because it is cheaper than following a regular procedure and Entity inspections do not occur. Necessity for improvement of public administration practices. The management seems co-operative.

International Donor Assistance

OSCE Mission to Bosnia and Herzegovina: launched the Municipal Infrastructure and Finance Implementation (MIFI) Program last year. Technical assistance in capital planning was first offered within the pilot program (MIFI-1) that encompassed 10 municipalities in BiH. This year, the program was expanded to the following 23 listed municipalities.

In the RS: Cajnice; Celic; Sipovo; Teslic; Novo Sarajevo (RS); Trnovo (RS); Rudo; Bosanska Gradiska.

In the Federation: Gorazde; Usora; Novi Travnik; Tesanj; Bosanska Krupa; Bosanski Petrovac; Konjic; Banovici; Kalesija; Kljuc; Buzim; Olovo; Jablanica; Ljubuski; Trnovo (Fed)

The World Bank's Local Development Project is in a start-up phase. Within that project, technical assistance in capital budgeting process will be offered to 15-30 pilot municipalities that have demonstrated potential creditworthiness. The process for identifying the list of municipalities was not determined at the time of this research.

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