



EASO Country of Origin Information Report

Bosnia and Herzegovina

Country Focus



November 2016



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Contents

Acknowledgments	3
Disclaimer	7
Glossary and Abbreviations	9
Introduction	11
Methodology	11
Map	12
1. State structure	13
1.1. Constitution	13
1.2. Executive branch	14
1.2.1. Presidency	14
1.2.2. Government – The Council of Ministers	14
1.3. Legislative branch: Parliamentary Assembly (PA) of BiH	15
1.4. Administration: Office of the High Representative (OHR) of Bosnia and Herzegovina	16
2. Socio-political landscape	17
2.1. General	17
2.2. Political parties	18
2.3. Elections	19
2.3.1. Legislation	19
2.3.2. Central Election Commission (CEC) ()	19
2.3.3. General Elections 2014	20
2.3.4. Local elections 2016	20
2.4. Electoral System – State level	20
2.4.1. Presidency	21
2.4.2. House of Representatives of the Parliamentary Assembly of BiH	21
2.4.3. House of Peoples of the Parliamentary Assembly of BiH	21
2.5. Mostar	22
2.6. Civil society	22
2.7. Media	23
2.7.1. Television and newspapers	23
2.7.2. Internet	23
3. Rule of Law and State Protection	24
3.1. Law enforcement	24
3.1.1. Police	24
3.1.2. Army	25
3.1.3. Intelligence/Security forces	26
3.1.4. Corruption	27
3.2. Judiciary	27
3.2.1. Judicial system	27
3.2.2. Courts	29
3.2.3. Capacity and integrity of the judiciary	31
3.2.4. Accountability for War Crimes	32
4. Security situation	34
4.1. General overview of the security situation	34
4.2. Level of violence	34
4.3. Terrorist threat	34

5. Human rights situation	36
5.1. Legal context and institutional framework	36
5.1.1. The Institution of Human Rights Ombudsman of BiH.....	36
5.1.2. Ministry of Human Rights and Refugees of BiH.....	36
5.2. General human rights situation	37
5.2.1. Freedom of expression.....	37
5.2.2. Freedom of religion.....	37
5.2.3. Freedom of association and assembly.....	38
5.2.4. Torture and other cruel, inhumane and degrading treatment and punishment	38
5.2.5. Prisons	38
5.3. Specific groups	39
5.3.1. Ethnic and religious minorities.....	39
5.3.2. Journalists and media.....	39
5.3.3. Human rights and peace defenders.....	40
5.3.4. Women	40
5.3.5. Children	41
5.3.6. Lesbian, gay, bisexual, transgender and intersex persons (LGBTI)	41
5.3.7. Trafficked persons.....	41
5.3.8. Returnees	42
Bibliography	43
Terms of Reference	55

Disclaimer

This report was written according to the EASO COI Report Methodology (2012) ⁽¹⁾. It is based on carefully selected sources of information. All sources used are referenced. To the extent possible, and unless otherwise stated, all information presented, except for undisputed or obvious facts, has been cross-checked.

The information contained in this report has been researched, evaluated and analysed with utmost care. However, this document does not claim to be exhaustive. If a particular event, person or organisation is not mentioned in the report, this does not mean that the event has not taken place or that the person or organisation does not exist.

Furthermore, this report is not conclusive as to the determination or merit of any particular claim to refugee status or asylum. Terminology used should not be regarded as indicative of a particular legal position.

'Refugee', 'risk' and similar terminology are used as a generic terminology and not as legally defined in the EU Asylum Acquis and the Geneva Convention

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The target audience are asylum caseworkers, COI researchers, policymakers, and decision-making authorities.

The drafting of this report was finalised on 14 September 2016. Any event taking place after this date is not included in this report. An exception to this cut-off date was made for the European Commission's Communication on EU Enlargement Policy issued 9 November 2016, the main findings of which were incorporated in this report.

⁽¹⁾ The EASO methodology is largely based on the Common EU Guidelines for processing Country of Origin Information (COI), 2008, and can be downloaded from the EASO website: <http://www.easo.europa.eu>.

Glossary and Abbreviations

BD	Brčko District
BHRT	Radio and Television of Bosnia and Herzegovina / Radio televizija Bosne i Hercegovine / Радио-телевизија Босне и Херцеговине
BiH	Bosnia and Herzegovina
BPS	Bosnian - Herzegovinian Patriotic Party / Bosanskohercegovačka patriotska stranka / Босанскохерцеговачка патриотска странка
CEC	Central Election Commission / Centralna izborna komisija Bosne i Hercegovine / Središnje izborno povjerenstvo Bosne i Hercegovine / Централна изборна комисија Босне и Херцеговине
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and inhuman and degrading treatment or punishment
CRD	Civil Rights Defenders
CSO	Civil society organisations
DF	Democratic Front / Demokratska fronta / Демократски фронт
DNS– NS-SRS	Democratic People’s Alliance / Demokratski narodni savez / Демократски народни савез
DPA	Dayton/Paris Peace Agreement
EC	European Commission
ECHR	European Convention on Human Rights
ECTHR	European Court of Human Rights
EP	European Parliament
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FPOF BiH	Federal Prosecutor’s Office of the Federation of Bosnia and Herzegovina
GRECO	Group of States against Corruption
HDZ BiH	Croatian Democratic Union
HDZ 1990	Croatian Democratic Union (HDZ) 1990 / Hrvatska demokratska zajednica 1990 / Хрватска демократска заједница 1990
HJPC	The High Judicial and Prosecutorial Council
HRW	Human Rights Watch
ICG	International Crisis Group
IDMC	International Displacement Monitoring Centre
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced persons
IREX	International Research and Exchanges Board

LGBT	Lesbian, gay, bisexual and transgender persons
LGBTI	Lesbian, gay, bisexual, transgender and intersex persons
MRG	International Minority Rights Group
MoD	Ministry of Defense
Mol	Ministry of Interior
NcOs	Non-commissioned officers
NGO	Non-governmental organisation
ODIHR	Office for Democratic Institutions and Human Rights
OHR	Office of the High Representative
OSAC	Overseas Security Advisory Council
OSCE	Organisation for Security and Co-operation in Europe
PA	Parliamentary Assembly of the BiH
PDP-NDP	Party of Democratic Progress – People’s Democratic Movement / Partija demokratskog progresa - Narodni demokratski pokret / Партија демократског прогреса - Народни демократски покрет
PO BiH	Prosecutor’s Office of Bosnia and Herzegovina
POBD	Prosecutor’s Office of BD
PORS	Prosecutor’s Office of Republika Srpska
RS	Republika Srpska
RSF	Reporters without Borders
SAA	Stabilisation and Association Agreement
SBB-BiH	Alliance for a Better Future / Savez za bolju budućnost / Савез за бољу будућност
SDA	Party of Democratic Action / Stranka Demokratske Akcije / Странка демократске акције
SDP	Social Democratic Party of BiH / Socijaldemokratska partija BiH / Социјалдемократска партија БиХ
SDSR	Serb Democratic Party / Srpska demokratska stranka / Савез независних социјалдемократ
SIPA	State Investigation and Protection Agency
SNSD	Alliance of Independent Social Democrats / Savez nezavisnih socijaldemokrata / Савез независних социјалдемократ

Introduction

This Country Focus report on Bosnia and Herzegovina was written at the request of the European Council for general background information and more detailed information relevant for international protection status determination and for the assessment of the applicability of the safe country of origin concept to Bosnia and Herzegovina. For the designation of safe countries of origin, Annex I of the Asylum Procedures Directive foresees that:

‘A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.’⁽²⁾

In addition, ‘account shall be taken, *inter alia*, of the extent to which protection is provided against persecution or mistreatment’⁽³⁾. The Bosnia and Herzegovina Country Focus at hand covers the most important information needs related to the above-mentioned criteria for safe country of origin designation, namely state structure, socio-political landscape, rule of law and state protection, security situation and human rights situation. The [Terms of Reference](#) can be found at the end of the report.

The report aims at providing an objective and neutral information base (without assessment or policy recommendations) that will allow for more informed policy discussions. It should be noted that the situation of third country nationals in Bosnia and Herzegovina (including persons transiting through the country or seeking international protection in Bosnia and Herzegovina) does not fall within the scope of this report.

Methodology

- Defining the Terms of Reference

The [Terms of Reference](#) have been defined on 8 April 2016 taking into account feedback from the EASO Country of Origin Information (COI) Strategic Network.

- Drafting process

The report was drafted by EASO staff. The drafting of this report was finalised on 14 September 2016. An exception to this cut-off date was made for the European Commission’s Communication on EU Enlargement Policy⁽⁴⁾ issued 9 November 2016, the main findings of which were incorporated in this report.

- Quality control

In order to ensure that the authors respected the EASO COI Report Methodology, a review was carried out by COI specialists from the countries listed as reviewers in the [Acknowledgements](#) section.

All comments made by the reviewers were taken into consideration and most of them were implemented in the final draft of this report.

For readability purposes, all references/translations provided in the three Bosnia and Herzegovina’s official languages will appear in the following order: Bosnian, Croatian and Serbian.

⁽²⁾ Council of Europe, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013.

⁽³⁾ Council of Europe, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013.

⁽⁴⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 26.

Map (5)



Map No. 3729 Rev. 6 UNITED NATIONS
March 2007

Department of Peacekeeping Operations
Cartographic Section

(5) UN, Geospatial Information Section, *Bosnia and Herzegovina*, April 2007.

1. State structure

After World War II, the Balkan states of Bosnia-Herzegovina, Serbia, Montenegro, Croatia, Slovenia and Macedonia formed the Federal People's Republic of Yugoslavia (FPRY). The autonomous provinces of Kosovo and Vojvodina joined ⁽⁶⁾.

Josip Broz Tito ruled the country until his death in 1980. As economic instability grew, nationalism among the different Yugoslav republics intensified, with leaders such as Slobodan Milosevic in Serbia or Franjo Tuđman in Croatia fomenting ethnic tensions. In 1991, Slovenia, Croatia and Macedonia declared their independence, and in 1992, Bosnia followed ⁽⁷⁾. The willingness to create 'ethnically defined states out of territories with ethnically mixed populations', prevented any peaceful solution for the region ⁽⁸⁾. The war in Bosnia erupted in 1992 ⁽⁹⁾.

In December 1995, after four years of war, the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia negotiated and signed the General Framework Agreement for Bosnia and Herzegovina, commonly referred to as the Dayton/Paris Peace Agreement (DPA) ⁽¹⁰⁾.

The DPA resulted in the establishment and mutual recognition of a politically independent Bosnia and Herzegovina (BiH), comprising two entities, the Federation of Bosnia-Herzegovina (FBiH) and the Republika Srpska (RS) ⁽¹¹⁾, as well as the neutral self-governing territory of the Brčko District ⁽¹²⁾.

The FBiH is divided into 10 cantons that are largely autonomous, each with their own government and parliament ⁽¹³⁾.

1.1. Constitution

BiH's Constitution (Annex 4 of the DPA) was drafted by international mediators and negotiated by some wartime leaders ⁽¹⁴⁾.

The Constitution established mutual recognition of the three parties' sovereignty and the recognition of the territorial integrity and political independence of BiH ⁽¹⁵⁾.

According to the EC Communication 2016, the country's Constitution is still in breach of the European Convention on Human Rights (ECHR) due to the lack of implementation of the 2009 *Sejdić-Finci* ruling of European Court of Human Rights (ECtHR) ⁽¹⁶⁾. The BiH's Constitution determines that the right to be eligible to the House of Peoples and the Presidency of Bosnia and Herzegovina is reserved to individuals of one of the constituent peoples, i.e., the Serbs, Croats and Bosniaks ⁽¹⁷⁾.

Dervo Sejdić, of Roma origin, and Jakob Finci, a Jew, filed a complaint with the ECtHR against the constitutional ethnicity-based restrictions as they considered them to be in violation of their human rights ⁽¹⁸⁾. In December 2009, the ECtHR ruled that such Constitutional provisions amounted to discrimination and were a breach of electoral rights ⁽¹⁹⁾.

⁽⁶⁾ Bethlehem, Daniel, et al, The conflict in Yugoslavia – a chronology, 1997.

⁽⁷⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016; O'Brien, J., 'The Dayton Constitution of Bosnia and Herzegovina', 15 April 2010.

⁽⁸⁾ O'Brien, J., 'The Dayton Constitution of Bosnia and Herzegovina', 15 April 2010.

⁽⁹⁾ Bethlehem, Daniel, et al, The conflict in Yugoslavia – a chronology, 1997.

⁽¹⁰⁾ OHR, General Framework Agreement for Peace in BiH (The), 14 December 1995.

⁽¹¹⁾ O'Brien, J., The Dayton Constitution of BiH, 15 April 2010.

⁽¹²⁾ European Forum for Democracy and Solidarity, Breakthrough in government formation Federation of BiH: SDP approves Dunovic' nomination, 5 February 2015.

⁽¹³⁾ OSW, The problem with constitutional reform in BiH, 13 October 2010.

⁽¹⁴⁾ O'Brien, J., The Dayton Constitution of BiH, 15 April 2010.

⁽¹⁵⁾ O'Brien, J., The Dayton Constitution of BiH, 15 April 2010.

⁽¹⁶⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 26.

⁽¹⁷⁾ OHR, Constitution of BiH, 14 November 1995.

⁽¹⁸⁾ ECtHR, Grand Chamber, Case of Sejdić and Finci v. BiH, 22 December 2009.

⁽¹⁹⁾ European Court of Human Rights, Grand Chamber, Case of Sejdić and Finci v. BiH.

Despite EU's recommendations ⁽²⁰⁾ and the Venice Commission's opinion on the need to proceed with BiH's Constitutional reform to fully implement the ECtHR ruling, that has not yet been achieved ⁽²¹⁾.

On 26 June 2016, the International Minority Rights Group (MRG) filed an application to the CoE to initialise criminal proceeding against BiH in connection with the *Sedjić-Finci* case ⁽²²⁾.

1.2. Executive branch

1.2.1. Presidency

The presidency of Bosnia and Herzegovina is defined by the Constitution as the highest state institution. The DPA discussions resulted in a tripartite division of the function of head of state between three 'Members of the constitutive people of BiH', the Bosniacs, the Serbs and the Croats. Article 5 of the Constitution defines the jurisdiction of the presidency, which includes ⁽²³⁾:

- Conducting foreign policy;
- Representing BiH in international organisations and institutions;
- Executing decisions of the Parliamentary Assembly ⁽²⁴⁾.

To apply for office, BiH's Constitution determines that candidates claim one of the three constituent peoples' identity ⁽²⁵⁾. The presidency is elected for four-year mandates ⁽²⁶⁾. (See [2.3 Elections](#) and [2.4.1 Electoral system – Presidency](#)).

As a result of the general elections held in October 2014, Mladen Ivanić, from Republika Srpska, Dragan Čović (Croat) and Bakir Izetbegović (Bosniak) are currently the members of the BiH Presidency. On 17 November 2014, Mladen Ivanić was chosen to be the first Chairman of the BiH Presidency ⁽²⁷⁾. Bakir Izetbegović is the current Chairman ⁽²⁸⁾.

1.2.2. Government – The Council of Ministers

BiH's unusual political system is the outcome of the split of Bosnia-Herzegovina into the Federation of Bosnia-Herzegovina and the RS, and also of the 1995 Dayton Agreement.

The Council of Ministers is the federal executive branch and has three representatives, a Serb, a Croat and a Bosniak. Its presidency rotates between the three every eight months, for a period of four years ⁽²⁹⁾.

The Chairman of the Council of Ministers is the Head of Government of BiH. The term of office of the Council of Ministers coincides with the mandate of the Parliamentary Assembly (PA) of BiH ⁽³⁰⁾.

The current Chairman of the Council of Ministers is Denis Zvizdić, elected in March 2015. Zvizdić is a member of the Party of Democratic Action since 1991 ⁽³¹⁾. The Chairman is entitled to nominate two Deputy Chairs chosen from the Ministers; these cannot belong to the same 'constituent people' ⁽³²⁾.

Zvizdić nominated Vjekoslav Bevanda as Deputy Chairman of the Council of Ministers and Minister of Finance and Treasury. Bevanda is a member of the Croatian Democratic Union of BiH (HDZ) and former Minister of Finance of

⁽²⁰⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 26.

⁽²¹⁾ CoE, Venice Commission, Amicus Curiae Brief in the cases of Sejdić and Finci v. BiH 22 October 2008.

⁽²²⁾ MRG, MRG indicates the failure of BiH after the verdict against discrimination brought by the highest European Court of Human Rights, 29 June 2016.

⁽²³⁾ Presidency of BiH, Chronology of the Presidency of BiH, n.d.

⁽²⁴⁾ Presidency of BiH, Rules of Procedure of the Presidency of BiH, 26 February 2013.

⁽²⁵⁾ OHR, Constitution of BiH, 14 November 1995.

⁽²⁶⁾ Presidency of BiH, Rules of Procedure of the Presidency of BiH, 26 February 2013.

⁽²⁷⁾ Presidency of BiH, Chronology of the Presidency of BiH, n.d.

⁽²⁸⁾ CIA, World Factbook, BiH, last updated 3 August 2016.

⁽²⁹⁾ European Forum for Democracy and Solidarity, Breakthrough in government formation Federation of BiH: SDP approves Dunovic' nomination, 5 February 2015.

⁽³⁰⁾ SIPA, Law on the Council of Ministers of BiH, December 2002.

⁽³¹⁾ Council of Ministers of BiH, Chairman, n.d.

⁽³²⁾ SIPA, Law on the Council of Ministers of BiH, December 2002.

the FBiH and Chairman of the Council of Ministers of BiH⁽³³⁾. The second Deputy Chairman is Mirko Šarović, former President of the Republika Srpska and member of the Serbian Democratic Party since 1990. Šarović is simultaneously Minister of Foreign Trade and Economic Relations⁽³⁴⁾.

The Council of Ministers consists of the Chair and the following Ministers:

- Minister of Foreign Affairs;
- Minister of Foreign Trade and Economic Relations;
- Minister of Finance and Treasury;
- Minister of Communications and Transport;
- Minister of Civil Affairs;
- Minister of Human Rights and Refugees;
- Minister of Justice;
- Minister of Security⁽³⁵⁾.

The Chairman of the Council of Ministers is responsible for:

- Harmonising the work of the Council of Ministers and the constitutional relations with the Presidency of BiH, the PA of BiH, as well as the Entities and the District of Brcko;
- Ensuring cooperation between the Council of Ministers and the entity and lower levels of Governments;
- Implementing decisions of the Council of Ministers⁽³⁶⁾.

BiH's state level of government is also responsible for arbitration, human rights, refugees and displaced persons⁽³⁷⁾, and matters pertaining to preservation of sovereignty, territorial integrity, political independence, and international personality of BiH. All other functions and powers not expressly assigned to BiH's institutions by the Constitution belong to the Entities⁽³⁸⁾. The Chairman is specifically tasked with the harmonisation and follow-up of the activities of institutions in BiH related to the EU accession process. The Directorate for EU Integration is under the Chairman's direct responsibility⁽³⁹⁾.

1.3. Legislative branch: Parliamentary Assembly (PA) of BiH

The Parliamentary Assembly of BiH consists of two chambers - the House of Representatives and the House of Peoples⁽⁴⁰⁾. According to Article IV of the BiH Constitution, the PA is, inter alia, responsible for:

- Enacting legislation to implement decisions of the presidency and to carry out the responsibilities of the Assembly under the Constitution;
- Deciding upon sources and amounts of revenues and approving budget to operationalise BiH's institutions and international commitments;
- Deciding on treaties ratification⁽⁴¹⁾.

In BiH, the legislative role lies with the PA, as set in Article III of the Constitution. Among others, the Parliamentary Assembly legislates on:

- Foreign policy and foreign trade policy;
- Customs and monetary policy;
- Finances and international commitments of BiH;
- Immigration, refugees and asylum policy and regulation;
- International and inter-Entity criminal law enforcement, including relations with Interpol;

⁽³³⁾ Council of Ministers of BiH, Ministry of Finance and Treasury, n.d.

⁽³⁴⁾ Council of Ministers of BiH, Minister of Foreign Trade and Economic Relations, n.d.

⁽³⁵⁾ SIPA, Law on the Council of Ministers of BiH, December 2002.

⁽³⁶⁾ SIPA, Law on the Council of Ministers of BiH, December 2002.

⁽³⁷⁾ OHR, Dayton Peace Agreement, Annexes 5, 6, 7 and 8, 14 December 1995.

⁽³⁸⁾ PA of BiH, Functions of the PA of BiH, n.d.

⁽³⁹⁾ OHR, Constitution of BiH, 14 November 1995; SIPA, Law on the Council of Ministers of BiH, December 2002.

⁽⁴⁰⁾ PA of BiH, Functions of the PA of BiH, n.d.

⁽⁴¹⁾ OHR, Constitution of BiH, 14 November 1995.

- Air traffic control ⁽⁴²⁾.

The controlling role of the PA lies with the House of Peoples, mandated to protect the interests of the three constituent peoples of BiH, ensuring that vital national interest of the constituent peoples is not violated ⁽⁴³⁾.

The PA has the authority to confirm the appointment of the Council of Ministers of BiH (performed by the House of Representatives), to oversee and control the work of the Council of Ministers and to present a vote of no confidence when necessary. The controlling role is supplemented by the electoral role ⁽⁴⁴⁾. The PA also has an interpretative role; it is the only body with authority to give authentic interpretation of legislation ⁽⁴⁵⁾.

1.4. Administration: Office of the High Representative (OHR) of Bosnia and Herzegovina

The Office of the High Representative was established by the General Framework Agreement for Peace in BiH (Annex 10), and is an ad-hoc international institution mandated to administer and oversee the implementation of all civilian aspects of the Peace Agreement ⁽⁴⁶⁾.

International Crisis Group (ICG) has criticised the role and need for the OHR, and called for its closure ⁽⁴⁷⁾. ICG argues that, among other issues, the OHR has lost authority in the country due to the public perception of it having favoured one of the sides and engaged in national politics ⁽⁴⁸⁾, namely during the crisis referendum in 2011 ⁽⁴⁹⁾. Critics argue that the OHR's role was problematic, as it was simultaneously a mediator and a conflicting party ⁽⁵⁰⁾.

⁽⁴²⁾ OHR, Constitution of BiH, 14 November 1995.

⁽⁴³⁾ PA of BiH, Functions of the PA of BiH, n.d.

⁽⁴⁴⁾ PA of BiH, Functions of the PA of BiH, n.d.

⁽⁴⁵⁾ PA of BiH, Functions of the PA of BiH, n.d.

⁽⁴⁶⁾ OHR, Mandate, n.d.

⁽⁴⁷⁾ ICG, Bosnia's Future, 10 July 2014.

⁽⁴⁸⁾ ICG, Bosnia's Future, 10 July 2014; ICG, Bosnia: State Institutions under Attack, 6 May 2011.

⁽⁴⁹⁾ Nouvelle-europe, The Odd Couple: the EU and BiH, 16 November 2011.

⁽⁵⁰⁾ Nouvelle-europe, The Odd Couple: the EU and BiH, 16 November 2011.

2. Socio-political landscape

2.1. General

According to the Bertelsmann Stiftung report, the BiH's socio-political landscape was strongly affected by the natural events that occurred in 2014, and which slowed the country's economic growth:

'Economic growth was set to accelerate in 2014, but severe flooding in May dramatically changed the outlook. This natural disaster caused major human suffering and hardship, affecting almost one quarter of the population. Thousands of people were displaced from their homes, over 2,000 of which were completely destroyed. A large number of businesses, farmlands, and infrastructure were also destroyed or severely damaged. The flooding moved land mines and other unexploded ordnance from the 1992 to 1995 war, leaving 70% of flooded areas at risk. Estimates put the total economic impact of the floods and consequent landslides at 5% to 10% percent of GDP. International donors pledged assistance, mainly in the form of loans, to assist the BiH authorities implement a reconstruction and recovery program in the flooded areas' ⁽⁵¹⁾.

During the same period the country experienced major social unrest. The source adds:

'In summer 2013, thousands of protesters gathered in Sarajevo to demand the government pass legislation regulating the national identification numbering system, as a legal vacuum had been created and new-born babies could not be registered, impacting their access to health care and other services. In February 2014, mass protests against governments in the Federation turned violent, with a minority attacking and burning government buildings in Sarajevo, Mostar, and Tuzla. The protests began in Tuzla, led by workers from Communist-era factories demanding back payment of salaries and other benefits. Protests spread, with demands for the resignation of governments across the Federation due to their perceived abuse of office and mismanagement of the economy' ⁽⁵²⁾.

Citizens in BiH strongly identify with their ethnic group, have 'relatively low levels of trust in each other' and show 'the lowest level of trust in their political leaders and state institutions', according to the Bertelsmann report. The source adds that political elites have not encouraged interaction between communities and have often discouraged such engagement ⁽⁵³⁾.

In addition, ethnicity is deeply rooted in the governance system and is an important principle of politics, translated into power-sharing mechanisms in all levels of government. During the war, the dissemination of interethnic hatred was a key technique to divide BiH. The international presence in Bosnia after the war discouraged the practice; however, after 2006, the weakening of the international presence gave room to a rise of the nationalist political rhetoric and an increase in obstruction of power-sharing structures ⁽⁵⁴⁾.

EU accession

Bosnia and Herzegovina was identified as a potential candidate to the European Union in the Thessaloniki European Council of 2003 and has since been negotiating the conditions for membership ⁽⁵⁵⁾.

One of the conditions is to fully comply with 'all the EU's standards and rules', through the 'adoption, implementation and enforcement of all current EU rules (the 'acquis')' ⁽⁵⁶⁾. The Coordination Mechanism is one of the foreseen instruments for that purpose, as it aims at harmonising national policies with the EU acquis, and effectively implement them ⁽⁵⁷⁾. In late July 2016, BiH agreed on the Coordination Mechanism, and on the decision to proceed with an International Monetary Fund programme ⁽⁵⁸⁾. According to a joint statement by Federica Mogherini, High

⁽⁵¹⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽⁵²⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽⁵³⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽⁵⁴⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽⁵⁵⁾ EC, European Neighbourhood Policy and Enlargement Negotiations, Conditions for Membership, n.d.

⁽⁵⁶⁾ EC, European Neighbourhood Policy and Enlargement Negotiations, Conditions for Membership, n.d.

⁽⁵⁷⁾ Initiative for Monitoring the European Integration of BiH, Coordination mechanism as one of the conditions for starting negotiations!, n.d.

⁽⁵⁸⁾ EEAS, Joint statement by High Representative/Vice-President Federica Mogherini and Commissioner for European Neighbourhood Policy and Enlargement Negotiations Johannes Hahn on BiH's authorities' agreement on key measures on the country's EU path, 1 August 2016.

Representative of the EU for Foreign Affairs and Security Policy/ Vice-President of the Commission, and Johannes Hahn, the Commissioner for European Neighbourhood Policy and Enlargement Negotiations, ‘the meaningful implementation of the reform agenda and the coordination mechanism on EU matters – together with the adaptation of the Stabilisation and Association Agreement (SAA), an agreement on which was recently initialled – are key for progress on the country’s EU accession path’⁽⁵⁹⁾.

On 2 August 2016, BiH’s Council of Ministers decided on the definition of instruments for the harmonisation of its legislation with the EU acquis, binding the ministries and state institutions to the harmonisation process⁽⁶⁰⁾.

On 23 August 2016, the Coordination Mechanism was adopted by Bosnia and Herzegovina. According to the EU, ‘substantial progress’ was made by BiH in its application for EU membership⁽⁶¹⁾.

2.2. Political parties

The Bertelsmann Stiftung report states that the party system in Bosnia and Herzegovina is mainly ethnically divided between Bosniaks, Croats and Serb, and that the political parties are territorially organised by entity⁽⁶²⁾. The source adds that BiH has a large number of political parties when compared to its population size⁽⁶³⁾.

According to the same source, ‘each ethnic group is dominated by two or three parties that tend to alternate in government’⁽⁶⁴⁾.

In Serb majority areas, the main parties/coalitions are the Alliance of Independent Social Democrats (SNSD) and the Serb Democratic Party (SDS). In Croatian areas, the Croatian Democratic Union of Bosnia and Herzegovina (HDZ) and Croatian Democratic Union 1990 (HDZ1990) and in Bosniak-majority areas, the Party for Democratic Action (SDA) is dominant; additionally, two new parties joined the Bosniak scene, the Union for a Better Future (SBB, formed in 2009 by an influential media tycoon) and the Democratic Front (DF, formed in 2014 by the former SDP member of the BiH presidency)⁽⁶⁵⁾.

The political parties and coalitions represented in the Parliamentary Assembly of BiH are as follows:

- SDA - Party of Democratic Action
- SNSD - Alliance of Independent Social Democrats
- DF - Democratic Front
- SDSRS - Serb Democratic Party
- SBB-BiH - Alliance for a Better Future
- Coalition HDZ BiH, HSS, HKDU BiH, HSP dr. Ante Starčević, HSP Herzeg-Bosnia
- SDP - Social Democratic Party of BiH
- HDZ 1990 - Croatian Democratic Union 1990
- BPS - Bosnian - Herzegovinian Patriotic Party
- Party of Democratic Activity
- PDP-NDP - Party of Democratic Progress
- DNS–NS-SRS - Democratic People’s Alliance⁽⁶⁶⁾.

In the October 2014 parliamentary elections, 10 parties and three coalitions won seats at the House of Representatives of the Parliamentary Assembly of BiH. According to the EP, all showed commitment towards EU integration⁽⁶⁷⁾.

⁽⁵⁹⁾ EEAS, Joint statement by High Representative/Vice-President Federica Mogherini and Commissioner for European Neighbourhood Policy and Enlargement Negotiations Johannes Hahn on BiH’s authorities’ agreement on key measures on the country’s EU path, 1 August 2016.

⁽⁶⁰⁾ European Western Balkans, Council of Ministers of BiH: A step towards on harmonisation BiH’s legislation with the EU acquis, 2 August 2016.

⁽⁶¹⁾ EEAS, On today’s adoption of Coordination Mechanism by Bosnia and Herzegovina, 23 August 2016.

⁽⁶²⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽⁶³⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽⁶⁴⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽⁶⁵⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽⁶⁶⁾ EP, BiH: Political parties, September 2015; the complete designation in Bosnian, Croatian and Serb can be found in Glossary and Abbreviations.

⁽⁶⁷⁾ EP, BiH: Political parties, September 2015.

2.3. Elections

2.3.1. Legislation

Elections are regulated by the Constitution, the Election Law of BiH⁽⁶⁸⁾, DPA's Annex III, the Law on Financing Political Parties, the Law on Citizenship, and the Central Election Commission's regulations⁽⁶⁹⁾.

The legal framework continues to place residency and ethnicity-based restrictions on the right to vote and to stand as a candidate (See 1.1 Constitution)⁽⁷⁰⁾.

The Election Law of BiH and its amendments are the most relevant legislation concerning elections for members of the Parliamentary Assembly, members of the Presidency of BiH, and governing principles of elections at all levels of authority in BiH⁽⁷¹⁾.

The country electoral system also includes regulatory by-laws, namely on election administration, voting and the Main Centre for Counting, appeals and complaints, awarding and terminating mandate, accrediting observers, voters and political subjects⁽⁷²⁾.

2.3.2. Central Election Commission (CEC) (73)

The Election Commission of Bosnia and Herzegovina was established in August 2011, following the adoption of the new Election Law of BiH⁽⁷⁴⁾. It is an independent body, reporting directly to the Parliamentary Assembly of BiH⁽⁷⁵⁾. In April 2006 it changed its name to Central Election Commission of Bosnia and Herzegovina⁽⁷⁶⁾.

The CEC consists of seven members, two Croats, two Bosniaks, two Serbs and one Other member. The President of the BiH Election Commission is appointed from its members and presides over the Election Commission 'according to the rotation principle, once in seven (7) years for the period of twenty-one (21) months'⁽⁷⁷⁾.

The CEC is responsible, *inter alia*, for:

- Supervising the lawful operation of all election commissions and Polling Station Committees;
- Issuing administrative regulations, namely the decision to hold direct elections in BiH;
- Maintenance and update of the Central Voters Register for the territory of BiH;
- Certification political parties, coalitions, and other lists of candidates for all levels of direct elections in BiH;
- Determining and verifying election results⁽⁷⁸⁾.

The CEC is also mandated to annul elections in electoral units or individual polling stations whenever irregularities occur⁽⁷⁹⁾.

⁽⁶⁸⁾ BiH's Election Law was last changed in May 2016, through the 'Law on changes and addenda to the BiH Election Law (Official Gazette of BiH, no. 31/16)' (see Bibliography).

⁽⁶⁹⁾ EP, BiH: Political parties, September 2015.

⁽⁷⁰⁾ EP, BiH: Political parties, September 2015.

⁽⁷¹⁾ CEC BiH, Election Law of BiH (Unofficial consolidated text), n.d.; The following legislative acts amend the original Election Law of BiH ("Official Gazette number 23/01): Decision on changes and addenda to the Election Law of BiH ("Official Gazette of BiH", number 7/02, number 9/02), Law on changes and addenda of the Election Law of BiH ("Official Gazette of BiH", number 20/02), Correction of the Law on changes and addenda to the Election Law of BiH ("Official Gazette of BiH", number 25/02), Law on changes and addenda of the Election Law of BiH ("Official Gazette of BiH", numbers 4/04, 20/04, 25/05 and 52/05), Correction of the Law on changes and addenda to the Election Law of BiH ("Official Gazette of BiH", number 65/05), Law on changes and addenda to the Election Law of BiH ("Official Gazette of BiH", numbers 77/05, 11/06 and 24/06), Law on adopting the law on changes and addenda to the Election Law of BiH ("Official Gazette of BiH", number 32/07), Law on changes and addenda to the Election Law of BiH ("Official Gazette of BiH", numbers 33/08, 37/08, 32/10, 18/13, 7/14, and the Law on changes and addenda to the BiH Election Law ("Official Gazette of BiH, no. 31/16).

⁽⁷²⁾ CEC BiH, Elections, By-laws, n.d.

⁽⁷³⁾ The complete designation in Bosnian, Croatian and Serb can be found in Glossary and Abbreviations.

⁽⁷⁴⁾ CEC, CEC of BiH, 7 May 2012.

⁽⁷⁵⁾ CEC, Election Law of BiH, 23 August 2001.

⁽⁷⁶⁾ CEC, CEC of BiH, 7 May 2012.

⁽⁷⁷⁾ CEC, CEC of BiH, 7 May 2012; CEC, Election Law of BiH, 23 August 2001.

⁽⁷⁸⁾ CEC, CEC of BiH, 7 May 2012.

⁽⁷⁹⁾ CEC, Election Law of BiH, 23 August 2001.

2.3.3. General Elections 2014

General elections took place in BiH on 12 October 2014. The Organisation for Security and Co-operation in Europe (OSCE) short-term observer mission noted that the elections were held in a competitive environment and the overall fundamental rights and freedoms were respected. However, the inter-ethnic split remained, and the lack of a shared vision among the three constituent peoples continued to hinder the reforms necessary to ensure democratic elections ⁽⁸⁰⁾.

OSCE observers also noted that although the legal framework was generally sufficient to hold democratic elections, ‘long-standing shortcomings’ continued, especially the ethnicity-based restrictions on candidacy and voting rights, namely the lack of implementation of the 2009 *Sejdić-Finci* ruling of the ECtHR ⁽⁸¹⁾. More details on this ruling can be found in section 1.1 [Constitution](#).

2.3.4. Local elections 2016

In April 2016 the CEC approved the ‘Rulebook on procedure of conducting elections in Bosnia and Herzegovina’, intended to define the conditions, responsibilities and overall procedures of elections taking place in the territory of BiH, including types of ballots, polling stations, polling station committees, voting procedures, counting votes, and processing, controlling and transmitting election results ⁽⁸²⁾.

On 4 May 2016, the CEC issued a decision announcing that direct local elections would be held in BiH on 2 October 2016 in different levels of government, as follows:

- 78 Municipal Councils in the Federation of Bosnia and Herzegovina;
- 57 Municipal Assemblies in the Republika Srpska;
- 131 mayors of municipalities in Bosnia and Herzegovina;
- 4 City Councils in the Federation of Bosnia and Herzegovina;
- 6 City Assemblies in Republika Srpska;
- 10 City mayors in Bosnia and Herzegovina;
- Assembly of Brčko District of Bosnia and Herzegovina ⁽⁸³⁾ ⁽⁸⁴⁾.

Pod Lupom, a coalition of 6 NGOs for free and fair elections, will be an observer of the pre-election, election, and post-election period, as well as monitoring media and election campaigns. The coalition’s activities are funded by the EU ⁽⁸⁵⁾.

On 18 August 2016 the CEC approved and certified candidates for the local elections and published the lists on their official website ⁽⁸⁶⁾.

2.4. Electoral System – State level

General elections are held separately from local elections. The CEC is responsible for the decision to call general elections in the country and those can be at different levels: for the Presidency (three members), for representatives of the Parliamentary Assembly (42 deputies), for the House of Representatives of the Federation of BiH (98 deputies), the president and two vice-presidents of the Republic of Srpska, the National Assembly of the Republic of Srpska (83 delegates) and for the Assembly of the 10 cantons in the Federation of BiH (289 deputies) ⁽⁸⁷⁾.

Elections for all institutions take place every four years, with different rules applying for each level. At state level, BiH is split into eight electoral units: three in RS and five in FBiH ⁽⁸⁸⁾.

⁽⁸⁰⁾ OSCE/ODIHR, Election Observation Mission Final report BiH, General Elections 12 October 2014, 7 January 2015.

⁽⁸¹⁾ OSCE, Elections in BiH held in competitive environment, but inter-ethnic divide and mistrust remain key factors, 13 October 2014.

⁽⁸²⁾ CEC, Rulebook on procedure of conducting elections in BiH, April 2016.

⁽⁸³⁾ CEC, Decision on Announcing and Administering 2016 Local Elections, 4 May 2016.

⁽⁸⁴⁾ Although research and drafting of this report was completed on 12 September 2016, it is relevant to note that local elections were held in BiH on 2 October 2016 and results can be found in CEC’s official website (see Bibliography).

⁽⁸⁵⁾ EU Delegation to BiH, The Coalition “Pod lupom” called on BiH citizens to join the non-partisan observation of local elections, 21 July 2016.

⁽⁸⁶⁾ CEC, Release of Certified Candidates’ List, 18 August 2016.

⁽⁸⁷⁾ Pod Lupom, The electoral System, n.d.

⁽⁸⁸⁾ Pod Lupom, The electoral System, n.d.

Members of Parliament are elected through open lists and via proportional representation and the Presidency's members are elected separately by plurality, each voter choosing a Bosniak or a Croat (in FBiH), and a Serb (in RS) ⁽⁸⁹⁾. At entity level, the law guarantees minimum representation for the three constituent peoples, which, if not met, is supplemented through compensatory mandates ⁽⁹⁰⁾.

2.4.1. Presidency

The members of the BiH's Presidency are directly elected from the territory of the Federation of BiH – one Bosniak and one Croat. The Bosniak and Croat candidates who receive the highest vote among candidates from the same constituency are elected. The third member of the Presidency is directly elected from Republika Srpska ⁽⁹¹⁾.

Members of the Presidency are elected for a four-year term. The Chair of the Presidency is chosen from the elected members of the Presidency; the Chair will change in a rotation procedure every eight months ⁽⁹²⁾.

After the October 2014 general elections, the Presidency of BiH was composed of Mladen Ivanić from Republika Srpska, Dragan Čović, the Croat member and Bakir Izetbegović, from the FBiH. Mladen Ivanić was chosen to be the first Chairman of the BiH Presidency; the rotation occurred in July 2015, with Dragan Čović acting as Chairman. Since March 2016 the Chairman is Bakir Izetbegović ⁽⁹³⁾.

2.4.2. House of Representatives of the Parliamentary Assembly of BiH

The Parliamentary Assembly of BiH consists of two chambers – the House of Representatives and the House of Peoples. The House of Representatives of the PA of BiH consists of 42 members, 28 directly elected by the Federation of BiH, and 14 directly elected by the Republika Srpska. The members of the House of Representatives serve for four years ⁽⁹⁴⁾. The election of the members of the House of Representatives is based on a complex proportional partly closed/partly open list system ⁽⁹⁵⁾.

Twenty-one of the twenty-eight deputies elected by direct vote in the FBiH are elected in five multi-member constituencies. The other seven are elected from political party compensatory lists. The same process applies to the RS – nine out of fourteen deputies are elected in three multi-member constituencies in RS; five are elected from political party compensatory lists ⁽⁹⁶⁾.

2.4.3. House of Peoples of the Parliamentary Assembly of BiH

The House of Peoples of the PA of BiH consists of 15 delegates: five Croats and five Bosniaks from the Federation of BiH and five Serbs from Republika Srpska ⁽⁹⁷⁾. The delegates are indirectly elected in the entities' Parliament ⁽⁹⁸⁾.

The Croat and Bosniak delegates are elected by the Croat and Bosniak Caucus of Delegates; Serbian and Others' delegates are not allowed to participate in the election of Croat and Bosniak Delegates. The five Delegates from Republika Srpska are elected by the National Assembly of Republika Srpska. Bosniak, Croats and the Others Delegates to the National Assembly of RS have the right to participate in the election of Delegates from the National Assembly of RS to House of Peoples of the Parliamentary Assembly of BiH ⁽⁹⁹⁾.

⁽⁸⁹⁾ Guardian (The), BiH: the world's most complicated system of government?, 8 October 2014.

⁽⁹⁰⁾ EP, BiH: Political parties, September 2015.

⁽⁹¹⁾ CEC, Election Law of BiH, 23 August 2001; Pod Lupom, The electoral System, n.d.

⁽⁹²⁾ CEC, Election Law of BiH, 23 August 2001.

⁽⁹³⁾ Presidency of BiH (The), Chronology of the Presidency of BiH, n.d.

⁽⁹⁴⁾ CEC, Election Law of BiH, 23 August 2001.

⁽⁹⁵⁾ CoE, Venice Commission, Report on Proportional electoral systems, 23 March 2015.

⁽⁹⁶⁾ Election Guide, BiH, Description of electoral system, n.d.

⁽⁹⁷⁾ CEC, Election Law of BiH, 23 August 2001; Pod Lupom, The electoral System, n.d.

⁽⁹⁸⁾ CEC, Election Law of BiH, 23 August 2001.

⁽⁹⁹⁾ CEC, Election Law of BiH, 23 August 2001.

2.5. Mostar

Mostar is the only municipality in BiH where local elections were not organised in 2012⁽¹⁰⁰⁾ and therefore lacks legally elected representatives⁽¹⁰¹⁾.

In 2010, the BiH's Constitutional Court ruled that the Mostar Statute was discriminatory and therefore needed to be amended. Additionally, the ruling determined that the Electoral Law should also be amended⁽¹⁰²⁾.

The two main parties in Mostar, the Bosniak Party of Democratic Action, SDA, and the Croatian Democratic Union, HDZ BiH, have unsuccessfully discussed a compromise for years. As a result, the municipality has been administrated without a municipal council⁽¹⁰³⁾.

BiH's authorities have not succeeded in making the necessary changes to the voting system in Mostar, as ordered by the Constitutional Court of BiH. Mostar residents have been unable to vote in local elections since 2008⁽¹⁰⁴⁾.

The British Ambassador to BiH has recently stated that the absence of a functioning city council has visible effects and impact in Mostar, namely 'in the neglected public areas, the war-damaged buildings, the struggling businesses and the lack of investment'⁽¹⁰⁵⁾.

2.6. Civil society

The Delegation of the European Union to BiH indicates that there is an estimated 12,000 registered CSOs in BiH but only about 500-1,500 are active⁽¹⁰⁶⁾.

Public confidence in BiH's CSOs is low and citizens do not trust their capacity to influence important matters, and are thus reluctant to participate in civil-society activities⁽¹⁰⁷⁾. According to US Aid, the government does not regard CSOs as major stakeholders, nor as citizens' legitimate representatives for holding officials accountable⁽¹⁰⁸⁾.

Some CSOs have tried to increase their capacity to monitor the EU integration process and dialogue on the Reform Agenda with the EU and BiH's authorities but they still have limited capacity to participate in policy dialogue⁽¹⁰⁹⁾.

The International Swedish Institute for Public Administration and the Bertelsmann Stiftung indicate that BiH's CSOs are critical of the legal and financial framework, specifically the registry of non-governmental organisations and the need to adopt transparent criteria of granting public funding⁽¹¹⁰⁾.

According to the Bertelsmann Stiftung, the central government needs to adopt a national strategy for civil society⁽¹¹¹⁾.

See [5.2.3 Freedom of association and assembly](#).

⁽¹⁰⁰⁾ BalkanInsight, Time Running Out for Deal on Mostar Elections, 22 January 2016.

⁽¹⁰¹⁾ Freedom House, Nations in Transit 2016, BiH, 12 April 2016.

⁽¹⁰²⁾ Freedom House, Nations in Transit 2016, BiH, 12 April 2016.

⁽¹⁰³⁾ Balkan Insight, Time Running Out for Deal on Mostar Elections, 22 January 2016.

⁽¹⁰⁴⁾ HRW, World Report 2016, BiH, 27 January 2016.

⁽¹⁰⁵⁾ Ferguson, E., Foreign and Commonwealth Office, Mostar: time to restore democracy, 2 August 2016.

⁽¹⁰⁶⁾ EU Delegation to BiH, Civil Society, n.d.

⁽¹⁰⁷⁾ US AID, Civil Society Sustainability Project in BiH, last updated 10 November 2015.

⁽¹⁰⁸⁾ US AID, Civil Society Sustainability Project in BiH, last updated 10 November 2015.

⁽¹⁰⁹⁾ Bertelsmann Stiftung, BTI 2016 – BiH report, 2016.

⁽¹¹⁰⁾ SIPU, Civil society organizations in BiH, 2011; Bertelsmann Stiftung, BTI 2016 – BiH report, 2016.

⁽¹¹¹⁾ Bertelsmann Stiftung, BTI 2016 – BiH report, 2016.

2.7. Media

2.7.1. Television and newspapers

The Communications Regulatory Agency regulates the communications sector in Bosnia and Herzegovina ⁽¹¹²⁾. The agency was originally established in March 2001. It is responsible for the broadcasting and the telecommunications sectors, and its main duties are set in the Communications Law of Bosnia and Herzegovina ⁽¹¹³⁾.

According to Freedom House, the public broadcaster BiH Radio Television (BHRT), broadcasting for multi-ethnic audiences, has been targeted with growing political and financial pressure in recent years ⁽¹¹⁴⁾.

More detailed lists of the main press, TV radio and Internet providers in BiH can be found in the BBC News profile on Bosnia and Herzegovina ⁽¹¹⁵⁾.

2.7.2. Internet

According to Freedom House, authorities normally do not restrict or illegally monitor communications on the Internet ⁽¹¹⁶⁾, nor disrupt access to it or censor online content ⁽¹¹⁷⁾.

However, in December 2014, following a court order issued by the Cantonal Court in Sarajevo, police raided the offices of the news website Klix.ba on 29 December, after it had publicised recordings that appeared to reveal a vote-buying scheme in the Republika Srpska. Computers, documents, notes and other items were confiscated. In 2015, the Sarajevo Municipal Court ordered the items' return and ruled that the raid was illegal ⁽¹¹⁸⁾.

In February 2015, RS passed a measure to criminalise the dissemination on social media of material that disturbed public order. The law was widely criticised by OSCE, journalists, NGOs and other domestic and international observers. The law was amended to exclude material that criticised government bodies ⁽¹¹⁹⁾ but not public officials and, in practice, there are no reports of the authorities having applied the law ⁽¹²⁰⁾. A coalition of journalists and other activists submitted an appeal to the RS Constitutional Court challenging the legality and constitutionality of the legislation ⁽¹²¹⁾.

According to a 2014 estimate by the World Bank, the International Telecommunication Union and the World Telecommunication/ICT Development Report and database, 60.8 % of BiH's population used the Internet ⁽¹²²⁾.

For information on freedom of expression, see [5.2.1 Freedom of expression](#).

For information on the situation of journalists, see [5.3.2 Journalists and media](#).

⁽¹¹²⁾ Communications Regulatory Agency BiH, About CRA, n.d.

⁽¹¹³⁾ Mediterranean Network of Regulatory Agencies, BiH Communications Regulatory Agency, n.d.

⁽¹¹⁴⁾ Freedom House, Freedom in the World 2016, BiH, 18 August 2016, para D.

⁽¹¹⁵⁾ BBC News, Bosnia-Herzegovina profile – Media, 25 March 2016.

⁽¹¹⁶⁾ Freedom House, Nations in Transit 2016, BiH, 12 April 2016.

⁽¹¹⁷⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽¹¹⁸⁾ OSCE, Raid against Klix.ba a clear attack on media freedom and journalists' right to protect sources in BiH, says Mijatović, 29 December 2014.

⁽¹¹⁹⁾ Freedom House, Freedom in the World 2016, BiH, 18 August 2016; Freedom House, Nations in Transit 2016, BiH, 12 April 2016.

⁽¹²⁰⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽¹²¹⁾ Freedom House, Freedom in the World 2016, BiH, 18 August 2016; Freedom House, Nations in Transit 2016, BiH, 12 April 2016; US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽¹²²⁾ World Bank, Data, BiH, Internet users (per 100 people), 2014.

3. Rule of Law and State Protection

3.1. Law enforcement

3.1.1. Police

Structure and capacity

The structure of Bosnia and Herzegovina's national law enforcement services mirrors the country's multi-level government structure⁽¹²³⁾. The BiH at state level, FBiH and RS at entity level and Brčko District, plus FBiH's 10 cantons have 16 police bodies that employ 16,618 police officers and 6,528 civilians⁽¹²⁴⁾.

Law enforcement and security services are overseen by the Ministry of Security. There are different national institutions:

- State Border Police;
- State Investigation and Protection Agency (SIPA);
- Directorate for Coordination of Police Bodies;
- Service for Foreigners' Affairs (Immigration service);
- Forensic Examination and Expertise Agency;
- Personnel Education and Professional Development Agency;
- Police Support Agency⁽¹²⁵⁾.

At state level, law enforcement is carried out by the State Investigation and Protection Agency (SIPA), tasked, *inter alia*, with facilitating inter-entity and regional cooperation in combating organised crime, human trafficking and international terrorism, the State Border Police, responsible for monitoring the borders and for detention of irregular migrants, and the State Intelligence Service⁽¹²⁶⁾.

Education and training of police officers is also divided at distinct levels and institutions⁽¹²⁷⁾. At the state level, the training is performed at the Agency for Education and Professional Training⁽¹²⁸⁾. As for the Federation BiH, the Police Academy of the Federal Ministry of Interior⁽¹²⁹⁾ (Mol) trains police officers and court police officers in the Federal Mol, at the cantonal Mols, BiH police bodies, Brčko District and Republika Srpska and the Federal Police Administration⁽¹³⁰⁾.

In all the above training institutions, officers are trained to be police officers (level I) and junior inspectors (level II).

In RS, training for police officers occurs at the Basic Training Unit-Police Academy and at the Graduate School for Internal Affairs. Beginners who enter the police as police officers are trained at the Police Academy, while those who complete the Graduate School get the University degree of Law Enforcement Lawyer⁽¹³¹⁾.

Recruitment of police officers at all levels is based on public advertisement. Police officers can be recruited to the rank of police officer provided they completed secondary school, and to the rank of junior inspector if candidates completed high school⁽¹³²⁾.

⁽¹²³⁾ Interpol, Members, BiH, n.d.

⁽¹²⁴⁾ Pointpulse, Policing in BiH, 13 August 2015.

⁽¹²⁵⁾ Ministry of Security of BiH, Organigram, 11 May 2009; Interpol, Member Countries, BiH, n.d.

⁽¹²⁶⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

⁽¹²⁷⁾ Pointpulse, Policing in BiH, 13 August 2015.

⁽¹²⁸⁾ Ministry of Security, Agency for Education and Professional Training Mostar, n.d.

⁽¹²⁹⁾ Bosnia i Hercegovina, Policijska akademija, n.d.

⁽¹³⁰⁾ Federal Police Administration, n.d.

⁽¹³¹⁾ Pointpulse, Policing in BiH, 13 August 2015.

⁽¹³²⁾ Pointpulse, Policing in BiH, 13 August 2015.

According to the 49th Report of the High Representative for the Implementation of the Peace Agreement on BiH, there is still political interference in operational policing ⁽¹³³⁾.

In its 2015 Human Rights Report, the US DoS indicates that ‘there were reports of police corruption’; the source states that although the government has ‘mechanisms to investigate and punish abuse and corruption, political pressure often prevented the application’ of such mechanisms ⁽¹³⁴⁾.

According to the 2012 Gallup Balkan Monitor survey cited in the Bertelsmann Stiftung report, levels of trust in BiH’s police are high, with 19 % of BiH respondents having a high level of trust and 41 % ‘some’ trust in the police ⁽¹³⁵⁾.

Abuse of power, ill-treatment and use of excessive force

According to the European Committee for the Prevention of Torture and inhuman and degrading treatment or punishment (CPT), reporting on its fourth periodic visit to Bosnia (after 2011 and 2012), there are continued allegations of widespread physical ill-treatment of detained persons by law enforcement officials throughout the country. The alleged ill-treatment ranges from ‘verbal abuse and threats, kicks and punches to various parts of the body or blows with batons, to handcuffing in stress positions for hours, hand-held electro-shock device and other non-standard instruments’ ⁽¹³⁶⁾. The CPT adds that, during the reporting period, there were allegations of mock executions with a pistol pointed at the detainees’ temple and the trigger pulled or the barrel of a pistol inserted in their mouth ⁽¹³⁷⁾.

The US DoS reports that most of the alleged abuses occurred while the RS police tried to obtain confessions during questioning. According to the RS government, such allegations were investigated but in practice there were no reports of prosecution or disciplinary actions towards the perpetrators of the alleged abuses identified by the CPT ⁽¹³⁸⁾.

Simultaneously, police units in FBiH and RS and the Brcko District investigated allegations of police abuse, applied administrative penalties, and referred criminal cases to prosecutors ⁽¹³⁹⁾.

The CPT’s visit to BiH’s prisons showed that the current system is ‘characterised by systemic failings by the police and judicial authorities to conduct prompt, thorough, independent and impartial investigations, aimed at bringing the perpetrators of ill-treatment to justice’ ⁽¹⁴⁰⁾. In the same report, the CPT indicates that several individuals state that they had complained about ill-treatment to the prosecutor or to the judge but with no apparent follow-up. If a medical examination was ordered and carried out, the plaintiff was often escorted by the same police officers whom he or she alleged had inflicted the ill-treatment and the examination was carried out in the presence of the police officers ⁽¹⁴¹⁾. The source states that although the formal safeguards against ill-treatment are enshrined in law – the right of access to a lawyer and to a doctor, and the right to notify a relative or another third party of the detention – they still do not apply in practice. The CPT also found that persons deprived of their liberty were not always informed without delay of their rights ⁽¹⁴²⁾.

3.1.2. Army

According to BiH’s Ministry of Defense, and pursuant to the Law on Defence of Bosnia and Herzegovina ⁽¹⁴³⁾, the Armed Forces of BiH are a ‘professional, single military force organized and controlled by Bosnia and Herzegovina’. The Armed Forces, as an institution of BiH, comprises members from all three constitutive ethnic groups and Others, in compliance with the Constitution and the legislation of BiH ⁽¹⁴⁴⁾.

⁽¹³³⁾ OHR, 49th Report of the High Representative for Implementation of the Peace Agreement on BiH, 4 May 2016.

⁽¹³⁴⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽¹³⁵⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽¹³⁶⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

⁽¹³⁷⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

⁽¹³⁸⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽¹³⁹⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽¹⁴⁰⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

⁽¹⁴¹⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

⁽¹⁴²⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

⁽¹⁴³⁾ MoD BiH, Law on Defense of BiH, 5 October 2005.

⁽¹⁴⁴⁾ MoD BiH, MoD and Armed Forces of BiH Herzegovina Brochure, July 2015.

The Ministry of Defence oversees all aspects of the Armed Forces of BiH⁽¹⁴⁵⁾. The chain of command and control of the BiH's Armed Forces is as follows⁽¹⁴⁶⁾:

- Presidency of BiH - supreme command and control over the AF BiH;
- Parliament of BiH - democratic and parliamentary control over the AF BiH;
- Ministry of Defence of BiH – overall strategy and policy for the defence system of Bosnia and Herzegovina;
- Joint Staff of the AF BiH – planning, organising and implementing of the directive and orders of the Minister of Defence of BiH.
- Operational Command of the AF BiH - implements the policies of the Joint Staff of the AF BiH.
- Support Command of the AF BiH - manages personnel, logistics and training.

The Armed Forces of BiH are tasked with ensuring sovereignty, territorial integrity, political independency and international subjectivity of BiH, in order to promote foreign policy objectives of BiH, meet the international commitments of BiH, as well as to protect the citizens of BiH⁽¹⁴⁷⁾.

The Armed Forces of BiH are divided into Land Army, Air Forces and Air Defence. Its branches include Infantry, Artillery, Artillery and Rocket Units of the Air Defence, Armoured Mechanized Units, Aviation, Engineering, Communications, Atomic, Biological and Chemical Defence, Electronic Surveillance and Defence, Air Surveillance and Alarming and Military Intelligence⁽¹⁴⁸⁾.

The professional military personnel is composed of generals, officers, non-commissioned officers (NCOs) and soldiers, trained at the Training and Doctrine Command (TRADOC) in Travnik, the Counter-Terrorism Centre in Pazarić, the CPD in Travnik, the Combat Simulation Centre of Manjača, the Counter-Terrorism Centre of Manjača and the Peace Support Operations Centre in Butmir, Sarajevo⁽¹⁴⁹⁾.

As part of the Reform Plan, the BiH Armed Forces of BiH is envisaged to have 16,000 members, 10,000 of whom will be professional military members, with 1,000 civilians and 5,000 reservists. The reform also sets out the percentages of ethnic representation, from among Bosniaks, Serbs, Croats and Other nationalities⁽¹⁵⁰⁾.

Military service is voluntary for individuals of 18 years of age. The mandatory retirement occurs at age 35 or after 15 years of service for soldiers, mandatory retirement at age 50 and 30 years of service for NCOs, mandatory retirement at age 55 and 30 years of service for all officers⁽¹⁵¹⁾.

3.1.3. Intelligence/Security forces

State Investigation and Protection Agency (SIPA)

According to the Law on the State in Investigation and Protection Agency (SIPA) of BiH, the agency is an 'administrative organisation within the Ministry of Security of BiH with operational autonomy, established for the purpose of performing police tasks'⁽¹⁵²⁾.

Such tasks include the prevention, detection and investigation of criminal offences falling within the jurisdiction of the Court of BiH, especially organised crime, terrorism, war crimes, trafficking in persons and other criminal offences against humanity and values protected by international law, as well as serious financial crime. SIPA competencies also include the collection of information and data on criminal offences, as well as observance and analyses of security situation and phenomena conducive to the emergence and development of crime⁽¹⁵³⁾.

The agency has police powers. Police staff act according to the Law on Police Officials⁽¹⁵⁴⁾.

⁽¹⁴⁵⁾ Council of Ministers, Ministry of Defense of BiH, n.d.

⁽¹⁴⁶⁾ MoD BiH, MoD and Armed Forces of BiH Herzegovina Brochure, July 2015.

⁽¹⁴⁷⁾ MoD BiH, MoD and Armed Forces of BiH Herzegovina Brochure, July 2015.

⁽¹⁴⁸⁾ MoD BiH, MoD and Armed Forces of BiH Herzegovina Brochure, July 2015.

⁽¹⁴⁹⁾ MoD BiH, MoD and Armed Forces of BiH Herzegovina Brochure, July 2015.

⁽¹⁵⁰⁾ MoD BiH, MoD and Armed Forces of BiH Herzegovina Brochure, July 2015.

⁽¹⁵¹⁾ CIA Factbook 2016, BiH 2016, Military, last updated 3 August 2016; Ministry of Defense and Armed Forces of BiH Brochure, July 2015.

⁽¹⁵²⁾ SIPA, Law on the SIPA, 4 May 2004, (amended).

⁽¹⁵³⁾ SIPA, Law on the SIPA, 4 May 2004, (amended).

⁽¹⁵⁴⁾ SIPA, Law on the SIPA, 4 May 2004, (amended).

Fight against organised crime/terrorism

SIPA is the state-level agency responsible for preventing, detecting and investigating organised crime and terrorism, trafficking in persons, as well as war crimes in BiH ⁽¹⁵⁵⁾.

The 2016 EC's Communication indicates that BiH 'has some level of preparation' and 'some progress was made notably to improve inter-agency cooperation'. The Communication notes, however, that:

'Financial investigations need to be stepped up. Fighting organised crime remains fundamental to countering criminal infiltration of the political, legal and economic system of the country. Bosnia and Herzegovina still needs to meet international standards on anti-money laundering and countering the financing of terrorism. Bosnia and Herzegovina has been seriously affected by the phenomenon of foreign terrorist fighters and radicalisation. Bosnia and Herzegovina has already taken important measures to deal with this problem which needs to be complemented by further steps to identify, prevent and disrupt the flow of foreign terrorist fighters travelling to conflict areas such as Iraq and Syria ⁽¹⁵⁶⁾.

3.1.4. Corruption

In its 2016 Communication, the European Commission notes that despite some level of preparation and some progress made 'with the adoption of action plans at various levels of governance', 'their fragmentation makes implementation less effective' ⁽¹⁵⁷⁾.

The EC Communication also indicates that 'corruption remains prevalent in many areas and continues to be a serious problem. The declared political commitment on this subject did not translate into concrete results ⁽¹⁵⁸⁾.

According to the US DoS, 'government corruption remained among the country's most serious problems, resulting in continued political and economic stagnation' ⁽¹⁵⁹⁾.

According to the Bertelsmann Foundation, the number of convictions of officials on charges of abuse of office and corruption in BiH remains low ⁽¹⁶⁰⁾. There was an increase in the number of investigations against higher-level officials but there were accusations of political/ethnic motivations, such as the arrest of the Federation's President over alleged involvement in selling presidential pardons, or the case against the Deputy Prime Minister of the Federation, charged with involvement in organised crime, along with other government officials (both in 2014) ⁽¹⁶¹⁾.

3.2. Judiciary

3.2.1. Judicial system

The judicial system of BiH has four separate judicial systems – BiH, Federation of BiH, Republika Srpska and the Brčko District ⁽¹⁶²⁾, reflecting the complexity of its constitutional organisation ⁽¹⁶³⁾. According to GRECO, the four judicial systems have 'no functional links between them' ⁽¹⁶⁴⁾.

The Federation, the Republika Srpska and the Brčko District judicial systems have general first and second instance courts. The judicial system of the Brčko District only has these two types of courts ⁽¹⁶⁵⁾. The judicial systems of the FBiH and the RS have each a constitutional court and a supreme court. In the FBiH, the Federation is divided into

⁽¹⁵⁵⁾ SIPA, Law on the SIPA, 4 May 2004, (amended).

⁽¹⁵⁶⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 27.

⁽¹⁵⁷⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 27.

⁽¹⁵⁸⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 27.

⁽¹⁵⁹⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽¹⁶⁰⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽¹⁶¹⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽¹⁶²⁾ CoE, Venice Commission, Opinion on Legal Certainty and the Independence of the Judiciary in BiH, 18 June 2012.

⁽¹⁶³⁾ Ferizović, J., Court System in BiH, n.d.

⁽¹⁶⁴⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽¹⁶⁵⁾ CoE, Venice Commission, Opinion on Legal Certainty and the Independence of the Judiciary in BiH, 18 June 2012.

10 cantons, each with their own cantonal and municipal courts ⁽¹⁶⁶⁾. In addition to courts of general jurisdiction, Republika Srpska has created courts of special jurisdiction: the district commercial courts and a higher commercial court ⁽¹⁶⁷⁾.

In its Fourth Evaluation Round, the GRECO reports expresses concerns regarding the efficiency of justice, given the complexity of the court systems and the threats to judicial independence. Greater transparency and simplification of the court system would raise citizens' confidence in the courts ⁽¹⁶⁸⁾.

An updated and country-wide justice sector reform strategy for 2014-2018 was adopted in September 2015, aiming at, *inter alia*, preventing corruption and conflict of interest, enhancing professionalism and integrity, disciplinary accountability or deciding within reasonable deadlines ⁽¹⁶⁹⁾.

The High Judicial and Prosecutorial Council (HJPC)

The High Judicial and Prosecutorial Council is the management body of the judiciary in BiH ⁽¹⁷⁰⁾. It was created in 2006 and is responsible for all judicial and prosecutorial appointments in BiH. It is also responsible for ensuring professional standards, providing training, proposing and issuing opinions on draft legislation, regulations and other issues affecting the judiciary ⁽¹⁷¹⁾. It is institutionally independent and 11 of its 15 members are appointed from among fellow judges and prosecutors ⁽¹⁷²⁾.

The HJPC's independence and the independence of other judicial bodies has been politically targeted by the authorities in the RS that still question the authority and competence of federal judicial institutions, including the HJPC, the BiH Constitutional Court, the State Court and the Prosecutor's Office ⁽¹⁷³⁾.

According to the Venice Commission's fourth evaluation round report, although the HJPC 'has been having a positive influence in strengthening the independence and professionalism of the judiciary', it's 'progress is fragile and the Council currently faces criticism as regards its composition, organisation and the accountability of its members ⁽¹⁷⁴⁾.

More on [3.2.3. Capacity and Integrity of the judiciary](#).

Prosecutor's Offices of BiH

According to GRECO's overview of the prosecution service in BiH:

'There are four distinct prosecution services at the level of the State, the Entities and BD, with no functional links between them; this mirrors the organisation of the court systems. At State level, the Prosecutor's Office of BiH (POBiH) is competent to investigate and prosecute offences for which the Court of BiH has jurisdiction. In FBiH, there is the Federal Prosecutor's Office of FBiH (FPOFBiH), which acts before the Supreme Court of FBiH, and ten cantonal prosecutors' offices, which are competent to act before the courts of the canton (both the municipal and cantonal courts). In RS, there is the Prosecutor's Office of RS (PORS) and five district prosecutors' offices, which are established for the territories of district courts. The District Prosecutor's Office of Banja Luka includes a Special Prosecutor's Office that is competent for the most severe forms of organised and economic crime committed across the territory of RS. In BD, the Prosecutor's Office of BD (POBD) is competent to act before the Basic Court and the Appellate Court of BD' ⁽¹⁷⁵⁾.

The same GRECO's evaluation report adds:

'There are 374 prosecutors in BiH (191 men and 183 women), including 53 in the POBiH; 206 in FBiH (12 in the FPOFBiH and 194 in the prosecutors' offices of FBiH); 106 in RS (six in the PORS, 92 in district prosecutors' offices and eight in the Special Prosecutor's Office); and nine in the POBD. All have the status of judicial office holders, which means that they perform their office independently of the legislative and executive branches of state.

⁽¹⁶⁶⁾ CoE, Judiciary in BiH, Types of Courts and their jurisdiction, n.d.

⁽¹⁶⁷⁾ CoE, Venice Commission, Opinion on Legal Certainty and the Independence of the Judiciary in BiH, 18 June 2012.

⁽¹⁶⁸⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽¹⁶⁹⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽¹⁷⁰⁾ Judicial Portal of BiH, Law on the High Judicial and Prosecutorial Council of BiH, 1 June 2004, art. 3.

⁽¹⁷¹⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽¹⁷²⁾ Judicial Portal of BiH, Law on the High Judicial and Prosecutorial Council of BiH, 1 June 2004, art. 1.4.

⁽¹⁷³⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽¹⁷⁴⁾ CoE, GRECO, Fourth Evaluation Round, Evaluation Report BiH, 22 February 2016.

⁽¹⁷⁵⁾ CoE, GRECO, Fourth Evaluation Round, Evaluation Report BiH, 22 February 2016.

The independence of the prosecution office is enshrined at constitutional level (in RS and BD) or at the level of the law (in the aforementioned laws on the prosecution services of BiH and FBiH). The prosecution services are organised in a hierarchical manner, each prosecutor's office being headed by a chief prosecutor who manages and supervises the work of the office. [...]

Prosecutors in BiH have life tenure until the retirement age of 70. Their recruitment, career and dismissal are regulated by the same provisions of the Law on the HJPC. [...] Basic requirements for appointment at a district/cantonal prosecutor's office include passing the bar examination and having a minimum of three years' legal experience. Additional conditions of working experience are required for appointment to higher positions within the prosecution service. The selection process is carried out by sub-councils of the HJPC or sub-committees appointed by the Entities' sub-councils' ⁽¹⁷⁶⁾.

3.2.2. Courts

Bosnia and Herzegovina has 76 courts. Three are constitutional courts, six are commercial courts and 67 are courts of general jurisdiction ⁽¹⁷⁷⁾.

At national level, the court system comprises two courts, the Constitutional Court of BiH and the Court of BiH ⁽¹⁷⁸⁾.

Constitutional Court

The Constitutional Court's jurisdiction, organisational structure, procedure as well as the final binding character of its decisions are set in article VI of the BiH Constitution ⁽¹⁷⁹⁾. The Court is composed of nine judges. Six are national judges, four of whom are selected by the House of Representatives of the Federation of BiH and two by the National Assembly of RS. The other three judges must not be citizens of BiH or any neighbouring country, and are appointed by the President of the ECtHR, upon consultation with the President of BiH ⁽¹⁸⁰⁾.

The Constitutional Court is responsible for upholding the Constitution and has exclusive jurisdiction to decide on any dispute between the two Entities, between BiH and an Entity or Entities, or between institutions of BiH ⁽¹⁸¹⁾.

The Constitutional Court has also appellate jurisdiction over issues under the Constitution of any other court in BiH, thus being the highest judicial body in BiH regarding the rights and freedoms enshrined in the Constitution ⁽¹⁸²⁾, as well as control of constitutionality ⁽¹⁸³⁾.

Referrals to the Constitutional Court are exclusively done by a member of the Presidency, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity ⁽¹⁸⁴⁾.

The six national judges are elected on the basis of the federal principle of representation, not their ethnic background. The Constitution does not require that they must be members of one of the constituent peoples, or that they have to declare which people they are members of. The Constitutional Court elects a President and three Vice-Presidents among the judges, by secret ballot. The term of office of the President of the Court is three years ⁽¹⁸⁵⁾.

⁽¹⁷⁶⁾ CoE, GRECO, Fourth Evaluation Round, Evaluation Report BiH, 22 February 2016.

⁽¹⁷⁷⁾ Ferizović, Jasenka, Court System in BiH, DATE.

⁽¹⁷⁸⁾ OHR, Constitution of BiH, 14 November 1995.

⁽¹⁷⁹⁾ OHR, Constitution of BiH, 14 November 1995.

⁽¹⁸⁰⁾ Ferizović, J., Court System in BiH, n.d.

⁽¹⁸¹⁾ OHR, Constitution, 14 November 1995; Conference of European Constitutional Courts, The Relations between the Constitutional Courts and other national courts, n.d.

⁽¹⁸²⁾ Conference of European Constitutional Courts, The Relations between the Constitutional Courts and other national courts, n.d.

⁽¹⁸³⁾ Ferizović, J., Court System in BiH, n.d.

⁽¹⁸⁴⁾ OHR, Constitution of BiH, 14 November 1995.

⁽¹⁸⁵⁾ Ferizović, J., Court System in BiH, n.d.

The Court of BiH

The Court of BiH is ruled by the ‘Law on the Court of Bosnia and Herzegovina’⁽¹⁸⁶⁾ and its establishment was imposed by the Decision of the High Representative for BiH⁽¹⁸⁷⁾ on 12 November 2000; that same month the legislation was adopted in the House of Representatives and the House of the Peoples of the Parliamentary Assembly of BiH⁽¹⁸⁸⁾.

The Court is composed of the President and other judges. The President is appointed by the HJPC for a term of six years (renewable)⁽¹⁸⁹⁾. According to information made available by the Court of BiH, there are 48 judges in the Court. Each Court Panel is composed of three judges⁽¹⁹⁰⁾. It has no jurisdiction over decisions adopted by the Supreme Courts of the Entities⁽¹⁹¹⁾.

The Court consists of the Plenum, the Criminal and the Administrative first instance courts, and the Appellate court. The Plenum includes the President and all judges of the Court, and adopts decisions by simple majority⁽¹⁹²⁾. Among other tasks, it is competent to draw up and adopt the Court’s Rules of Procedure, working schedule and the budget proposal⁽¹⁹³⁾.

The Criminal Division is divided into three Sections – Section I for War Crimes, Section II for Organized, Economic Crime and Corruption, and Section III for all other crimes falling under the Court’s jurisdiction. It should be composed of at least 10 judges⁽¹⁹⁴⁾.

The structure of the Appellate Division mirrors the Criminal Division, with three corresponding sections – Sections I, II and III for appeals against decisions of, respectively, Sections I, II and III of the Criminal Division⁽¹⁹⁵⁾. It should be composed of at least 10 judges⁽¹⁹⁶⁾.

Article 7 of the Law on Court of BiH establishes the court’s criminal jurisdiction. Among others, the court tries criminal offences foreseen in the Criminal Code of BiH and criminal offences defined in the Entities’ and Brčko District’s legislation when these endanger the sovereignty, territorial integrity, political independence, national security or international personality of BiH⁽¹⁹⁷⁾.

The Court is also responsible for issuing practical directions on the application of the substantive criminal law of BiH on genocide, crimes against humanity, war crimes and violations of the laws and practices of warfare, as well as individual criminal responsibility related to those crimes, ex officio or upon request of any court of the Entities or of the Brčko District, and decide conflicts of jurisdiction between the courts of the Entities, between the Courts of the Entities and the Courts of the Brčko District, and between the Court of BiH and any other court⁽¹⁹⁸⁾.

As regards the administrative jurisdiction, the Court decides upon complaints to final administrative acts and/or administrative silence of institutions of BiH, public agencies, public corporations, institutions of the Brčko District, and any other organisations established by State laws of BiH. It also assesses the legality of individual and general executive administrative acts; decides on property disputes between the State and the Entities, between the State and the Brčko District, between the Entities, between the Entities and the Brčko District and between the institutions of BiH; and resolves conflicts of jurisdiction between the Entity courts, and between the courts of the Entities and the courts of the Brčko District and between the Court of BiH and any other court⁽¹⁹⁹⁾.

⁽¹⁸⁶⁾ Court of BiH, Law on the Court of BiH, 18 May 2009.

⁽¹⁸⁷⁾ OHR, Decision imposing the Law on the State Court of BiH, 12 November 2000.

⁽¹⁸⁸⁾ Ferizović, J., Court System in BiH, n.d.

⁽¹⁸⁹⁾ Court of BiH, Organisational Structure of the Court of BiH, n.d.

⁽¹⁹⁰⁾ Court of BiH, Organisational Structure of the Court of BiH, n.d.

⁽¹⁹¹⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽¹⁹²⁾ Court of BiH, Law on the Court of BiH, article 12, 18 May 2009.

⁽¹⁹³⁾ Ferizović, J., Court System in BiH, n.d.

⁽¹⁹⁴⁾ Court of BiH, Law on the Court of BiH, article 13-14, 18 May 2009.

⁽¹⁹⁵⁾ Ferizović, J., Court System in BiH, n.d.

⁽¹⁹⁶⁾ Court of BiH, Law on the Court of BiH, article 13, 16, 18 May 2009.

⁽¹⁹⁷⁾ Court of BiH, Law on the Court of BiH, article 7, number 1-2, 18 May 2009.

⁽¹⁹⁸⁾ Court of BiH, Law on the Court of BiH, article 7, number 3, 18 May 2009.

⁽¹⁹⁹⁾ Ferizović, J., Court System in BiH, n.d.

The Appellate Court decides upon ordinary and extraordinary legal remedies against decisions delivered by the Criminal and Administrative Divisions of the Court. It is also competent to assess complaints on violations of the electoral legislation ⁽²⁰⁰⁾.

3.2.3. Capacity and integrity of the judiciary

According to the European Commission’s Communication 2016, the functioning of Bosnia and Herzegovina’s justice system ‘has some level of preparation. Some progress was made on accountability and integrity. The action plan needed to implement the 2014-2018 justice sector reform strategy has yet to be adopted. Politically motivated threats on the judiciary by some politicians in the country continued. Judicial independence remains to be strengthened’ ⁽²⁰¹⁾.

Capacity of the judiciary

BiH’s judiciary consists of professional career judges and prosecutors that belong to a single professional body, governed by the High Judicial and Prosecutorial Council of BiH. They are, to a large extent, governed by the same rules, including those relating to recruitment, career, integrity and disciplinary accountability ⁽²⁰²⁾.

There are 987 professional judges in BiH – 360 men and 627 women. There are 98 reserve judges appointed on a temporary basis to reduce backlogs and replacing judges on prolonged absence. Lay judges are not in the current judicial systems anymore but, due to a backlog of cases, there are still 322 active lay judges ⁽²⁰³⁾. There are 374 prosecutors in BiH (191 men and 183 women), including 53 in the PO BiH; 206 in FBiH (12 in the FPO FBiH and 194 in the prosecutors’ offices of FBiH); 106 in RS (six in the PORS, 92 in district prosecutors’ offices and eight in the Special Prosecutor’s Office); and nine in the POBD. All prosecutors are judicial office holders, meaning they perform independently of the legislative and executive branches ⁽²⁰⁴⁾.

Judges in BiH have life tenure until their retirement at 70 (except for reserve judges) ⁽²⁰⁵⁾.

All judges in BiH, including reserve judges and lay judges, are appointed and dismissed by the HJPC, with the exception of judges in the Constitutional Courts of FBiH and RS. A judge can only be dismissed after disciplinary proceedings or if there is a permanent loss of working capacity ⁽²⁰⁶⁾.

To be eligible for a first instance court includes passing the bar examination and having a minimum of three years’ legal experience. Additional conditions exist for appointments to higher positions. Appointments must also take into consideration equal representation of constituent peoples and others, and gender balance ⁽²⁰⁷⁾.

According to GRECO’s evaluation report, the appointment and promotion systems for judges and prosecutors, as well as the quality of the appointees, are generally criticised in BiH. There is no judicial academy in BiH. Candidates for entry positions of judges and prosecutors are interviewed by the HJPC, leaving room for subjectivity. Written exams are not compulsory. Promotion is based on the results of the candidates’ performance appraisals for the past three years, as well as on an interview ⁽²⁰⁸⁾.

GRECO further indicates that ‘the ethnicity criterion that has to be taken into account in appointments to judicial positions further complicates the process and is widely recognised as taking precedence over professional competence in some appointment decisions’. Some improvement in the appointment procedures has, however, been registered by GRECO ⁽²⁰⁹⁾.

⁽²⁰⁰⁾ Court of BiH, Law on the Court of BiH, article 9, 18 May 2009.

⁽²⁰¹⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 27.

⁽²⁰²⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽²⁰³⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽²⁰⁴⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽²⁰⁵⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽²⁰⁶⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽²⁰⁷⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽²⁰⁸⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽²⁰⁹⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

Independence and impartiality of the judiciary

The principle of judicial independence is not enshrined in BiH's Constitution, nor in the Law of Courts of BiH, but only in the Entities' constitutions and laws on courts. According to GRECO, that limits the judicial system's capacity to address political interference and pressure. These exist and endanger the independence and impartiality of the judiciary ⁽²¹⁰⁾.

The independence of the judiciary in Bosnia and Herzegovina is overseen by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC), an independent and autonomous body tasked with 'ensuring the maintenance of an independent, impartial and professional judiciary' in BiH ⁽²¹¹⁾.

The establishment of the HJPC in 2004 was widely welcomed in the EU. The Venice Commission, in its 2012 Opinion on the Legal Certainty and the Independence of the Judiciary in BiH, confirmed the HJPC's relevant role in the 'strengthening the independence of the judiciary' ⁽²¹²⁾.

Despite the generally positive evaluation, concerns have been raised regarding the selection procedure of the members of the Council, the obligation of an ethnic-based selection of the members of the Council or the absence of the Council's competences to create a uniform system of financing of the judiciary, dealing with the backlog of cases, and 'undertaking a more radical reform of the judiciary' ⁽²¹³⁾. Criticism was also raised regarding the absence of written exams in the process of appointing judges and the absence of a 'national pool of vacancies' ⁽²¹⁴⁾.

According to the Bertelsmann Stiftung Transformation Index 2016 (BTI) country report, BiH has an independent judiciary, appointed and regulated by the independent HJPC. However, concerns remain regarding political interference in the judiciary ⁽²¹⁵⁾. Despite that, the same source states that BiH lacks the necessary enforcement mechanisms to harmonise legislation in the country ⁽²¹⁶⁾.

According to the NGO Civil Rights Defenders, access to justice is not equal to all citizens, and legal support is mainly provided by non-governmental organisations ⁽²¹⁷⁾.

The April 2016 report of The High Representative for the Implementation of the Peace Agreement on BiH, raised concerns regarding the political pressure on the judiciary and recommended that the 'judiciary is left to prosecute and rule on cases free from political pressure, but fully in line with the principles of professionalism and accountability' ⁽²¹⁸⁾.

A survey conducted by the Gallup Balkan Monitor in 2012 indicated that citizens expressed low levels of trust in the judicial system (34 %) ⁽²¹⁹⁾.

Legislation on the creation of a special prosecutor's department to fight corruption and organised crime exists since 2014 but has not been implemented. In February 2016 the BiH's government announced its intention to postpone its application until 1 July 2017 ⁽²²⁰⁾.

3.2.4. Accountability for War Crimes

According to HRW, limited progress has been achieved in justice for war crimes committed in Bosnia. In its annual report the source notes that while the International Criminal Tribunal for the former Yugoslavia (ICTY) has convicted 14 people of crimes committed at Srebrenica, national courts have a more limited ruling ⁽²²¹⁾.

BiH's national war crimes strategy, adopted in 2008, is still not fully implemented ⁽²²²⁾.

⁽²¹⁰⁾ CoE, GRECO, Fourth Round, Evaluation Report BiH, 22 February 2016.

⁽²¹¹⁾ Judicial Portal of BiH, Law on the High Judicial and Prosecutorial Council of BiH, 1 June 2004.

⁽²¹²⁾ CoE, Venice Commission, Opinion on Legal Certainty and the Independence of the Judiciary in BiH, 18 June 2012.

⁽²¹³⁾ CoE, Venice Commission, Opinion on Legal Certainty and the Independence of the Judiciary in BiH, 18 June 2012.

⁽²¹⁴⁾ CoE, Venice Commission, Opinion on the Draft Law of the HJPC of BiH, 24 March 2014.

⁽²¹⁵⁾ Bertelsmann Stiftung, BTI 2016 – BiH Country Report, 2016.

⁽²¹⁶⁾ Bertelsmann Stiftung, BTI 2016 – BiH Country Report, 2016.

⁽²¹⁷⁾ CRD, Country reports, Bosnia and Herzegovina, updated 9 June 2015.

⁽²¹⁸⁾ OHR, 49th Report of the High Representative for Implementation of the Peace Agreement on BiH, 4 May 2016.

⁽²¹⁹⁾ Bertelsmann Stiftung, BTI 2016 – BiH Country Report, 2016.

⁽²²⁰⁾ OHR, 49th Report of the High Representative for Implementation of the Peace Agreement on BiH, 4 May 2016.

⁽²²¹⁾ HRW, World Report 2016, BiH, 27 January 2016.

⁽²²²⁾ HRW, World Report 2016, BiH, 27 January 2016.

As already mentioned, the HR for Implementation of the Peace Agreement on BiH reported that the seven-year deadline for processing all war-crime cases in BiH expired in December 2015. The Supervisory Board for the Implementation of the War Crimes Prosecution Strategy is assessing the reasons for the delays, and the HR urged the Board to also assess whether the EU funds for the processing of war crimes ‘are being spent properly by the authorities’ ⁽²²³⁾.

The Bertelsmann report states that many lower-level perpetrators of war crimes are still unpunished despite the ongoing implementation of a strategy on domestic war crimes prosecutions ⁽²²⁴⁾.

SIPA has established a specialised unit to deal with war crimes, the Sector for Investigation of War Crimes and Crimes Punishable under International Humanitarian Laws. It is tasked with the detection and investigation of war crimes and crimes punishable under the international humanitarian laws. For that purpose, it collects information and data, analyses reports and information and evaluates and analyses intelligence ⁽²²⁵⁾.

⁽²²³⁾ OHR, 49th Report of the High Representative for Implementation of the Peace Agreement on BiH, 4 May 2016.

⁽²²⁴⁾ Bertelsmann Stiftung, BTI 2016 – BiH, 2016.

⁽²²⁵⁾ SIPA, Sector for Investigation of War Crimes and Crimes Punishable under International Humanitarian Laws, n.d.

4. Security situation

4.1. General overview of the security situation

In 2004, the EU launched EUFOR ALTHEA, a military operation in BiH, aimed at maintaining a safe and secure environment in BiH and to ensure continued compliance with the Dayton/Paris agreement. On 10 November 2015, the UN Security Council renewed the mandate for another year ⁽²²⁶⁾.

According to ALTHEA's report on the security situation in BiH, dated 29 July 2016, the 'situation in BiH overall was calm and stable during the reporting period; yet stability has not been entrenched. The reporting period saw no threat to the safe and secure environment'. However, the 'return of foreign fighters and mixed migratory flows may in the future put additional pressure on this relatively fragile security environment and on the law enforcement agencies' ⁽²²⁷⁾.

Although the security situation in BiH has largely normalised according to the Bertelmann Stiftung ⁽²²⁸⁾, as a result of the 1992-95 war, there are still an estimated 120,000 landmines in known minefields in the country. Since 1996, they have killed about 600 people. The number of casualties has decreased over the years but there are still incidents every year ⁽²²⁹⁾.

ALTHEA report stresses that, though significant progress has been made, 'law enforcement agencies remain fragmented, uncoordinated and vulnerable to political manipulation and obstruction' ⁽²³⁰⁾.

4.2. Level of violence

According to the Overseas Security Advisory Council (OSAC) report on Crime and Safety 2016 in BiH, the vast majority of crimes committed in BiH are non-violent (but widespread) crimes. Violent criminality not associated with organised crime is not significant ⁽²³¹⁾.

The OSAC report 2016 indicates that the largest concentration of crime incidents occur in Sarajevo and other larger towns like Banja Luka, Tuzla or Mostar ⁽²³²⁾.

The source adds that a significant number of violent incidents related to organised crime linked to smuggling, trafficking, and other transnational crime occurred. Violence among members of these gangs or their affiliates is quite common. Military weapons and munitions from the Bosnian war are still abundant, increasing the incidents level of violence ⁽²³³⁾.

4.3. Terrorist threat

According to the EC's Communication 2016, BiH 'has been seriously affected by the phenomenon of foreign terrorist fighters and radicalisation. Bosnia and Herzegovina has already taken important measures to deal with this problem which needs to be complemented by further steps to identify, prevent and disrupt the flow of foreign terrorist fighters travelling to conflict areas such as Iraq and Syria' ⁽²³⁴⁾.

⁽²²⁶⁾ UN Security Council, Adopting Resolution 2247 (2015), Renews Authorization for EU-Led Stabilization Force in BiH, 10 November 2015.

⁽²²⁷⁾ Security Council, Report by the HR of the EU for Foreign Affairs and Security Policy on the activities of the EU military operation in BiH, 29 July 2016.

⁽²²⁸⁾ Bertelmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽²²⁹⁾ OSAC, Bosnia and Herzegovina 2016 Crime & Safety Report, 23 February 2016.

⁽²³⁰⁾ Security Council, Report by the HR of the EU for Foreign Affairs and Security Policy on the activities of the EU military operation in BiH, 29 July 2016.

⁽²³¹⁾ OSAC, Bosnia and Herzegovina 2016 Crime & Safety Report, 23 February 2016.

⁽²³²⁾ OSAC, Bosnia and Herzegovina 2016 Crime & Safety Report, 23 February 2016.

⁽²³³⁾ OSAC, Bosnia and Herzegovina 2016 Crime & Safety Report, 23 February 2016.

⁽²³⁴⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 27.

The OSAC reports that during the 1992-1995 war, 'Islamic fighters travelled to BiH to aid the Bosnian Muslim war effort. Several hundred of those fighters remained active in Islamic fundamentalist congregations and organizations, contributing to the gradual radicalization of certain segments of the Bosnian Muslim community' ⁽²³⁵⁾.

Incidents allegedly associated with terrorist activities were reported, such as the October 2011 assault on the United States Embassy by a lone gunman affiliated with the Wahhabi movement, or the attack, in April 2015, on the Zvornik police station, where the gunman shouted 'Allahu Akbar' (God is Great) and killed one police officer and wounded two others before he was killed ⁽²³⁶⁾. In November 2015 a gunman killed two Bosnian soldiers in uniform on the outskirts of Sarajevo and opened fire at another soldier sitting in a city bus. The gunman eventually detonated a hand grenade, killing himself. The police investigation indicated that 'it was believed that the attacker had become radicalised and specifically targeted members of the BiH armed forces' ⁽²³⁷⁾. The HR for the Implementation of the Peace Agreement in BiH stated that the attack had shown the challenges faced by BiH's authorities in the fight against terrorism and highlighted that the need for closer cooperation between the authorities is of 'paramount importance' ⁽²³⁸⁾.

OSAC reports that extremist groups with potential ties to terrorist support structure and financing exist in BiH. The source further indicates that 'in 2014, approximately 200 local citizens travelled to Syria and Iraq, making BiH one of the main source-countries per capita of foreign fighters in that war' and SIPA arrested those suspected to join or support foreign fighters ⁽²³⁹⁾.

⁽²³⁵⁾ OSAC, Bosnia and Herzegovina 2016 Crime & Safety Report, 23 February 2016.

⁽²³⁶⁾ Reuters, Gunman kills Bosnian policeman in apparent Islamist attack, 27 April 2015.

⁽²³⁷⁾ OSAC, Bosnia and Herzegovina 2016 Crime & Safety Report, 23 February 2016.

⁽²³⁸⁾ OHR, 49th Report of the High Representative for Implementation of the Peace Agreement on BiH to the Secretary-General of the United Nations, 5 April 2016.

⁽²³⁹⁾ OSAC, Bosnia and Herzegovina 2016 Crime & Safety Report, 23 February 2016.

5. Human rights situation

5.1. Legal context and institutional framework

BiH's Constitution guarantees fundamental human rights, including freedom of expression, of religion, of movement, of peaceful assembly, and respect for civil rights ⁽²⁴⁰⁾.

BiH ratified the core international Human Rights instruments: the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention Against Torture or the Convention on the Rights of the Child ⁽²⁴¹⁾.

5.1.1. The Institution of Human Rights Ombudsman of BiH

The Institution of Human Rights Ombudsman/Ombudsmen of BiH official website states that the Ombudsman is responsible for handling complaints related to the poor functioning or human rights violations committed by the official organs of BiH, its entities and District Brcko. Cases are opened after individual complaints or ex officio ⁽²⁴²⁾.

Other relevant legislation include the Agreement on Human Rights, part of the DPA (Annex 6), Law on Rights of National Minorities, Law on Gender Equality in BiH or the Laws on Foreigners and Asylum ⁽²⁴³⁾.

The US DoS indicates that the Ombudsman issues nonbinding recommendations. The Office of the Ombudsman reportedly issued approximately 300 recommendations as of November 2015, and the government implemented 50-60 % of those ⁽²⁴⁴⁾.

The same source reports that 'members of the international community noted that the ombudsman's effectiveness was in question because of the unanimity required between representatives of BiH's three constituent peoples over what constitutes a human rights violation. A Bosniak, a Croat, and a Serb shared leadership of the ombudsman institution' ⁽²⁴⁵⁾.

The 49th report of the HR notes that, on 10 November 2015, the PA BiH appointed BiH's three Ombudsmen for Human Rights ⁽²⁴⁶⁾. The new Ombudsmen, appointed for a 6-year term, are Ljubinko Mitrović (Serb), Jasminka Džumhur (Bosniack) and Nives Jukić (Croat) ⁽²⁴⁷⁾.

5.1.2. Ministry of Human Rights and Refugees of BiH

The Ministry of Human Rights and Refugees of BiH is, inter alia, responsible for promoting and protecting individual and collective human rights and freedoms, monitoring and implementing international conventions and other documents in the field of human rights and fundamental freedoms, collaborating with religious communities, national minorities, and asylum and rights of refugees. It is also responsible for the return of refugees and displaced persons in BiH, reconstruction projects and conditions for a sustainable return ⁽²⁴⁸⁾.

⁽²⁴⁰⁾ OHR, Constitution of BiH, 14 November 1995.

⁽²⁴¹⁾ UN Human Rights, Office of the High Commissioner, Status of Verification, Bosnia and Herzegovina, updated at least every six months.

⁽²⁴²⁾ Institution of Human Rights Ombudsman of BiH, What do we do?, n.d.

⁽²⁴³⁾ OHR, Dayton/Paris Peace Agreement, Annex 6, Agreement on Human Rights, 14 November 1995; OHR, Law on Rights of National Minorities, 12 April 2003; Law on Gender Equality in BiH, 21 May 2003; Ministry of Security, Strategy In The Area Of Migrations And Asylum And Action Plan For The Period 2016-2020, March 2016.

⁽²⁴⁴⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽²⁴⁵⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽²⁴⁶⁾ OHR, 49th Report of the High Representative for Implementation of the Peace Agreement on BiH to the Secretary-General of the United Nations, 5 April 2016.

⁽²⁴⁷⁾ Institution of the HR Omdusman of BiH, Appointed BiH Human Rights Ombudspersons, 20 November 2015.

⁽²⁴⁸⁾ Council of Ministers of BiH, Ministry of Human Rights and Refugees, n.d.

5.2. General human rights situation

According to the 2016 European Commission’s Communication on the BiH:

‘More work is required addressing human rights and minorities’ issues. Some progress was achieved in particular with the adoption of amendments to the anti-discrimination law. The strategic, legal, institutional and policy frameworks for the observance of human rights remain in overall need of substantial improvement’ ⁽²⁴⁹⁾.

According to the 2015 HRW report of BiH, ‘there was little change in 2015 regarding human rights for the people of Bosnia and Herzegovina’ ⁽²⁵⁰⁾.

5.2.1. Freedom of expression

The EC Communication 2016 indicates that BiH shows some level of preparation on freedom of expression, but ‘no progress was made in this area’ ⁽²⁵¹⁾.

According to the said Communication, ‘cases of political pressure and intimidation against journalists need adequate legal follow up. The financial stability of the public broadcasting system remains to be addressed, as well as the issue of the lack of transparency of media ownership’ ⁽²⁵²⁾.

The International Research and Exchanges Board (IREX) Media Sustainability Index for BiH indicates that there is still no transparency in media ownership ⁽²⁵³⁾.

The Civil Rights Defenders (CRD), a Swedish international human rights organisation with an office in Sarajevo, states that:

‘The right to freedom of expression is continuously challenged in Bosnia Herzegovina. Over recent years media freedom has sharply declined, and is ranked the lowest of all the Western Balkans countries. As a result of declining revenues and low journalist salaries, politicians have gained influence over the media. Those media outlets that have managed to remain independent often experience harassment by the authorities, as evident by the police raids against the web portal Klix.ba in December 2015. At least one journalist was beaten up by police officers while recording the February 2014 protests in the Federation of Bosnia and Herzegovina’ ⁽²⁵⁴⁾.

On the specific situation in Republika Srpska, the Civil Rights Defenders adds:

‘In January 2015, the Republika Srpska defined social media as a public sphere where peace and order needs to be upheld. According to the law, individuals expressing critical opinions are subject to sanctions. This law is seen as a big step towards possible censorship and self-censorship, and is in conflict with freedom of expression’ ⁽²⁵⁵⁾.

According to Reporters Without Borders, the content of articles 7 and 8 of the RS’s Law on Public Peace and Order adopted on 5 February 2015:

‘Criminalise posting text, symbols, images or cartoons that are obscene or offensive, content that is embarrassing or insulting, or content that incites uncouth or insolent behaviour. Anyone posting content that “disturbs social order” in this way could be fined 300 Bosnia marks (about 150 euros). Insulting or threatening other persons would be punishable by a fine of up to 800 marks (400 euros) – almost the average monthly salary – and 30 days in prison’ ⁽²⁵⁶⁾.

5.2.2. Freedom of religion

In BiH there is a strong correlation between ethnicity and religion ⁽²⁵⁷⁾.

⁽²⁴⁹⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 27.

⁽²⁵⁰⁾ HRW, World Report 2016, BiH, 27 January 2016.

⁽²⁵¹⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 27.

⁽²⁵²⁾ EC, Communication on the EU Enlargement Policy 2016, 9 November 2016, p. 27.

⁽²⁵³⁾ IREX, Media Sustainability Index (MSI), BiH, 2016.

⁽²⁵⁴⁾ Civil Rights Defenders, Country reports, Bosnia and Herzegovina, updated 9 June 2015.

⁽²⁵⁵⁾ Civil Rights Defenders, Country reports, Bosnia and Herzegovina, updated 9 June 2015.

⁽²⁵⁶⁾ RSF, Republika Srpska adopts law criminalizing social network content, 23 February 2015.

⁽²⁵⁷⁾ US DoS, 2015 Report on International Religious Freedom, 10 August 2016.

According to CRD, ‘Bosnian segregation of religious and ethnic minorities stems out from its Constitution, which revolves around the security of the three largest ethno-religious groups – Bosniaks (Muslims), Croats (Catholics) and Serbs (Orthodox)’⁽²⁵⁸⁾.

The same source adds that religious abuses and discrimination are common between Muslims, Catholics and Orthodox Serbs, but also towards other minorities. Returnees are one of the communities targeted, with 350 cases of hate crimes, physical violence, hate speech, offensive graffiti and the desecration of religious sites registered in 2014. Only 77 of these cases were processed through the courts⁽²⁵⁹⁾.

According to the US DoS report on religious freedom, different religious communities reported discrimination against religious minorities in nearly all parts of the country⁽²⁶⁰⁾.

5.2.3. Freedom of association and assembly

According to the US DoS report, the law guarantees freedom of association, and the government generally respected this right. However, NGOs reported difficulties registering as official entities with the government and lengthy bureaucratic procedures required for registration at state level⁽²⁶¹⁾.

Several attacks against LGBT people in public events received slow and inadequate reaction from the government. In 2014, violence during the LGBT Merlinka film festival in Sarajevo⁽²⁶²⁾ and an attack against an LGBT human rights defender in Banja Luka⁽²⁶³⁾ revealed how the police failed to provide security⁽²⁶⁴⁾. (See 5.3.6 [Lesbian, gay, bisexual, transgender and Intersex persons](#)).

According to *Civil Rights Defenders*, there have been attempts to control human rights defenders to prevent mass mobilisation, including by controlling social media, watchdog organisations, and creating restrictions in public gatherings⁽²⁶⁵⁾.

5.2.4. Torture and other cruel, inhumane and degrading treatment and punishment

Torture and other cruel, inhuman or degrading treatment or punishment are prohibited by law⁽²⁶⁶⁾.

The Council of Europe’s CPT reported that there are reports of police physical mistreatment during arrest and detention, and that detention facility staff at times have physically abused prisoners. Additionally, there were several allegations about mistreatment aimed at forcing confessions in some police stations, namely at Banja Luka Central Police Station⁽²⁶⁷⁾.

5.2.5. Prisons

The CPT reported that 1,913 prisoners were held in FBiH, with an overall capacity of 1,911 places. In the RS there were 885 prisoners for an overall capacity of 1,404. Prison capacity and adequacy will increase by 350 places after the completion of a new state prison, and the construction of new prisons in Mostar (400 places) and Bijeljina (250 places)⁽²⁶⁸⁾.

According to the CPT, ‘since its last periodic visit in 2011, courts throughout the country have made greater use of alternatives to imprisonment such as community service, fines and house arrest with electronic monitoring. Further legislation is currently being prepared to establish a system of probation’⁽²⁶⁹⁾.

⁽²⁵⁸⁾ Civil Rights Defenders, Country reports, Bosnia and Herzegovina, updated 9 June 2015.

⁽²⁵⁹⁾ Civil Rights Defenders, Country reports, Bosnia and Herzegovina, updated 9 June 2015.

⁽²⁶⁰⁾ US DoS, BiH 2015 International Religious Freedom Report, 10 August 2016.

⁽²⁶¹⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽²⁶²⁾ CRD, Hate attack against Queer festival in Sarajevo left three people injured, 4 February 2014.

⁽²⁶³⁾ SOC, SOC condemns the attack on LGBT activist from Banja Luka, 14 April 2014.

⁽²⁶⁴⁾ Civil Rights Defenders, Country reports, Bosnia and Herzegovina, updated 9 June 2015.

⁽²⁶⁵⁾ Civil Rights Defenders, Country reports, Bosnia and Herzegovina, updated 9 June 2015.

⁽²⁶⁶⁾ Bertelsmann Stiftung, BTI 2016, BiH Country Report, 2016.

⁽²⁶⁷⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

⁽²⁶⁸⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

⁽²⁶⁹⁾ CoE, CPT, Report to the Government of BiH on the visit to BiH carried out by the CPT from 29 September to 9 October 2015, 5 July 2016.

5.3. Specific groups

5.3.1. Ethnic and religious minorities

According to HRW, BiH's government did not move forward in amending the country's Constitution in order to eliminate ethnicity-based restrictions to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina ⁽²⁷⁰⁾ (see section 1.1 Constitution).

Roma remain the most vulnerable ethnic group in the country and face widespread discrimination in employment, education, and political representation. Lack of a free and universal birth registration system means that many Roma are not on the national public registry that records births, deaths, and marriages. This impedes their access to public services, including health care ⁽²⁷¹⁾.

5.3.2. Journalists and media

BiH scored 68 out of 180 on the 2016 World Press Freedom Index of Reporters Without Borders (RSF) ⁽²⁷²⁾. RSF commented that:

'This country has the world's most liberal media freedom laws but their implementation is held back by a saturated judicial system. Defamation was decriminalized in 2003 but lawsuits are still possible. Journalists are often the targets of threats and political pressure. The situation is aggravated by the fact that the pro-government media continue to enjoy direct and indirect state subsidies' ⁽²⁷³⁾.

According to the IREX MSI index 2016, BiH's showed 'an alarming lack of media ownership transparency, questionable patterns of government financing, and political control over the public broadcasters' ⁽²⁷⁴⁾.

The Bertelsmann Stiftung indicates that there have been 'sustained attempts by politicians' to control media independence and influence editorial policy, especially on public broadcasters ⁽²⁷⁵⁾.

IREX Media Sustainability Index for BiH indicates that in 2016 'journalists remained vulnerable to intimidation and threats due to the unsteady political and economic climate' ⁽²⁷⁶⁾.

HRW reports that state protection is often ineffective and 'police investigations rarely provide results' ⁽²⁷⁷⁾.

Commenting on the attack on a TV reporter in Banja Luka ⁽²⁷⁸⁾, the OSCE Representative on Freedom of the Media, Dunja Mijatović, stated:

'There have been numerous attacks on journalists in Bosnia and Herzegovina where the assailants yet are to be prosecuted. Impunity for attacks on members of the media must stop' ⁽²⁷⁹⁾.

The European Parliament's resolution on the EC's 2015 Communication 'calls on the competent authorities to conduct a thorough investigation into attacks on journalists and to create a legal framework for the protection of journalists' ⁽²⁸⁰⁾.

IREX reports that BiH media maintained previous negative trends, due to a 'low level of professionalism, poor protection and conditions for journalists, weak and oversaturated media market, an unsustainable public media service, a fragmented media scene, and political influence' ⁽²⁸¹⁾.

⁽²⁷⁰⁾ HRW, World Report 2016, BiH, 27 January 2016.

⁽²⁷¹⁾ HRW, World Report 2016, BiH, 27 January 2016.

⁽²⁷²⁾ RSF, BiH, Ranking 2016, 2016.

⁽²⁷³⁾ RSF, BiH, Highly protected media but..., 2016.

⁽²⁷⁴⁾ IREX, Europe & Eurasia Media Sustainability Index 2016 – Bosnia and Herzegovina, n.d.

⁽²⁷⁵⁾ Bertelsmann Stiftung, BTI 2016 – BiH report, 2016.

⁽²⁷⁶⁾ IREX, Media Sustainability Index (MSI), BiH, 2016.

⁽²⁷⁷⁾ HRW, World Report 2016, BiH, 27 January 2016.

⁽²⁷⁸⁾ Mapping Media Freedom, Bosnia: Croatian journalist assaulted after broadcast on protests, 14 May 2015.

⁽²⁷⁹⁾ OSCE, Attacks against journalists during demonstrations in Bosnia and Herzegovina must be condemned and investigated, OSCE Representative says, 17 May 2016.

⁽²⁸⁰⁾ EP, EP resolution of 14 April 2016 on the 2015 Report on Bosnia and Herzegovina, 14 April 2016.

⁽²⁸¹⁾ IREX, Media Sustainability Index (MSI), BiH, 2016.

Both the IREX BiH Media sustainability index report (2016) and the 49th report of the OHR on BiH indicate the existence of a continued polarisation of the media along political and ethnic lines ⁽²⁸²⁾.

5.3.3. Human rights and peace defenders

Human rights defenders in BiH are often threatened by individual groups and are pressured by the authorities. The situation is most severe for LGBT activist and journalists. According to the CRD, ‘the institutional weaknesses and new censorship instruments in legislation makes any kind of activism difficult to initiate’ ⁽²⁸³⁾.

The Bertelsmann Stiftung states that NGOs critical of RS authorities came under pressure, with reports of arrests and harassment. In 2014, the SNSD, the ruling party, alleged that ‘a network of foreign funded NGOs were planning to undermine the “constitutional order of the RS”’. The United States, EU, and OSCE condemned accusations by RS authorities that certain media outlets were ‘foreign agents’ ⁽²⁸⁴⁾.

According to the advocacy organisation Front Line Defenders, the situation of human rights defenders in Bosnia-Herzegovina has improved in recent years, with a decrease in the number of physical attacks against human rights defenders and no reported killings ⁽²⁸⁵⁾.

In practice, government officials did not condemn the majority of attacks on human rights defenders ⁽²⁸⁶⁾.

5.3.4. Women

According to Freedom House, although women are legally entitled to full equality, in practice they are underrepresented in politics and government and face discrimination in the workplace. Sexual harassment is common and the police are generally unresponsive to violent domestic disputes. Severe corruption enables human trafficking for the purpose of prostitution and forced labour and the government has made limited progress in training prosecutors and judges to handle trafficking cases ⁽²⁸⁷⁾.

The Sarajevo Open Centre (SOC), an independent civil society organisation working in the area of the LGBTI and women rights, writes in its 2016 Orange Report that the legislative framework for the systematic fight against domestic violence, violence against women and gender equality has improved in BiH after the signature of the Istanbul Convention, which obligates states to combat violence against women and domestic violence ⁽²⁸⁸⁾.

However, in practice, the source adds that progress is needed ‘in improving women’s place in society, and especially, the position of the marginalized groups of women like returnees, women victims of war, Roma women, women with disabilities, single mothers, women victims of violence, lesbians, bisexual and trans women, who often face discrimination and are sometimes even completely shunned’ ⁽²⁸⁹⁾.

SOC indicates that there are shortcomings in the state’s approach concerning maternity, gender equality, labour law and workforce, education, healthcare, political life, combating gender-based violence and conflict-related sexual violence ⁽²⁹⁰⁾.

According to the US DoS human rights report, ‘violence against women, including sexual assault and domestic violence, remained widespread and underreported’ ⁽²⁹¹⁾.

According to SOC, the issue of discrimination of new mothers in the FBiH is persistent, as maternity leave and child support varies according to the women’s employment status, employment sector and the canton in which she resides ⁽²⁹²⁾.

⁽²⁸²⁾ IREX, Media Sustainability Index (MSI), BiH, 2016.

⁽²⁸³⁾ CRD, Human Rights in BiH, updated 9 June 2015.

⁽²⁸⁴⁾ Bertelsmann Stiftung, BTI 2016 – BiH report, 2016.

⁽²⁸⁵⁾ Front Line Defenders, Bosnia and Herzegovina, n.d.

⁽²⁸⁶⁾ Front Line Defenders, Bosnia and Herzegovina, n.d.

⁽²⁸⁷⁾ Freedom House, Freedom in the World 2016, BiH, 18 August 2016.

⁽²⁸⁸⁾ SOC, Orange Report 2016, Annual Report On The State Of Women’s Rights in BiH, February 2016.

⁽²⁸⁹⁾ SOC, Orange Report 2016, Annual Report On The State Of Women’s Rights in BiH, February 2016.

⁽²⁹⁰⁾ SOC, Orange Report 2016, Annual Report On The State Of Women’s Rights in BiH, February 2016.

⁽²⁹¹⁾ US DoS, 2015 Human Rights Report, BiH, 13 April 2016.

⁽²⁹²⁾ SOC, Orange Report 2016, Annual Report On The State Of Women’s Rights in BiH, February 2016.

5.3.5. Children

According to UNICEF, poverty and social exclusion are the main causes for lack of rights of children and of the delivery of social services in BiH. The most vulnerable are families with three or more children, women, Roma and other ethnic minorities, internally displaced persons (IDP), children with disabilities and youth. UNICEF estimates that more than 50 % of the population experiences some form of social exclusion, discrimination or stigma ⁽²⁹³⁾.

The US DoS reports that rural poverty is twice that of urban areas and that little or no progress has been made in reducing this gap. There are about 400 unregistered children in BiH, mainly of Roma origin. There are reports of family violence against children. The police investigated and prosecuted individual cases of child abuse. According to the same source, early marriage is especially worrisome in Roma communities, with girls being married between 12 and 14. Girls were subjected to sexual exploitation, and 12-year-old Romani girls endured early and forced marriage and domestic servitude. Children were also used in the production of pornography ⁽²⁹⁴⁾.

Despite Roma being the largest ethnic minority in BiH, UNICEF's research shows that 80 % of Roma children live in poverty, Roma children are five times more likely to be underweight at birth than other children and about 60 % of Romani children have not been fully immunised against preventable diseases ⁽²⁹⁵⁾.

5.3.6. Lesbian, gay, bisexual, transgender and intersex persons (LGBTI)

The UN Special Rapporteur on the situation of human rights defenders addressed the BiH's Government following the violent disruption of the 2014 Queer Festival Merlinka in Sarajevo. The Special Rapporteur urged the Government to produce results of the investigation carried out by the police and Sarajevo Cantonal Prosecutor's Office into the events. It also recommended that the Government take action 'to ensure protection to organizers and participants of future public events aimed at addressing and raising awareness of discrimination on the basis of sexual orientation and gender identity in the country' ⁽²⁹⁶⁾.

According to SOC, an independent civil society organisation working in the area of the LGBTI rights, there was no significant progress as regards LGBTI persons' human rights. Compared to 2014, the number of cases of reported discrimination and violence on the grounds of sexual orientation has increased. Media reporting continues to be an issue, as LGBTI people and topics are not neutrally presented ⁽²⁹⁷⁾.

However, SOC underlines a new approach by the legislative and executive branch at state and entity levels towards the protection of LGBTI persons' rights. The source indicates that for the first time the governments of RS and FBiH passed the Annual Plan for Implementation of the Gender Action Plan for 2016, containing specific measures for protection of LGBTI people's rights ⁽²⁹⁸⁾.

Most cases of discrimination against LGBTI persons remain unrecorded, as the victims have not come out publicly about their sexual orientation, gender identity and/or sexual characteristics. According to *The Guardian* newspaper, quoting SCO 2013 data, '73 % of the LGBT community did not trust the police' ⁽²⁹⁹⁾. The Ombudsman recorded eight cases of discrimination on the basis of sexual orientation and gender identity in 2015/early 2016, and 11 cases in 2014 ⁽³⁰⁰⁾.

As mentioned previously, according to *Front Line Defenders*, journalists and human rights defenders working against discrimination of LGBTI people face additional risk ⁽³⁰¹⁾.

5.3.7. Trafficked persons

The US Report on Human Trafficking in 2015 indicates poor socio-economic circumstances and corruption within the police as factors contributing to the proliferation of trafficking-related crimes. The source adds that, despite

⁽²⁹³⁾ UNICEF, *The Reality of Life Today for the Children of Bosnia and Herzegovina*, n.d.

⁽²⁹⁴⁾ US DoS, *Country Report on Human Rights Practices, BiH*, 13 April 2016.

⁽²⁹⁵⁾ UNICEF, *The Status of Roma Children and Families in Bosnia and Herzegovina*, 2013.

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⁽²⁹⁹⁾ *Guardian (The)*, 'The LGBT community is invisible': using data to fight hate crime in the Balkans, n.d.

⁽³⁰⁰⁾ SOC, *Pink report 2016, Annual Report on the State of Human Rights of LGBTI in BiH*, April 2016.

⁽³⁰¹⁾ *Front Line Defenders, Bosnia and Herzegovina*, n.d.

the need for improvement in the legislative framework around the issue of trafficking in human beings, there were positive developments, especially the Action Plan for Combating Trafficking in Bosnia and Herzegovina for the period 2016-2019, adopted by the Council of Ministers BiH on 30 December 2015⁽³⁰²⁾.

The SOC's Orange Report 2016 recommends to 'harmonize the Criminal Law of FBiH with the Criminal Law of BiH and the Protocol on Trafficking from 2000 so that all forms of trafficking would be explicitly prohibited and so that appropriate prosecutions and punishments should be vetted out' and 'work actively on implementing the activities from Action Plan for Combating Trafficking in Bosnia and Herzegovina for the period of 2016 and 2019'⁽³⁰³⁾.

5.3.8. Returnees

In the aftermath of the Bosnia 1992-95 conflict, more than one million people were internally displaced and another million became refugees. Bosniaks, Bosnian Croats, Roma, Jews and other minorities in BiH fled the Serb-dominated areas, while Bosnian Serbs mainly fled to Serb areas⁽³⁰⁴⁾.

According to the International Displacement Monitoring Centre (IDMC), in November 2014 the number of IDPs in FBiH was 39,063, and the number of returnees 351,787; in RS there were 60,847 IDPs and 208,552 returnees, and in the Brčko District the count was 455 IDPs and 20,119 returnees⁽³⁰⁵⁾.

The US DoS report states that 'a substantial number of IDPs and returnees live in substandard conditions that affected their livelihoods'⁽³⁰⁶⁾.

In its concluding observations on BiH, the Committee on the Elimination of Racial Discrimination reported that many returnees were still unable to return to their villages of origin, as their houses had not been reconstructed, or landmines had not been cleared. The Committee added that many returnees, in particular minority returnees and Roma IDPs, still faced limited access to 'running water, public lighting and sewage-systems, limited access to health care and education, and very few employment opportunities'⁽³⁰⁷⁾.

IDMC states that there seems to be little political willingness to 'encourage a sense of common belonging and establish the facts of the events of the 1992-1995 war to promote reconciliation'. IDMC continues:

'It is also vital to resolve outstanding property cases of IDPs, address requests for housing reconstruction, design a livelihoods strategy for IDPs, returnees and other vulnerable groups, eliminate segregated education, improve tenure security and birth registration for Roma, step up efforts to determine the whereabouts of the remaining 7,200 missing persons and resolve outstanding court cases related to wartime atrocities. [...] While many displaced persons have since returned, the political arrangement whereby territory was divided by ethnicity has only served to further entrench divisions and slow the resolution of displacement and related issues'⁽³⁰⁸⁾.

According to the European Parliament Research Service Blog, BiH continued to cooperate with the regional partners under the Sarajevo Declaration Process⁽³⁰⁹⁾, aimed at finding a sustainable solution for the remaining 74,000 refugees and displaced persons from the 1992-95 conflict. The report adds that although progress was made on the Regional Housing Programme, further efforts are necessary⁽³¹⁰⁾.

⁽³⁰²⁾ US DoS, Trafficking in Persons Report 2016, Bosnia and Herzegovina, 30 June 2016.

⁽³⁰³⁾ SOC, Orange Report 2016, Annual Report On The State Of Women's Rights in Bosnia And Herzegovina, February 2016.

⁽³⁰⁴⁾ IDMC, Bosnia and Herzegovina: Ethno-political agendas still prolonging displacement, 19 November 2014.

⁽³⁰⁵⁾ IDMC, Bosnia and Herzegovina: Ethno-political agendas still prolonging displacement, 19 November 2014.

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⁽³⁰⁷⁾ CERD, Concluding observations on the ninth and eleventh periodic reports of BiH, 15 May 2015.

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⁽³⁰⁹⁾ EP, EP Research Service Blog, Sarajevo Process: The 1992-95 War Refugee Problem In The Western Balkans, 4 February 2014.

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Terms of Reference

1. State structure – 4 pages

- 1.1 Constitution
- 1.2 Executive branch
 - President
 - Government
- 1.3 Legislative branch
 - Parliament (assembly, senate?)
- 1.4 Administration

2. Socio-political landscape (= level of democracy) – 7 pages

- 2.1 Political parties
- 2.2 Elections
- 2.3 Opposition/ Armed groups
- 2.4 Civil society (ngo's, freedom of speech, freedom of assembly and association, labour rights and conditions)
- 2.5 Media (TV, radio, newspapers, internet)

3. Rule of Law and State Protection – 8 pages

- 3.1. Law enforcement (include information about: Capacity to protect civilians; Corruption; Abuse of power; accountability mechanisms to deal with these issues - where relevant)
 - 3.1.1 Police
 - 3.1.2 Army
 - 3.1.3 Intelligence/Security forces
 - 3.1.4 Corruption / fight against organised crime
- 3.2 Judiciary (include information about: Capacity to protect civilians; Corruption; Abuse of power; Internal mechanisms to deal with these issues - where relevant)
 - 3.2.1 Courts system (state courts, religious courts, military courts, etc.)
Capacity and Judicial integrity

4. Security situation (general, regional) – 3 pages

- 4.1 Short description of the (regional) situation
- 4.2 Amount/ Level of violence (chronology of main incidents)
- 4.3 Actors in the conflict (security forces, armed opposition groups)
- 4.4 Areas of control/influence
- 4.5 Impact of the violence to the population

5. Human rights situation – 8 pages

- 5.1 Legal context (relevant legislation: constitution, treaties, citizenship, etc.)
- 5.2 General situation (arbitrary arrests, detention, torture, disappearances, situation in detention facilities, deportation/refoulement)
- 5.3 Specific groups (e.g., ethnic/religious minorities, journalists, human rights defenders, children, women, LGBT, victims of trafficking, returnees, etc.)

6. Reintegration of returnees – 1 page

Annexes (EASO)

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