

# Constitutional and Governance Reforms in Bosnia and Herzegovina:

## Does Public Opinion Matter?

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## EXECUTIVE SUMMARY

The past two years in Bosnia and Herzegovina (BiH) were punctuated by episodes of unprecedented popular activism. Major flooding in central and northern BiH demonstrated government lack of preparedness and incompetence at all levels. These events coincided with the failure of efforts to obtain one particular constitutional change: implementation of the European Court of Human Rights' (ECtHR) ruling in the Sejdić-Finci case. The positions of BiH political leaders on structural questions have been clear – and entrenched. Yet little attention has been paid, both by local political actors and the international community, to what citizens of the country actually think as to how outstanding structural impediments to accountability and functionality, manifest in BiH's constitutional order, can be addressed.

This paper analyzes results of seven recent polls, undertaken mostly in the past two years, to identify areas of popular agreement on discrete elements which should be addressed in BiH's constitutional structure. This analysis allows for an overall view on trends over time and across themes. It also reduces the risk of selective data and manipulated answers being touted as expressions of citizens' interests. The aggregate results demonstrate far more popular appetite for confronting outstanding problems through the constitutional structure than is evident at either the local or international political level – 88% in the aggregate in 2013, including nearly 80% of RS respondents, for example. Citizens understand that this would allow them to live as in a “normal country” with functioning governance, facilitate confidence-building and reconciliation, and be a prerequisite to integration into the EU.

Numerous responses on sectoral priorities defy conventional wisdom – and current policies. Corruption consistently topped the list of identified popular concerns, with it being explicitly linked to the economic situation in most of the polls assessed. Justice is seen as among the most corrupted elements of governance, this corruption also being manifest in political influence. Nearly 8 in 10 citizens – including more than 6 in 10 Serbs – surveyed believe corruption needed to be investigated and adjudicated at the state-level. An overwhelming majority of BiH citizens of all stripes agree that agriculture should be among the elements of constitutional reform – with more than 60% (including a plurality of RS Serbs) believing this should be a state competence. Furthermore, nearly 80% of respondents stated that EU laws should trump domestic law, giving the EU potential leverage in its reform efforts, should it mobilize a popular constituency.

The analysis of the surveys shows that the differences among respondent groups are narrow and are *decreasing* over time, as all citizens grow more dissatisfied with politics and politicians. There are few differences across entities and ethnicities when it comes to burning issues such as corruption, the economic crisis, political representation and justice.

## CONSTITUTIONAL AND GOVERNANCE REFORMS IN BOSNIA AND HERZEGOVINA:

### DOES PUBLIC OPINION MATTER?

#### 1. Introduction

Following several dismal years of non-progress, 2013 and 2014 were punctuated by protests and renewed activism in Bosnia and Herzegovina (BiH) as citizens openly demonstrated their increasing dissatisfaction and frustration with the authorities and the performance of government. A Gallup study published this year found that only 8% of the population approves of the country's current leadership.<sup>1</sup> The disastrous failure of government at all levels to either prepare for or respond to the devastating spring floods brought renewed urgency to the discourse among experts regarding the future path of BiH.

The need or readiness for constitutional reform has been debated by Perry<sup>2</sup> and Bieber,<sup>3</sup> as well as other interested parties. In July, the International Crisis Group (ICG) issued a report<sup>4</sup> that recognizes the necessity of state-level constitutional reform to prevent the country from disintegrating. However its main recommendation for reform seemingly simply confirms the overriding primacy of the three constituent peoples, and would institutionalize the party-dominant system commonly referred to as the “sextet.”

While it is fairly clear what the leading political parties want – though it is equally clear that their visions are mutually incompatible – the question remains: ***what do the citizens of BiH want in terms of the country's constitutional structure and resulting functionality?***

A review of a number of public opinion polls (surveys) taken within BiH over the last six years suggests that citizens understand that constitutional reform in BiH is necessary to allow for the complex and problematic post-war government structures established by the Dayton Peace Accords in 1995 to be replaced with a more effective constitutional set-up that would impose accountability on politicians – something that is now lacking. For years, various attempts to rewrite or reform the Dayton constitutional order have been made. The most ambitious was the so-called “April Package,” which was comprised of a set of reforms based heavily on proposals of the Venice Commission and for which the US led the negotiations during 2005 and 2006. By a very narrow margin, this failed to be adopted by the BiH Parliament. Recognizing that policies aiming at changing constitutional orders should have citizens' formal (i.e. a referendum) or informal support, the public opinion polls and studies commissioned by various institutions over the past six years sought to ascertain BiH citizens' attitudes and preferred solutions to what has been referred to as “Bosnia's constitutional deadlock.”<sup>5</sup> This paper presents and analyzes the results of seven surveys conducted in BiH during the period from

2007 through 2013 in the hope and expectation that the findings of the surveys – which probed what citizens want – will contribute to informing future constitutional reform policy options and choices – because public opinion does matter.

## 2. Note on methodology

The public opinion polls selected for this paper’s analysis are:

- **Survey 1:** *Bosnia Visions of the Future*, commissioned by UNDP BiH, conducted by the Oxford Research Institute, 2007;
- **Survey 2:** *Public Opinion Survey About Constitutional Reforms*, commissioned by the Center for Civil Initiatives BiH, conducted by PRISM Research BiH, 2009;
- **Survey 3:** *Reconciliation and Trust Building in Bosnia-Herzegovina: A Survey of Popular Attitudes in Four Cities and Regions (Banja Luka, Bugojno, Mostar and Sarajevo)*, commissioned by the University of Edinburgh, conducted by Centar za empirijska istraživanja Religije (CEIR), 2012;<sup>1</sup>
- **Survey 4:** *Factors in Reconciliation: Religion, Local Conditions, People and Trust*, commissioned by the University of Edinburgh, conducted by Centar za empirijska istraživanja Religije (CEIR), 2013;<sup>2</sup>
- **Survey 5:** *Public Opinion in Bosnia and Herzegovina*, commissioned by the National Democratic Institute, conducted by IPSOS Public Affairs, 2013;
- **Survey 6:** *Public Opinion Poll Results, Bosnia and Herzegovina Conflict Analysis*, commissioned by UNDP BiH, conducted by PRISM research, 2013;<sup>3</sup> and
- **Survey 7:** Citizens’ comments on State Level Constitutional Reform (conducted for the USAID project “Constitutional Reform in BiH: Engaging Civil Society”), commissioned by the Public International Law and Policy Group, conducted by PRISM Research, 2013.<sup>4</sup>

<sup>1</sup> Available at [http://www.research.ed.ac.uk/portal/en/publications/reconciliation-and-trust-building-in-bosniaherzegovina\(330541cd-f11e-44c4-a760-f6ebfd226431\).html](http://www.research.ed.ac.uk/portal/en/publications/reconciliation-and-trust-building-in-bosniaherzegovina(330541cd-f11e-44c4-a760-f6ebfd226431).html)

<sup>2</sup> Available at [http://www.research.ed.ac.uk/portal/en/publications/factors-in-reconciliation-religion-local-conditions-people-and-trust\(7be43bce-c29d-43dd-992c-18dab2ef5248\).html](http://www.research.ed.ac.uk/portal/en/publications/factors-in-reconciliation-religion-local-conditions-people-and-trust(7be43bce-c29d-43dd-992c-18dab2ef5248).html)

<sup>3</sup> Available at

[http://webcache.googleusercontent.com/search?q=cache:Pc5ZiqMVB0J:www.un.ba/upload/documents/Prism%2520Research%2520for%2520UN%2520RCO\\_Statistical%2520report.pdf+%&cd=1&hl=en&ct=clnk&gl=be&client=safari](http://webcache.googleusercontent.com/search?q=cache:Pc5ZiqMVB0J:www.un.ba/upload/documents/Prism%2520Research%2520for%2520UN%2520RCO_Statistical%2520report.pdf+%&cd=1&hl=en&ct=clnk&gl=be&client=safari)

<sup>4</sup> Available at <http://www.mreza-mira.net/wp-content/uploads/2013-Public-Opinion-Poll-Oct-31-Narrative-Report.pdf>

The surveys analyzed identify the reasons why reforms are needed, with all of them providing for a variety of answers, and sometimes including the possibility for responses such as “none of the above”/ “some other reason”/ “I don’t know”/ “I do not want to answer.” However, these “no answer” responses were not the choice of a significant number of respondents; people have opinions and preferences. Some of the polls are freely available on the Internet; in other cases the polls were not formally publically shared, and interested readers should contact the commissioning organization to request the data.

The manner in which questions are asked can of course affect citizens’ opinions, as can the presentation of pre-designed options for various questions. Some polls focused more on ethnic/ethno-national issues, or the causes of the war,<sup>5</sup> as well as governance; others were more focused on satisfaction with governance. Some asked about constitutional reform, presenting options related to secession or a third entity to determine positions on those issues. Other polls focused less on stated positions and more on broader interests. It is apparent that the sequencing of questions more likely than not affected responses in a number of cases.

The findings of all polls analyzed lead to the same conclusions when it comes to major issues to be tackled by constitutional reform, such as fighting corruption, solving the economic crisis and the lack of effective political representation regardless of the ethnic and/or entity affiliation of the respondents. Findings of some polls, however, indicate differences among respondents that correspond to their ethnic and/or entity affiliation. This may largely be due to the fact that the manner in which the questions were presented influenced the answers of the respondents.

For example, when asked about the solution to the country’s problems, respondents are given a list of possible answers and asked to choose one. If this list is limited, ethnically framed and presents unclear “solutions” to the country’s problems,<sup>6</sup> then the respondents’ registered opinion will reflect the same limitations. That was precisely the case in this example. As a result, it is hardly surprising that 48.8% of Serb respondents opted for supporting the RS in becoming a sovereign state, while 56.8% of Bosniak and 32.3% of Croat respondents opted for having a strong BiH with entities and cantons abolished. These types of questions are focused on

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<sup>5</sup> For example, survey 6; Q 46: “Keeping in mind your ethnic group, would you defend your ethnic/national territory?” Answer options are: 1) “use all peaceful means”, 2) “not engage at all”, 3) “take arms”, 4) “no answer.” This question indicates several logical flaws: first, the attack and the attacker are not clearly defined; second, the defender and the act of defense is directed towards the “ethnic/national territory”; if the respondent keeps in mind his/her ethnic group, then to what extent does ethnic territory equal national territory?; third, if ethnic territory is different from national territory, there is a (false) assumption that the ethnic group is assigned to an ethnic territory. Given that there is no answer option: “it depends what my territory is, who attacks it, why, and how”, the question and answer choices mold and shape the positions of the respondents.

<sup>6</sup> Survey 6; Q 57: “In your opinion, what is the right solution for the Republika Srpska?”- Answer options are: 1) “Strong BiH, entities and canton should be abolished,” 2) “Become a sovereign state,” 3) “As is, entity within BiH,” 4) “no answer,” 5) “Weaker entity powers with strong central BiH government,” 6) “More autonomous entity within sovereign BiH,” 7) “Entity with few economic regions, cantons within BiH,” 8) “other.”

positions and pre-canned solutions, rather than broader forward-looking interests that cut across ethnic and entity lines. A further result of this type of restrictive approach is that it can often lead respondents to opt for a “no answer” response; in this case, a significant 22.4% of Serbs answered with “no answer” or “other” (Survey 6, Image 58). The manner in which the question was phrased not only limited the answer options but it actually discouraged the meaningful participation of respondents.

The following analysis of these questions and answers focuses on several selected themes, and aims to provide a better understanding of responses on certain core issues over time.

### 3. Issue: Why is constitutional reform necessary?

Four out of the seven surveys analyzed tackled this issue directly. The surveys show that interest in constitutional reform remains consistently high. In 2007, asked if the constitution of the country should change or should remain as is, 92% of citizens interviewed thought that it should be changed (Survey 1). Six years later, in 2013, **88% of all respondents indicated their support for attempts at constitutional reform.** The breakdown of this percentage in terms of entity and ethnicity shows that support for constitutional reform was declared by 98.5% of Croat majority respondents living in the Federation of Bosnia and Herzegovina (FBiH), by 91.5% of FBiH Bosniaks, and by 79.5% of Serb majority respondents living in the Republika Srpska (RS) (Survey 7).

Results of surveys that use the words “constitutional reform” in their questionnaires have often been discredited based on assumptions that respondents do not really grasp the complete meaning of the two words, don’t understand the way an unreformed or reformed constitution would impact upon their day-to-day lives, or do not know what kinds of constitutional reforms are implied. To clarify BiH citizens’ views in this regard, the next three subsections will attempt to deconstruct the concept of “constitutional reform” within the context of the political, economic, justice and social sectors in BiH for the purpose of shedding light on the **key specific reasons why citizens support constitutional reform.**

*...so that BiH can function like a normal country*

A definition of “normality” is generally hard to come up with, but in the case of BiH, “normality” has been defined as a recovery after the 1992 -1995 war, a stable peace and the absence of potentially harmful ethnic and territorial divisions which could lead to conflict or to a stalemate in the country’s development.<sup>6</sup> **The desire to resume a normal life after violent conflict is closely linked with the desire or opportunity to live in a country that is “normal” or that is functioning well. Approximately 8 out of 10 citizens recognize that this is not the case in BiH**



**as it is currently structured (Survey 2; Survey 7).**

Asked what would enable BiH to function “normally,” an interesting trend in citizens’ responses is observed. In 2009, less than 50% of respondents, (31.6% RS Serbs, 61.3% FBiH Bosniaks and 41% FBiH Croats), thought that constitutional changes would enable the country to function normally (Survey 2). **In 2013 the percentage of citizens that thought constitutional changes are necessary for the country to function normally was at a much higher percentage of 71.5% of all respondents:** 75% Bosniaks, 70.5% Serbs, and 63.1% Croats (Survey 7). So in the past four years, not only has there been a significant increase in support for constitutional reform as a way to enable the country to function normally, but also a much more narrow difference of opinion across ethnicities and entities. Brčko District is the only outlier, with an impressive 91.9% of citizens viewing constitutional reform as a necessary precondition for a normal functioning state (Survey 7).

*...for transitional justice*

Transitional justice, which includes judicial and non-judicial measures such as criminal prosecutions, truth commissions, reparation programs and institutional reforms which may be implemented to redress the results of human rights abuses committed during the war, has faced various challenges in Bosnia and Herzegovina. A Transitional Justice Strategy drafted by the country’s Council of Ministers with strong support of the United Nations Development Programme (UNDP) in 2012 had several shortcomings and ultimately was not adopted.<sup>7</sup> The military peacekeeping force (IFOR, then SFOR, now EUFOR), and various international police missions to BiH, have helped maintain peace in the country. However, in terms of fundamentally reforming the justice system, establishing police practices that ensure the enforcement of the rule of law uniformly throughout the country and dealing with past injustices, human rights abuses and war crimes, there is still much left to be done. Prosecuting war crimes is within the responsibility of both the War Crimes Chamber of the Court of BiH, which was established in 2005, and the International Criminal Tribunal for the Former Yugoslavia (ICTY). Existing legislation also provides for war crimes cases to be processed at the cantonal and district courts level in the two entities, where a significant backlog of cases limits the ability of the courts to provide justice in due time.<sup>8</sup> Additionally, the ongoing political crisis in the country has at times undermined the independence of the judiciary and has made the effort to sustain hard-earned judicial reforms difficult.

Citizens’ opinions on transitional justice point to the need for constitutional reform. **In 2012, 73% of citizens interviewed thought that constitutional change was *important* and *very important* for confidence and trust-building initiatives, as forms of transitional justice and reconciliation (Survey 3).**

A follow up to this study in 2013 asked **citizens if they believed that a reconciliation process would make an impact if it focused on** a series of ten issues that were given as options to the answer (Survey 4, p.21). The first 4 responses chosen were: 1) mutual understanding and respect for differences among citizens (an answer chosen by 78% of respondents), 2) mutual understanding and respect for the similarities between citizens (75%), 3) agreement on the historical facts that would clarify the degree to which all parties suffered during the war (74%) and 4) **constitutional reform to end the deep-seated conflict between parties representing the constituent peoples (67%)**.

72.5% of citizens see identification of liability/guilt to be an *important* or *very important* objective for confidence and trust-building initiatives (Survey 3, p.11). Unfortunately, despite all past and ongoing efforts at both the international and national levels to prosecute war crimes cases in pursuit of justice and reconciliation, the effort has fallen short of expectations and has not had the desired impact in the country.

*...and so that BiH can join the European Union*

From the date a country submits an application for membership, the process of joining the European Union (EU) can take many years. For example, it took Croatia 10 years. In the case of BiH, an application has not yet even been submitted, despite several attempts by the EU to create conditions for the submission of a “credible application.” It has often seemed that the reforms needed for accession are fluid and negotiable. For example, the 2008 European Partnership document required a number of significant reforms, including creation of a BiH-level Supreme Court. However, the requirements enumerated in that document seemingly were forgotten when the focus shifted to three new reform initiatives required for the Stabilization and Association Agreement (SAA) (signed in 2008), to enter into force: a Law on State Aid, a Law on the Census, and constitutional changes required by the European Court of Human Rights Sejdić-Finci ruling<sup>9</sup>. Until the SAA enters into force, BiH cannot submit an application for EU candidate status or membership. It has now been 5 years since the Sejdić-Finci ruling was made and there has been no progress on changing the Constitution to comply with the decision. Now, this requirement has changed as well, or has been substantially “re-sequenced.” In November 2014, the German and British Foreign Ministers published a joint letter to the EU proposing that the SAA enter into force in exchange for a mere written commitment from BiH politicians to make a series of as yet undefined socio-economic reforms – sidelining to some extent rule of law and constitutional reforms.<sup>7</sup> The EU Foreign Affairs Council endorsed and adopted this approach on December 15, 2014, when it invited BiH

<sup>7</sup> More information available at [http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Interview/2014/141106-BM\\_Hammond\\_FR.html?nn=471560](http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Interview/2014/141106-BM_Hammond_FR.html?nn=471560) and an analysis available at <http://www.democratizationpolicy.org/policy-briefs-policy-papers>

political leaders to “secure at the earliest its irrevocable written commitment to undertake reforms in the framework of the EU accession process” and, it pledged, upon endorsement of the commitment by the BiH Parliament, to decide on the entry into force of the SAA.<sup>10</sup>

Over 70% of BiH citizens hope to see the country become an EU member, and think that constitutional reform could help BiH integrate into the EU<sup>8</sup> (Survey 1; Survey 2), by ensuring that the country has all the functions and capabilities needed. For most people “membership is preferable, but not critical for the survival of the country”<sup>9</sup> (Survey 6). Integration in the EU is not seen as a magic wand that would enable the country to function normally; **rather the road to EU integration is seen by citizens as more important than the integration itself.**<sup>10</sup>

### Main take-away points:

- Around 90% of citizens have maintained an opinion since 1997 that the constitution should be changed. (Survey 1; Survey 7).
- Citizens know the kind of constitutional reforms they want. (Survey 2; Survey 7).
- The main reason why the majority of citizens support constitutional reform is to enable the country to function normally. More than 7 out of 10 people support this, with this view increasingly represented between 2009 and 2013. This reflects an increasing dissatisfaction with the way the country is functioning. At the same time, it demonstrates an increasing popular conviction that constitutional reform can be the catalyst for positive change. (Survey 2; Survey 7).
- A much smaller, but still significant, number of people think that through state-level

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<sup>8</sup> Survey 1: Q35 – “Irrespective of what you think may be possible from today’s perspective: ideally, what or where should BiH be in twenty years’ time?” the possible response categories were: (1) “In the EU,” (2) “Nowhere,” (3) “Where it is now,” (4) “In better shape,” and (5) “Gone.”

Survey 2; Q 15: “Should the main focus of the constitutional reforms be redrawing the internal borders in BiH or ensuring that the country has all the functions necessary for joining the EU?” the highest ranked answer, “Ensuring that the country has all the functions necessary for joining the EU,” was chosen by 76.1% RS Serbs, 75.7% FBiH Bosniaks, 48.4% FBiH Croats.

<sup>9</sup> Survey 6, Image 61: “How do you feel about BiH and EU?” Answer options in the order of their choice: (1) “The membership is preferable but not critical for the survival of the country,” (2) “EU membership is the only way how BiH can survive,” (3) “EU will fall apart before BiH becomes a member,” (4) “BiH will fall apart before becoming a member,” (5) “The membership is important but ethnic interests are more important,” (6) “I do not care about EU,” (7) “EU does not care about BiH anymore.”

The highest ranked answer was supported by 30.7% of all respondents (Bosniak majority – 35.4%; Croat majority – 28.0%; Serb majority – 22.4%; Others – 40.2%);

<sup>10</sup> Survey 7, Slide 48: “Why do you think constitutional changes in BiH are necessary?” In the order of their choice: (1) “So that it could function like any other country,” (2) “To ensure equality of all citizens,” (3) “So that it could integrate in the EU as soon as possible,” (5) “To abolish discrimination on the basis of nationality,” (6) “For the territorial reorganization of BiH,” (7) “To balance out the responsibilities of the state and other levels of government,” (8) “Do not know,” (9) “Some other reason,” (10) and “Do not want to answer.”

constitutional reform the process of transitional justice will be facilitated and contribute to the reconciliation process. More than 6 out of 10 people think that constitutional reform will contribute to this process by ending the deep-seated conflict between political parties representing the constituent peoples. **An overwhelming majority of more than 9 out of 10 respondents declared their support for state-level competency over the justice system.** (Survey 3; Survey 4).

- A small proportion of citizens support constitutional reform so that the country can integrate into the EU, trending downward since 2007. In 2013, fewer than 4 out of 10 people chose this as the main reason for constitutional reform. However, reforms to ensure that BiH is functional, accountable, and governed in accordance with the EU's values would facilitate EU integration, regardless of the endpoint. (Surveys 1, 2, 6, and 7).

The next section will continue to attempt to deconstruct the term “constitutional reform” by examining citizens’ views on corruption, economy, politics, justice, agriculture, EU laws, and civil and political rights – all of which have a direct effect on citizens’ daily lives. These same aspects of daily life are intrinsic to a meaningful constitutional reform process in BiH.

#### 4. Constitutional reform – sectoral analysis

Much discussion on constitutional reform has focused either on the Sejdić-Finci ruling, or on broader, controversial ethnic issues like a Croat entity, or greater ethno-territorial autonomy. Yet the current constitutional structure of the country has an impact on more prosaic aspects including the economy, educational mobility and agriculture. Constitutional amendments could extend to citizens the right to directly influence policy at the state-level (e.g. through referendum). There are many other such examples of how targeted constitutional reforms could have a functional impact on the country and could motivate targeted constituencies to action in support of incremental, practical improvements. The following themes were selected given either their recurrence in all or most of the surveys analyzed, or their relevance to the country’s economy.

##### *1) Citizens’ views on corruption*

Corruption is a recurring theme throughout five of the seven surveys analyzed in this paper. The findings of the surveys with regard to corruption support and build upon each other to offer a complete perspective on citizens’ views and perceptions of corruption in BiH.

**Throughout the past four years, corruption continues to be identified by citizens as the biggest problem in the country and fighting corruption as the highest priority.** In 2009, citizens

perceived addressing corruption as the highest priority for BiH, followed closely by the need to resolve the economic crisis (Survey 2).<sup>11</sup> In 2013, this stance had not changed at all. 72.4% of respondents selected corruption first over a series of other problems that the country is currently facing (Survey 6).<sup>12</sup> Corruption is of concern to the majority of the country's population, regardless of their declared ethnic affiliation, including 75.3% of FBiH Bosniak majority respondents, 74.9% of FBiH Croat majority respondents, 66.3% of RS Serb majority respondents and 74.5% of Others (Survey 6). When asked this question in a different manner by a separate survey, respondents again ranked "fighting corruption" as the highest priority for BiH at the moment (Survey 7).<sup>13</sup> These findings are also confirmed by Transparency International's Global Corruption Barometer, which shows that almost 90% of citizens believe that there has been no progress in the fight against corruption, or that the situation has even deteriorated.<sup>11</sup>

**84% of Bosniaks, 73% of Serbs and 82% of Croats see corruption as the biggest problem because it impacts their daily life** (Survey 5). The ways in which corruption affects the daily lives of citizens in BiH are manifold and explored in detail elsewhere.

## *2) Corruption and the economy*

Corruption is closely linked with the economy and this link is made explicit in five of the seven surveys analyzed. In 2013 respondents aged 18 to 35 see fighting corruption as a priority second only to resolving the economic crisis, which they ranked as the number one priority in BiH (Survey 7). This might be due to a desire to curb the high youth unemployment rate, estimated at over 60%.<sup>12</sup> At the same time, Transparency International finds that: "In recent years, which have been characterized by extremely high unemployment and poverty, there has been a growing incidence of nepotism in recruitments, to the point that more and more citizens join parties so that they could get a job based on the party's influence."<sup>13</sup>

A United Nations Office on Drugs and Crime (UNODC) report in 2013<sup>14</sup> shows that 39% of the

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<sup>11</sup> Survey 2; slide 34: "To what extent does each of the following items represent a priority question in B&H?" Top three answers chosen: "(1) Fighting corruption," (2) "Solving the economic crisis," and "(3) Solving the political crisis."

<sup>12</sup> Survey 6: "Image 10: In your opinion, what are the biggest problems and challenges in the country at present?" possible responses: (1) "Government, administration," (2) "Ethnic, religious relations," (3) "Politics," (4) "Rule of law," (5) "Legislation and constitution," (6) "Corruption," (7) "Mentality," (8) "Economy," (9) "Crime," (10) "International community," (11) "Regional and global influences," (12) "Other," and (13) "No answer."

<sup>13</sup> Survey 7: "Please rank the following statements on a scale from 1 to 11, regarding how each and every statement represents a priority question in BiH?" Answers in the order they were chosen: (1) "Fighting corruption," (2) "Resolving the economic crisis," (3) "Resolving the political crisis," (4) "Making it easier for domestic companies to do business," (5) "Ensuring war crime suspects are brought to justice," (6) "Reduction of administration," (7) "Constitutional reform," (8) "International Community leaving BiH," (9) "Joining NATO," (10) "Completing reform necessary to join the EU," and (11) "Finding a remedy for the Sejdić-Finci decision."

average net monthly salary of citizens goes to bribes. But individual citizens and families are not the only ones forced to resort to corrupt practices; businesses have to do so as well. The same report shows that one in ten citizens and businesses pay bribes to public officials, with the average amount per bribe being around €327. Direct and indirect requests by public officials account for roughly two-thirds of all bribery cases, and almost half of the bribes are paid in advance. People and businesses pay bribes to speed up administrative procedures or to overcome a negative administrative decision, be it related to health inspections for businesses or to implementation of existing laws by police officers. The UNODC data are stark: 44.1% of businesses consider that reporting cases of bribery is pointless, not only because it is considered a common practice, but also because nobody would really care. 60% of people do not consider it is worth making the effort to even complain. Both businesses and people show an enormous lack of faith in the accountability of public institutions and are resigned to resorting to corrupt practices in order to obtain positive outcomes of administrative decisions.

Having to choose between prioritizing addressing corruption and resolving the economic crisis is a hard decision for respondents to make, as in many ways they are two sides of the same coin.

### *3) Corruption and politics*

The second way in which corruption affects the daily lives of people in BiH is through the country's current political system. This link is evident in six of the seven polls analyzed. In 2007, a total of 64% of people interviewed thought that all or most of the officials serving the citizens are corrupt. **Although citizens think that the police, the judiciary and the government should be the institutions leading the fight against corruption, unfortunately, the government and the judiciary, together with the health system, are identified by respondents as the most corrupt institutions in BiH (Survey 5).**

Faith in politicians is minimal across ethnicities. Survey 7 finds that 56% of citizens believe that politicians are not able to reach an agreement on state-level constitutional reforms because it is not in their interest to do so (58.2% FBiH Bosniak majority, 41.5% FBiH Croat majority, 56.6% RS Serb majority, 82.5% Brčko District respondents). Of the total BiH respondents, 87% think that politicians do not represent the interests of the citizens who elect them, but rather the interests of their parties.<sup>14</sup> The 2013 UNDP commissioned survey (Survey 6) notes that 87% of citizens have no confidence in political parties.

As a result of the recurrent high level of mistrust in politicians at all levels in most surveys

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<sup>14</sup> Survey 7: "Do you think that elected politicians at any following levels of government represent the interest of citizens who voted for them or interests of their parties? Highest ranked answer: "interests of parties" with no differences between answers across entities and ethnicities.



analyzed, **79.6% of citizens, including a fairly high number of more than 6 in 10 Serbs, prefer that crime and corruption be tackled at the state level, and not at the cantonal or entity levels of administration (Survey 7).** Over 80% of FBiH and RS respondents think that the politicians are to blame for the political crisis, which they identified as the third biggest problem the country is facing, after corruption and the economic crisis (Survey 6). The urgency of tackling corruption is felt throughout the country by 71% of Bosniaks, 59% of Serbs and 75% of Croats (Survey 5<sup>15</sup>).

Despite these figures, not much has been done to respond to citizens' concerns. According to the EU, implementation of the state-level anti-corruption strategy and action plan for 2009-2014 has been "significantly delayed," and strategies and action plans are being implemented without coordination at the entity level, in Brčko District, and in some cantons. Amendments to the Law on Conflict of Interest were adopted by the BiH Parliament in 2013, but this took place through "urgent procedure" with no public consultation, and has not had an impact on the fragmented anti-corruption efforts across the country.<sup>15</sup> Furthermore, it has increased concerns over politicizing the fight against corruption because it has passed the responsibility to decide on conflicts of interest among politicians from an (ostensibly) independent Central Election Commission to the Parliamentary Commission. Activities to fight corruption remain localized and uncoordinated. Such problems continue to undermine citizens' faith in the political system and in democracy in BiH.

#### *4) Citizens' views on the justice sector*

This issue has been tackled by three of the seven surveys analyzed by this paper. They show that public discontent with the judicial system in BiH is deep and universal. The judiciary is fragmented with the Federation of BiH, the Republika Srpska, Brčko District and the State each having its own separate system. In the Federation of BiH, each canton has its own courts. While there is a Court of BiH and a Constitutional Court of BiH, there is no BiH Supreme Court (each entity has a supreme court) that serves as a final court of appeal for all citizens.

But what kind of constitutional changes do citizens have in mind, and how could the judiciary be made more accountable in the provision of justice, and in particular, transitional justice? The polling data shows that in cities and towns across BiH, citizens see that the importance of reconciliation activities at the state level is considerably greater than for any local or regional processes, "regardless of which political parties are strong in those cities" (Survey 4, p.7). This is the case for respondents in the RS as well: 65% of RS respondents are not satisfied with the RS

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<sup>15</sup> Survey 5: "Which of the following statements comes closest to your own opinion about public corruption in BiH?" highest ranked statement "Corruption is an urgent problem. It threatens our progress and must be confronted forcefully" chosen by 71% of Bosniaks, 59% of Serbs, and 75% of Croats.

judiciary (Survey 5, slide 34).

Asked if the judiciary should be addressed through state-level constitutional reforms, an overwhelming majority of 98.5% of those interviewed across the country responded affirmatively with almost no differences across entities and ethnicities (Survey 7).<sup>16</sup> This shows that citizens clearly reject the current fragmented structure, which has led to ineffectiveness and lack of accountability in the judiciary at the entity and canton levels of government.

### *5) Citizens' views on agriculture*

Only one of the seven surveys analyzed asked citizens how they view the current agriculture sector. However, a large number of media, civil society and international reports have pointed to the problems posed by the country's constitutional structure as an obstacle to the development of this sector.

The European Commission 2013 Progress Report on BiH stated that the country has a fragmented national economic space (p.35). This has a direct impact on the implementation of the EU's regulations and on the accession process, causing the loss of a great amount of funding. Farmers cannot directly access EU funds destined for agriculture and rural development because of the lack of a unified funds absorption structure<sup>16</sup> and the lack of a single payment system/coordinating body at the state level.<sup>17</sup> Losses stand at approximately €325 million in IPARD funds reserved by the EU for BiH for the period 2007 - 2013. Additionally, since Croatia's entry into the Union, BiH is not permitted to sell food produce to EU nations because the country's divided government cannot agree on how to meet EU hygiene codes. Not being able to export its produce is costing the country over €100 million annually, including some €30 million for dairy products alone.<sup>18</sup>

The NGO Green Council has recently gathered a number of farmers from across the country into a Farmers Union, which called for a state-level Ministry of Agriculture and made its voice heard among BiH's international partners, including the EU. In 2013, not only farmers, but 97.2% of citizens across the country expressed their support for agriculture to be addressed in state-level constitutional reforms. This included 98.6% of Bosniaks, 97.6% of Serbs, 85.3% of Croats, and 100% of Others. Constitutional reforms should, according to more than 6 in 10 citizens, place the agriculture sector under the jurisdiction of the state.<sup>17</sup>

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<sup>16</sup> Specifically 98.5% of FBiH Bosniaks and Croats, 98% of RS Serbs and 100% of Brčko District respondents think that justice should be addressed in state-level constitutional reforms (Survey 7, slides 177 and 180)

<sup>17</sup> Survey 7: RS/Serb majority respondents in support of this competency at entity level: 41.8% (slide 68); RS/Serb majority respondents in support of this competency at state-level: 48.8% (slide 68); FBiH/Bosniak majority respondents in support of this competency at state level: 71.4% (slide 68); FBiH/Croat majority respondents in support of this competency at state level: 64.6% (slide 68)



### 6) Citizens' views on the adoption of European Union laws in BiH

This particular issue was specifically and directly tackled by one of the seven surveys analyzed in this paper (Survey 7). The previous section of this study showed that popular support for constitutional changes that would bring the country closer to EU integration has experienced a downward trend since 2007. It also showed that citizens believe that the country can survive without integration in the EU. However, there is interest among citizens in reforms that would confirm the supremacy of EU law over BiH domestic law to ease the harmonization process. **Citizens favor EU laws over the country's laws knowing that this would be a way to motivate country-wide reform and provide access to funding that would advance the much needed progress on all economic fronts.** A large majority of 79.1% of citizens support this, including 81.9% of Bosniaks, 73.6% of Serbs, 81.1% of Croats and 73.7% of Others, with no differences across urban and rural areas (Survey 7). More than two out of three Serb respondents, and more than three out of four RS respondents, agree that constitutional amendments to ensure and confirm the primacy of EU law over domestic law make sense.

### 7) Citizens' views on civil liberties and political rights

Dayton BiH is built around the equality of its three constituent peoples, and not on the equality of its citizens. Even if ethnicity is important to citizens and constitutes part of their individual identities, the interests of individuals are not constrained by their ethnicity. Although this issue is tackled head-on by only one survey of the seven analyzed here, the previous subsections have shown that across ethnicities people want a better economic and political situation. This subsection confirms this by revealing citizens' support for equal political rights, regardless of ethnicity.

In 2013, people were asked whether citizens from the category of "Others" should be able to run for the BiH Presidency, all parliaments and all governments in the country. The answers showed a high support for equal participation of "Others" in political life in BiH, with more than 4 out of 5 respondents supportive of such equality (Survey 7). In particular, 83% of Bosniaks, 80.6% of Serbs, 62.1% of Croats, and 94.7% of Others support equality of citizens, regardless of their ethnic background or if they belong to constituent peoples or not. (The Croats represent a somewhat lower majority, likely due to recent resurgent rhetoric on the need for a *de facto* or *de jure* third entity)<sup>19</sup>.

Even the 2014 report of the ICG, which recommends formalizing political party domination in many ways, notes that the Bosnian crisis is about politics, not personal identity or ethnicity.<sup>20</sup> The economic problems, as this paper has shown, are directly linked to top-heavy political and administrative structures, as employment in government institutions provides for durable

patronage systems. Broad support for a state based on civic rather than simply on ethnic rights makes it clear that across the board what citizens mostly want is a country that works for all its citizens and not merely for the privileged few.

### **Main take-away points:**

- Corruption is the country's biggest problem and fighting it should be the highest priority.
- Corruption in BiH is so high that it not only affects people's opportunities for employment and business development in the country, but it is also seen as a given in the country's governance institutions.
- Citizens want to take the justice system out of the hands of politicians, who are widely perceived as corrupt and who are seen by almost 90% of citizens to represent the interest of their parties at all levels of government (Survey 7). People oppose the current fragmented justice system, which prosecutes crime and corruption cases at the entity and cantonal levels of government and where opportunity for political influence is high. 79.6% of all citizens want state-level judicial institutions that can tackle corruption effectively. Citizens rank justice as one of the top five sectors to be addressed in state-level constitutional reform.<sup>18</sup>
- To avoid losing more EU funds for agriculture and rural development, and possible revenues from exporting produce to the EU, more than 6 out of 10 people in BiH understand the need for a state-level authority in agriculture, such as a state-level Ministry of Agriculture.
- 79.1% of citizens favor EU laws over domestic laws knowing that this would be a way to motivate country-wide reform and provide access to funding that would advance much-needed progress on all economic fronts.
- 80.6% of citizens believe that "Others" should enjoy representation in BiH's parliaments and governments.

## **5. Positions vs. Interests: Territorial Party Politics**

A full exploration of the impact of questions like "Do you think the RS should secede from BiH?" or "Do you think the Croats should have their own third entity?" are beyond the scope of this survey, but a few things deserve mention.

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<sup>18</sup> Survey 4, p 175: "To what degree do you think that the following sectors are important to be addressed in state-level constitutional reforms?" (multiple answers possible).

Although several reports base their arguments on polling data, the 2014 ICG report is given extra attention in this paper because it wraps up a series of 80 reports on the Balkans in the past eighteen years. As previously noted, the report cites the 2013 UNDP-commissioned survey to say that BiH citizens hold political parties accountable for the country's problems with 87% having no confidence in them. While the lack of faith in BiH's politicians has been a recurrent theme in five out of the seven polls analyzed here, the ICG report also notes several other issues based on the findings of two surveys *not* analyzed in this paper. For example, the ICG report notes that 59.3% of Serbs prefer independence, and another 11.1% desire union with Serbia, and that only 16.8% prefer living in Bosnia and Herzegovina as currently structured.<sup>19</sup> The data is based on a survey conducted in 2012, but the ICG report fails to provide more information about the way the questions were asked (open-ended or closed questions; whether respondents were limited to just one response; etc.). This is particularly worrying as manipulated answers to survey questions can be a justification for wrong messages. In this case, the message is that the majority of RS Serbs want independence because they do not want to be part of the country as it is currently structured. If living in a reformed BiH was not provided as an answer option, then the RS Serbs interviewed were limited to choosing either independence from BiH or union with Serbia.

While the report provides some thoughts on Bosnia's future, unfortunately it fails to identify correctly some of Bosnia's problems, mainly because it bases its messages on highly selective data that focuses on narrow positions, rather than potentially broader-stated interests. This paper has found that three<sup>20</sup> polls provide information contrary to the message relayed through ICG's analysis regarding the issue of RS independence. Survey 5 shows that 69% of RS Serbs do not trust their entity government.<sup>21</sup> Survey 6 shows that 81.7% of RS Serbs blame their politicians for the corruption and economic crisis they experience.<sup>22</sup> Finally, Survey 7 (publicly available, but not cited by the ICG), finds that 79.5% of RS Serbs are supportive of state-level constitutional reform, including greater state competence for fighting corruption and reforming the justice sector, and that 70.5% would want BiH to function like a normal country.<sup>23</sup>

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<sup>19</sup> ICG report 2014, *Bosnia's Future*, p.18

<sup>20</sup> Survey 5, Survey 6, Survey 7

<sup>21</sup> Survey 5: "How likely is it that the current RS government will implement policies to improve areas you have chosen as the most important ones in the previous question?" Answers: "not likely" chosen by 69%, "likely" chosen by 27%. (Slide 27); the same survey shows that over 69% of RS citizens are not satisfied with the RS judiciary (slide 34)

<sup>22</sup> Survey 6: "Who do you hold most accountable for these problems?" (image 13)

<sup>23</sup> Survey 7: "To what extent do you support attempts at Constitutional Reform?" total answers "Supportive" 67%, total answers "Not Supportive" 16.6% (slide 60), "Why do you think constitutional changes in BiH are necessary?" multiple answers possible (slide 48)

## 6. Conclusion

The analysis of surveys conducted over the past years in BiH has shown that divisions among citizens from different entities and ethnic backgrounds are narrow when it comes to meaningful, interest-based state-level constitutional reform. The differences among respondent groups are in fact *decreasing* over time, as all citizens grow more dissatisfied with politics and politicians. There are few differences across entities and ethnicities when it comes to burning issues such as corruption, the economic crisis, political representation and justice. This is clear in all the polls analyzed here. The only outlier at times has proven to be Survey 6 commissioned in 2013 by UNDP, which reflects a divided country in terms of citizens' preferences for its administrative and territorial setting. This poll also very clearly asked questions skewed in this direction. According to this poll, 48.8% of Serbs want the RS to be an independent state but when asked how much confidence they have in the entity government, only 37% say they trust it. The inconsistencies in these answers are evidence of the guiding nature of the questions asked, and the conflation of positions and interests. The fact that the poll makes reference to citizens' ethnicity to ask if they would defend their ethnic territory is yet another example.

Overall, citizens want what makes sense for them: a state-level regulated justice system devoid of politicization; state-level competency over agriculture that allows growth in this sector; harmonization of laws across the country to encourage more foreign and EU investment and make reforms possible and attractive; and equal civic rights for all citizens. These types of reforms enjoy the full support of BiH citizens and must be planned and carried out with their involvement. So far, a top-down approach to constitutional reform has been promoted and reform packages have failed to gather both political and citizens' support. It is time to draft a constitution that represents the interests of the citizens and not the interests and positions shared by political parties and politicians who benefit from maintaining a divided status quo. This can only be achieved through encouraging and enabling the participation of local constituencies in the reform processes. This was the case in Iceland in 2010, when a citizen-led constitutional assembly proposed a reformed constitution to the country's Parliament,<sup>21</sup> and in Ireland, where a constitutional convention was formed in 2012 that included 100 members from parliament and political parties and from randomly-selected citizens who constituted a majority of convention members.<sup>22</sup>

Recommendations for reform that are concentrated on the roles and positions of the elites only are not only not democratic, but will ultimately be ineffective as well. Such an approach would do little to address the stated practical interests of citizens. Solving the constitutional deadlock and building a state based on individual rights, in which citizens can decide on policies that affect their day-to-day lives, would imply more structural change. Political representatives need

to be made more accountable to the people they serve for the actions they take and for their inaction as well. Transferring many of the responsibilities that currently reside with the entities and cantons to the State in some cases but particularly to the municipalities would help to ensure more accountability. It would also avoid the concentration of hundreds of millions of Euros annually in a bloated entity and canton-level structure. Although this solution is not the easiest one, it is the most obvious one. And Bosnia and Herzegovina has been through just about enough attempts to impose on its citizens simple quick-fix solutions to its constitutional problems.

## Endnotes

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<sup>2</sup> Balkan Insight, 2014: “Elite Driven Reform Will Not Save Bosnia”, author Valery Perry, available at <http://www.balkaninsight.com/en/article/elite-driven-reform-will-not-save-bosnia>

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<sup>3</sup> Balkan Insight 2014: “Why Constitutional Reform Will Not Solve the Bosnian Blockade”, author Florian Bieber, available at <http://www.balkaninsight.com/en/blog/why-constitutional-reform-will-not-solve-the-bosnian-blockade-1>

<sup>4</sup> International Crisis Group, “Bosnia’s Future”, Europe Report No. 232, 10 July 2014

<sup>5</sup> Hitchner B. and Hays D., 2013, “How to break Bosnia’s constitutional deadlock”, article published in the European Voice, on 17.01.2013, available at <http://www.europeanvoice.com/article/imported/how-to-break-bosnia-constitutional-deadlock/76177.aspx> (log-in required)

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<sup>6</sup> General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, available at <http://www.ucdp.uu.se/gpdata/peace/BoH%2019951121.pdf>, last accessed 1 February 2014; Deutsche Welle 2009, “Normality comes in small doses in Bosnia”, article published on 05.07.2009 by C. Penfold at <http://www.dw.de/normality-comes-in-small-doses-in-bosnia/a-4452668>, last accessed 1 February 2014

<sup>7</sup> Balkan Insight, 2012: “Bosnian Transitional Justice Strategy Hits First Bump”, author Denis Dzidic, available at <http://www.balkaninsight.com/en/article/bosnian-transitional-justice-strategy-hits-first-bump>, last accessed on 1 February 2014

<sup>8</sup> “Delivering Justice in Bosnia Herzegovina, An Overview of War Crimes Processing from 2005 to 2010, Organization for Security and Co-operation in Europe OSCE 2011, [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2011051909500706eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2011051909500706eng.pdf)

<sup>9</sup> European Commission Memo, 27 June 2012, available at [http://europa.eu/rapid/press-release\\_MEMO-12-503\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-503_en.htm?locale=en)

<sup>10</sup> Main Results of the Foreign Affairs Council, December 2014, European Union External Action, EU Relations with Bosnia Herzegovina, available at [http://eeas.europa.eu/bosnia\\_and\\_herzegovina/index\\_en.htm](http://eeas.europa.eu/bosnia_and_herzegovina/index_en.htm)

<sup>11</sup> Transparency International National Integrity System Assessment, Bosnia and Herzegovina, 2013, available at <http://ti-bih.org/wp-content/uploads/2012/12/National-Integrity-System-Assessment-BiH-2013-en.pdf>

<sup>12</sup> “Youth Unemployment in Bosnia over 60 percent”, World Bulletin, 23 November 2013, available at <http://www.worldbulletin.net/?aType=haber&ArticleID=123915>

<sup>13</sup> Transparency International National Integrity System Assessment, Bosnia and Herzegovina, 2013, p.185

<sup>14</sup> UNODC Report: “Business, corruption and crime in the Western Balkans: the impact of bribery and other crime on private enterprise”, available at [http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Western\\_balkans\\_business\\_corruption\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Western_balkans_business_corruption_web.pdf)

<sup>15</sup> EUD/EUSR Statement on the Amendments to the Law on Conflict of Interest, 6 November 2013, available at <http://www.delbih.ec.europa.eu/News.aspx?newsid=5962&lang=EN>

<sup>16</sup> Green Council BiH, “Project Summary: Examining Bosnia and Herzegovina’s Constitutional Structure: Why do we need a State Ministry of Agriculture, Food and Rural Development”, 26 June 2013

<sup>17</sup> PILPG Legal Memorandum on European Union Standards for State Regulation of Agriculture, December 2012

<sup>18</sup> “Lack of EU Standards Costs 200 Million KM Annually”, Bosnia Daily, N.3404, Oct 29, 2014

<sup>19</sup> “Čović: Nagrada mi je dokaz da je moj put ispravan”, Nezavisne Novine, article by UROŠ VUKIĆ, 12 December 2014 available at <http://www.nezavisne.com/novosti/intervju/Covic-Nagrada-mi-je-dokaz-da-je-moj-put-ispravan-278389.html>

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<sup>22</sup> The Convention of the Constitution in Ireland website <https://www.constitution.ie/Convention.aspx>