

## Legitimacy in Multilevel Systems

Traditionally, the definition of legitimacy is based on several accompanying criteria such as legality, justifiability, and legitimation. The legitimacy of a system is then based on *legal rules that are justifiable through the recognised political authority and legitimised by relevant bodies*. Prerequisites, however, include sovereignty and the effective functioning of government bodies. Given that this approach is closely connected with unitary and nation-states or even mono-national federal states, it makes it inapplicable to federal systems with identity differences such as Bosnia and Herzegovina (BiH).

Legitimacy in BiH reflects a *balance of different interests*, and therefore, depends on two interconnected aspects. First, legitimacy is envisaged in such a way as to acknowledge that it originates not only from citizens but also from specific groups or territories. On the one hand, legitimacy is tied to specific ethnic groups, meaning the three constituent peoples. On the other hand, legitimacy is tied to the territory, that is to say, to sub-state entities. In other words, it is tied to the Federation of BiH (FBiH) and the Republic of Srpska (RS) (the Entities), cantons, and the Brčko District (BD). Second, legitimacy reflects how these sources interact with each other horizontally and vertically in balancing their interests. This means that it depends, considerably, on the mutual relationship of the central authorities, sub-state entities, and ethnic groups.

Importantly, legitimacy in BiH is based on aspects of the so-called *input, output, and throughput legitimacy*. **Input legitimacy** includes effective political participation by the people. This means that people authorise political representatives to represent and participate in decision-making at all levels of government. This usually happens through elections; however, it is also possible through referendums. Hence, authorisation in BiH is based on a multiplicity of subjects from which legitimacy in BiH is drawn: the citizens, ethnic groups and levels of government, sometimes even under specific conditions. This means that input legitimacy is vested in multiple subjects simultaneously to enable their equality in processes. However, multiple subjects provide input in multiple levels of government such as the state level, the Entities, cantons, etc. This may affect transparency as it may not always be clear which subject is providing input and where. For example, constituent peoples provide input in the legislative and executive bodies at the cantonal, Entity, and state levels based on the principle of representation and participation of the constituent peoples. The cantons delegate the constituent peoples to the House of Peoples of the Parliament of the FBiH, and the Entities delegate the constituent peoples - Bosniaks and Croats from the FBiH, and Serbs from the RS – to the House of Peoples of the Parliamentary Assembly of BiH, ensuring input at the entity or state level. The specific position of the BD, however, is noticeable, given that the

residents of the BD have to decide in which of the two entities they will vote in the local and parliamentary elections. The internal structure of BiH obviously affects input legitimacy in that the relationship between the subjects from which legitimacy is drawn is blurred since there are several relationships, some of which are indirect. At the same time, all subjects, especially BD, are not an integral part of input legitimacy.

**Output legitimacy** includes effective political participation for the people. This happens thanks to access to information, responsiveness, and accountability. In other words, output legitimacy reveals how political representatives were involved in decision-making through publicly available information about their work. This is a good indicator of whether they were responsive enough to meet the expectations of those who authorised them, and consequently, it raises the question of their accountability. For example, Bosniaks and Serbs have often used the so-called entity vote, which unites territorial and identity features into a qualified majority, in the legislature at central level to block legislation, although there is a procedure for the protection of vital national interests guaranteed to the three constituent peoples. Due to their small number, Croats cannot use the entity vote as a veto mechanism. Similarly, in the three-member presidency in BiH, the procedure for protecting the vital interests of the constituent peoples is often used by the members of the Presidency to prevent decision-making without consensus. This, for example, is the case with the decision on accession to the North Atlantic Treaty Organization (NATO), which the Serb member of the Presidency regularly opposes. Another example is that both FBiH and RS can opt to transfer some of their powers to state level on the basis of a mutual agreement. Since the political establishment in RS stands against transferring powers, most of the powers that have been transferred (including the establishment of the Court of BiH, the Prosecutor's Office of BiH, and the High Judicial and Prosecutorial Council of BiH) were imposed by the Office of the High Representative for BiH (OHR). In RS, the establishment of these institutions has never been approved since there was no agreement on the issue. Considering the complexity of output legitimacy, it is natural to conclude that both effectiveness and accountability are imperilled, which diminishes these essential characteristics of the democratic process in BiH.

Finally, **throughput legitimacy** includes effective political participation with the people. This happens by ensuring that the content of decisions is justified, and that decisions are made in such a way that all subjects have had the opportunity to be involved in decision-making processes. This may also include public hearings, consultations, and citizens' initiatives. For example, the already mentioned entity vote in decision-making procedures puts one constituent people, the Croats, in an unequal position. This undermines throughput legitimacy as it creates the perception that one is unable to participate in decision-making.

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