

Abuse of State Resources Research and Assessment Framework *Bosnia and Herzegovina*

April 2018



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I. Executive Summary

The abuse of state resources (ASR) in elections can give significant, unfair advantages to incumbent political parties and candidates, erode the quality of democracy, and undermine the fair allocation of public resources. The linkages between ASR and electoral advantage are cyclical and also emblematic of larger corruption challenges; powerful elected and appointed officials can take advantage of a politicized civil service, public contractors, government communications and public media, and other means of in-kind support to both enrich themselves and gain an unfair electoral advantage. Following an election, politicians can “pay back” the services rendered during the campaign in the form of civil service employment and benefits, favorable procurement contracts, and other perks for supporters. ASR has been highlighted as a pervasive challenge in a series of recent elections in Bosnia and Herzegovina (BiH), and may be both a symptom and a cause of the country’s widespread corruption challenges.

This report details the findings of an *Abuse of State Resources Assessment* conducted by the International Foundation for Electoral Systems (IFES). The report draws on detailed desk research as well as a field research mission to BiH in November 2017. Findings are focused on ASR legal provisions, oversight institutions, and enforcement mechanisms. To the extent possible, the report evaluates both the state (national) level of BiH and the entities of the Federation of BiH (FBiH) and *Republika Srpska* (RS) to properly account for local variation in the abuse of state resources. While in BiH, the team conducted 15 interviews in Sarajevo and Banja Luka with a range of stakeholders.

Assessment interlocutors were confident that public awareness of ASR was high. There was generally agreement, however, that – more than two decades after the conclusion of a devastating war – the public is largely resigned to accepting such misuses in exchange for peace. The 1995 Dayton Accords that ended the war created a uniquely complex political and electoral structure for the country that remains in place today. This structure creates additional challenges to preventing the abuse of state resources in campaigns, as ethnic divisions in society are replicated in the political system. Voting blocs are considered pre-determined, so parties representing a particular set of ethnic interests cater to their own constituencies at the expense of broad or programmatic-based coalition building. There is a limited “opposition” willing to advocate against ASR, as essentially all political actors are both beneficiaries and victims of the abuse.

This report focuses on three principles for detecting, deterring, and remedying ASR abuses in a manner commensurate with international standards (the assessment methodology is described further in Section III). Principle 1 evaluates the legal framework for addressing three potential avenues for ASR: state personnel; state funds and physical resources; and official government communications. The BiH legal framework does not appropriately address ASR in election campaigns. Although some laws and regulations could be proactively applied in service of mitigating ASR, the framework clearly lacks sufficient provisions that would govern the activity of civil servants and the use of state funds and other resources during the election period. Regulations on public media during the official campaign period are the strongest component of the ASR legal framework, but assessment interlocutors note that media bias is still a concern.

Principle 2 of this report focuses on oversight of the ASR legal framework by independent institutions. The constellation of institutions whose mandates cover aspects of ASR in elections in BiH is generally characterized by weak legal mandates, insufficient resources, poor inter-institutional coordination, and a dearth of political will. Although the challenges are considerable, the establishment of stronger mandates to monitor and investigate ASR and improved coordination between agencies would contribute to greater oversight of the abuse of state resources in elections.

The complexity and fragmentation of the judicial sector is an especially thorny problem, as it creates barriers to citizen interaction with the justice system. Numerous reports have highlighted widespread

“political influence and direct interference in judicial proceedings.”¹ In tandem with obstructionist prosecutors’ offices, these issues ensure that most investigations of ASR are buried by inefficiency, political maneuvering, or both. The effective enforcement of criminal sanctions and penalties – analyzed in the third and final principle of the ASR assessment methodology – is accordingly stymied. Administrative disciplinary procedures that might apply to misuses of state resources, particularly those perpetrated by civil servants within public agencies, are also burdened by onerous requirements that render them essentially useless.

This report also delves into key contextual features that impact ASR (herein referred to as the ASR enabling environment): the public service framework, campaign finance mechanisms, civil society oversight and advocacy, media environment and public information, and public procurement. An overall environment of impunity for perpetrators of the misuse of state resources during elections is further enabled by a variety of factors exogenous to the legal and administrative system. For example, interlocutors indicated that both public and private media outlets affiliated with perpetrators of ASR often avoid reporting the story within their community rather than investigating, reporting and demanding accountability through the law. Without true media scrutiny of the use of state resources and the impunity of perpetrators, public demand for action is less likely and the deterrent effect of penalties is considerably diminished.

Similarly, civil society has a key watchdog function in detecting and monitoring the abuse of state resources. Several civil society organizations (CSOs) in BiH regularly engage in electoral and political monitoring, reporting, and advocacy. However, greater coordination between CSOs and political parties, as well as the implementation of stronger, standardized ASR monitoring methodologies is needed to enhance ASR oversight and inform more effective advocacy.

The overarching public service framework directly impacts the interaction of civil servants with election campaigns. As noted herein, the civil service apparatus in BiH lacks clear distinctions between independent state administration and elected positions within the government. As a result, a highly politicized civil service at all levels of government is a deeply ingrained feature of Bosnian society. Strong political affiliations at the local level particularly challenge oversight and enforcement; civil servants are directly accountable to mayors (in cities) and municipal executives (in municipalities), who are themselves political figures and likely to encourage and enable the participation of civil servants in political activity.

The campaign finance framework is another important feature of the ASR landscape. This assessment highlights five principal weaknesses of the campaign finance regime, including that the Central Election Commission’s audit team is under-resourced and the reporting regime makes it difficult for observers and citizens to track campaign expenditures outside of the campaign period. The public procurement system similarly contributes to an environment that enables political actors to misuse state resources. As this report will detail, the system fuels corruption, captures and diverts public resources, and severely undermines the integrity of both elections and good governance. The public sector is an extremely powerful “buyer” in BiH, and many stakeholders allege that elected officials reward supportive companies with procurements after elections.

The remainder of this report offers a detailed recommendations list and a brief overview of the ASR assessment methodology, as well as an in-depth analysis on each of the areas described above. Based on this analysis, recommendations have been made to strengthen the legal framework with an emphasis on the rights and responsibilities of civil servants, explicitly regulating the use of state funds and other resources, strengthening mandates of oversight and enforcement bodies, creating incentives for improved enforcement, and strengthening weaknesses in the enabling environment that impact ASR.

¹ Blagovčanin, Srđan. “National Integrity System Assessment: Bosnia and Herzegovina 2015.” 2015. *Transparency International*. 86. <https://ti-bih.org/wp-content/uploads/2015/12/National-Integrity-System-Assesment-BIH-2015.pdf>.

II. Recommendations

In the table below, summary recommendations (discussed in more detail in the rest of this report) are indicated in the first column, followed by the relevant actor or actors responsible for implementation. In the political will columns, two additional elements are identified in summary form: existing features of the political landscape that can be leveraged (by the international community, technical assistance providers, or other stakeholders) because they enable or do not block reform, and features that may need to be mitigated or overcome as they present barriers related to political will. These features include incentives (e.g., checks and balances in the government that hold officials accountable, including through the effective use of penalties and sanctions for misbehavior, support from powerful actors, including from the international community); relationships (e.g., interest groups and political parties/forces that are supportive of the effort, or that do not seek to provide organized opposition, a receptive and engaged public, and supportive partners in the international community); and consequences (e.g., social and political conflict are minimal, reputational costs are minimal or advantageous). The final column identifies the priority level of the particular recommendation.

The assessment team considers the following, high-level recommendations to be priorities; these and other recommendations are explained in more detail in the table below and throughout this report:

- Support coordination of state and entity-level audit institutions to develop explicit mechanisms for uncovering misuses of public resources during the election period, including developing standard methodology for monetizing in-kind donations
- Improve coordination between audit offices and prosecutors' offices to facilitate investigation of wrongdoing uncovered by audits
- Strengthen coordination between election commissions and police to efficiently track and address misuses of physical resources
- Convene anti-corruption institutions and civil society organizations (CSOs) under the Agency for the Prevention of Corruption and Coordination in the Fight Against Corruption to develop strategy for comprehensive ASR oversight and public education
- As an alternative to legal reform by parliament, consider using CEC mandate to issue administrative regulations regulating the use of public resources in election campaigns, including state personnel, vehicles and premises
- Provide the CEC with sufficient material resources and clarify its legal authority to audit and identify inappropriate campaign activity (including the use of state resources through in-kind contributions) in annual party reports, as well as levy sanctions on political parties based on third-party complaint or its own initiative
- Conduct civic education on the whistleblower law through CSOs, and strengthen enforcement at the national level through expanded APIK mandate and capacity
- Strengthen training of civil servants on rights and responsibilities during the electoral period, and conduct targeted public outreach
- Use existing online public procurement portal to create a database of bidders (winners and losers of contracts) to engender demand for reform
- In collaboration with relevant stakeholders, develop a consistent and rigorous method for CSOs to collect evidence of the misuse of state resources, including state personnel and physical resources

Figure 1: Priority Recommendations

<i>Acronyms used in this table:</i>		
Civil society organization (CSO)	Abuse of state resources (ASR)	Communications Regulatory Agency (CRA)
European Union (EU)	Central Election Commission (CEC)	Public Procurement Agency (PPA)
Republika Srpska (RS)	Bosnia and Herzegovina (BiH)	Procurement Review Board (PRB)
Agency for the Prevention of Corruption and Coordination in the Fight Against Corruption (APIK)		International nongovernmental organization (INGO)

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
ASR Legal Framework				
Amend the legal framework where most effective (e.g., the civil service and election laws, as appropriate) to include explicit restrictions on civil servants using their time, money and other resources to support election campaigns	Parliament (state and entity)	<ul style="list-style-type: none"> ✓ Potential champions within civil service management and oversight institutions ✓ Potential champions within election administration ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Resistance from candidates and political parties, as governing framework enables all major parties to access state resources and have vested interest in maintaining status quo ✓ Potential resistance from civil servants satisfied with existing legal framework 	High
Consider amendments to the legal framework to protect civil servants and employees of public companies from political influence during the electoral period	Parliament (state and entity)	<ul style="list-style-type: none"> ✓ Potential champions within civil service / public companies and their management / oversight institutions ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Resistance from candidates and political parties, as governing framework enables all major parties to access state resources and have vested interest in maintaining status quo 	High
Consider amendments to RS legal framework to restrict the ability of civil servants to stand as candidates without modifying their employment status	RS Parliament	<ul style="list-style-type: none"> ✓ Potential champions within civil service and their management / oversight institutions ✓ Existing, highly engaged CSO advocacy and monitoring groups 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties in RS ✓ Potential resistance from civil servants satisfied with existing legal framework 	Moderate
Amend the legal framework to tightly regulate the use of state vehicles and other physical resources for political purposes and ensure costs	Parliament (state and entity)	<ul style="list-style-type: none"> ✓ Potential champions within civil service management and oversight institutions 	<ul style="list-style-type: none"> ✓ Resistance from candidates and political parties, as governing framework enables all major 	High

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
associated with using these resources are paid for with campaign funds		<ul style="list-style-type: none"> ✓ Potential champions within election administration ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community (specifically EU) to push for change 	parties to access state resources and have vested interest in maintaining status quo	
Strengthen coordination between election commissions and police to efficiently track and address misuses of physical resources	Election commissions Police	<ul style="list-style-type: none"> ✓ Potential champions within election administration ✓ Existing, highly engaged CSO advocacy and monitoring groups 	<ul style="list-style-type: none"> ✓ Potential resistance from police ✓ Potential resistance from political parties and candidates 	High
Amend the legal framework to prohibit social assistance transfers and ceremonies related to development projects that were not publicly announced significantly in advance of Election Day (at a predetermined time that is determined based on stakeholder consultation)	Parliament (state and entity)	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups 	<ul style="list-style-type: none"> ✓ Limited public interest in curbing ASR abuses ✓ Municipal governments and political parties benefit from existing legal framework 	Moderate
Strengthen disclosure and transparency measures on the use of the resources of public companies	Parliament (state and entity)	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties 	High
Consider further regulating political content in official government communications, including social media and public advertisements	Parliament (state and entity) CEC	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties 	Low
Provide adequate human and financial resources, as well as technical training, to APIK and expand the institution's mandate to explicitly include ASR in elections	Parliament (BiH) APIK INGOs	<ul style="list-style-type: none"> ✓ Potential champions within election administration ✓ Potential champions within APIK 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties ✓ Limited public trust in APIK 	High
Convene anti-corruption institutions and CSOs under APIK to develop strategy for comprehensive ASR oversight and public education	APIK CSOs INGOs	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community (specifically EU) to push for change 	N/A	High

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
Consider legal amendments that would shift mandate to investigate conflicts of interest from parliamentary commission to an independent body	Parliament (BiH)	<ul style="list-style-type: none"> ✓ Potential champions within Parliamentary Commission for Deciding on Conflicts of Interest ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Potential spoilers within Parliamentary Commission for Deciding on Conflicts of Interest Resistance from candidates and political parties, as governing framework enables all major parties to access state resources and have vested interest in maintaining status quo 	Moderate
As an alternative to legal reforms that remove the commission's mandate, consider expanding the scope of Parliamentary Commission for Deciding on Conflicts of Interest to include examining abuses of an official position for campaign purposes	Parliament (BiH)	<ul style="list-style-type: none"> ✓ Potential champions within Parliamentary Commission for Deciding on Conflicts of Interest ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Potential spoilers within Parliamentary Commission for Deciding on Conflicts of Interest ✓ Resistance from candidates and political parties, as governing framework enables all major parties to access state resources and have vested interest in maintaining status quo 	Moderate
As an alternative to legal reform by parliament, consider using CEC mandate to issue administrative regulations regulating the use of public resources in election campaigns, including state personnel, vehicles and premises	CEC	<ul style="list-style-type: none"> ✓ Potential champions within election administration ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Resistance from candidates and political parties, as governing framework enables all major parties to access state resources and have vested interest in maintaining status quo 	High
Reform appointment process to Agency for Civil Service and Civil Service Board (and entity agencies as needed) to encourage greater independence	Parliament (state and entity)	<ul style="list-style-type: none"> ✓ Potential champions within civil service management and oversight institutions ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Potential resistance from civil servants satisfied with existing legal framework ✓ Resistance from candidates and political parties, as governing framework enables all major parties to access state resources and have vested interest in maintaining status quo 	High
Strengthen the capacity, including increasing budget and staff, of entity level audit offices	Parliament (state and entity) Audit offices	<ul style="list-style-type: none"> ✓ Potential champions within audit offices 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties and/or municipal governments 	High

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
Support coordination of state and entity-level audit institutions to develop explicit mechanisms for uncovering misuses of public resources during the election period, including developing standard methodology for monetizing in-kind donations	Audit offices INGOs	<ul style="list-style-type: none"> ✓ Potential champions within audit offices ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties and/or municipal governments 	High
Improve coordination between audit and prosecutors' offices to facilitate investigation of wrongdoing uncovered by audits	Audit offices Prosecutors' offices International community/INGOs	<ul style="list-style-type: none"> ✓ Potential champions within audit offices ✓ Influence of the international community (specifically EU) to push for change 	<ul style="list-style-type: none"> ✓ Potential resistance from prosecutors' offices 	High
Support collaboration between audit offices and CSOs on monitoring ASR and raising public awareness	Audit offices CSOs INGOs	<ul style="list-style-type: none"> ✓ Potential champions within audit offices ✓ Existing, highly engaged CSO advocacy and monitoring groups 	N/A	Moderate
Provide clear deadlines for the timely adjudication of complaints against the media during the electoral period	Parliament (BiH) CRA	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Potential champions within CRA 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties ✓ Potential resistance from media actors 	High
Expand mandate and strengthen resource capacity of CRA to conduct systematic media monitoring during the election period	Parliament (BiH) CRA	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Potential champions within CRA 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties 	High
Ensure continuation in CRA Director General and Council leadership through reformed appointment process that protects CRA independence	Parliament (BiH) CRA	<ul style="list-style-type: none"> ✓ Potential champions within CRA 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties 	Moderate
Streamline civil servant disciplinary regulations to reduce procedural barriers to enforcement	Parliament (BiH)	<ul style="list-style-type: none"> ✓ Potential champions within civil service management and oversight institutions 	<ul style="list-style-type: none"> ✓ Potential resistance from civil servants satisfied with existing legal framework ✓ Potential resistance from political parties 	High
Systematically monitor restrictions on the employment of public officials and civil servants while standing as candidates	CSOs Civil service agencies	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Potential champions within civil service management and oversight institutions 	<ul style="list-style-type: none"> ✓ Potential resistance from civil service management and oversight institutions 	Moderate

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
Conduct civic education on the whistleblower law through CSOs	CSOs INGOs	✓ Existing, highly engaged CSO advocacy and monitoring groups	N/A	High
Strengthen enforcement of whistleblower law at the national level through expanded APIK mandate and capacity	Parliament (BiH) APIK	✓ Potential champions within APIK	✓ Limited public trust in APIK ✓ Limited public trust in public institutions and government agencies, including ombudsman's office	Moderate
Enabling Environment				
Strengthen training of civil servants on rights and responsibilities during the electoral period, and conduct targeted public outreach	Civil service agencies (state and entity) INGOs	✓ Potential champions within civil service management and oversight institutions	✓ Resistance from candidates and political parties, as governing framework enables all major parties to access state resources and have vested interest in maintaining status quo ✓ Potential resistance from civil servants	High
Develop state-level, universal code of conduct for civil servants employed in public institutions	Civil service agencies (state and entity)	✓ Potential champions within civil service management and oversight institutions	✓ Potential resistance from civil service management and oversight institutions	Moderate
Consider improvements to performance management system for civil servants	Civil service agencies (state and entity) Public institutions	✓ Potential champions within civil service management and oversight institutions	✓ Potential resistance from civil service management and oversight institutions ✓ Potential resistance from public institutions	Moderate
Provide the CEC with sufficient material resources and clarify its legal authority to audit and identify inappropriate campaign activity (including the use of state resources through in-kind contributions) in annual party reports, as well as levy sanctions on political parties based on third-party complaint or its own initiative	Parliament (BiH) CEC	✓ Potential champions within election administration ✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ Potential resistance from political parties	High
Better define and train candidates and parties on how to properly monetize and report in-kind contributions	CSOs Political parties INGOs CEC	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Potential champions within election administration	✓ Potential resistance from political parties	High

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
Develop a consistent methodology for civil society organizations to monitor in-kind contributions and jointly issue reports on these contributions before, during and after the electoral campaign period	CSOs INGOs	✓ Existing, highly engaged CSO advocacy and monitoring groups	N/A	Moderate
Enhance transparency of campaign finance by updating disclosure forms and regulations to include interim reports (during the campaign period)	Parliament (BiH) CEC	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Potential champions within election administration	✓ Potential resistance from political parties and candidates	High
Close the gaps in the law that allow candidates and parties to bundle small donations (100 KM or less) without disclosing their source	Parliament (BiH)	✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ Potential resistance from political parties	High
In collaboration with relevant stakeholders, develop a consistent and rigorous method for CSOs to collect evidence of the misuse of state resources, including state personnel and physical resources	CSOs INGOs	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community (specifically EU) to push for change	N/A	High
Adhering to a “do no harm” principle, train journalists on investigative journalism techniques, and specifically focus on misuses of state resources during the electoral period at all levels	CSOs INGOs Media	✓ Potential champions within the media	✓ Potential resistance from political parties	High
Harmonize legislation related to the freedom of information and close gaps in existing laws that limit access	Parliament (state and entity)	✓ Potential champions within the media ✓ Influence of the international community (specifically EU) to push for change	✓ Potential resistance from political parties ✓ Potential resistance from public institutions	Moderate
Conduct training for public institutions/agencies on proactive transparency and adherence to freedom of information laws	CSOs INGOs	✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ Potential resistance from public institutions	Moderate
Close loopholes that allow government agencies to set technical requirements that limit competition in public procurement	Parliament (BiH) PPA	✓ Influence of the international community (specifically EU) to push for change	✓ Potential resistance from political parties and municipal governments	High
Narrow and strengthen the public procurement bidding scoring criteria to encourage a fair and competitive process	Municipal governments PPA PRB	✓ CSOs that monitor procurement process	✓ Potential resistance from political parties and municipal governments	Moderate

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
		<ul style="list-style-type: none"> ✓ Bidders and businesses that want a level playing field ✓ International community that is advocating to implement GRECO recommendations 		
Introduce regulations that discourage fragmenting procurements to evade more highly regulated procurement processes	Parliament (BiH) PPA	<ul style="list-style-type: none"> ✓ Bidders and business that want a level playing field ✓ International community that is advocating to implement GRECO recommendations. 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties and municipal governments 	Moderate
Use existing online public procurement portal to create a database of bidders (winners and losers of contracts) to engender demand for reform	CSOs INGOs	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups 	<ul style="list-style-type: none"> ✓ Potential resistance from political parties and municipal governments 	High
Train the PRB on comparative standards for procurement oversight and conduct training on independence and capacity-building for the PPA and PRB, in collaboration with APIK	APIK INGOs PPA PRB	<ul style="list-style-type: none"> ✓ Potential champions within APIK 	<ul style="list-style-type: none"> ✓ Limited public trust in APIK ✓ Potential resistance from PRB and PPA 	High
Collaborate with civil society organizations, such as Transparency International and <i>Pod Lupom</i> , to conduct civic education and consistently monitor the procurement process	CSOs INGOs PPA	<ul style="list-style-type: none"> ✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community (specifically EU) to push for change 	N/A	Moderate

III. Methodology

The abuse of state resources (ASR) for electoral campaigns is increasingly recognized as a major corruptive force in electoral and political processes, yet it is often less regulated than other areas of political finance. Although the concept of the abuse of state resources is indirectly highlighted in some international and regional public law documents, there are few comprehensive sources for this information. This methodology was developed to address this gap and examine ASR as a specific electoral challenge that undermines electoral integrity while more broadly eroding the quality of democracy, the ability of state institutions to function, and the fair allocation of public resources.

The purpose of this assessment report is to analyze the effectiveness of the ASR framework in Bosnia and Herzegovina and offer meaningful recommendations for reform, accounting for capacity, context, and political will. Important terms used throughout the report are defined in Figure 2 below. The assessment methodology focuses on the use of the legal and regulatory framework to prevent specific abuses related to the state's resources, which are limited herein to state personnel, state funds and physical assets, and official government communications to the public (including publicly-funded or state-run/owned media).

An analysis of the *effectiveness* of the legal framework also requires an examination of contextual factors that impact how the legal framework operates in practice. The methodology therefore examines both the contours of the **ASR legal framework** and additional factors that influence the abuse of state resources – described herein as the **enabling environment**. This holistic approach allows for recommendations that take into account context – both positive and negative – that should be either leveraged or mitigated in order to realistically effect change. The methodology also considers the potential for gender-based differences in the use and abuse of state resources (for example, whether oversight bodies have equitable gender representation, or whether there are gender-based differences in the application of sanctions and penalties).

ASR Legal Framework

ASR legal framework questions are predicated on several important principles recognized in international law and comparative good practice:

Principle 1	First, the legal framework must <u>establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections</u> (<i>legal and regulatory framework</i>). Provisions regarding the permissible uses of state resources should clearly apply to both incumbent and opposition political forces, and should not be “abused in support of any particular candidates or parties.” ² The legal and regulatory framework should require public employees to act in a neutral and impartial manner, and make a “clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign.” ³
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Principle 2	Second, <u>effective and transparent oversight by independent institutions</u> is essential to address the abuse of state resources (<i>oversight institutions</i>). Institutions responsible for auditing the use of administrative resources should be granted the necessary authority and mandate to monitor parties and candidates, and must be equipped with the necessary human and financial resources to effectively carry out their mandate.
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² The Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Election Observation Handbook*, 6th ed. (Warsaw, 2010), 62.

³ *Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes*, report no. 778/2014, The Venice Commission and OSCE Office for Democratic Institutions and Human Rights (Strasbourg, 2016), 4.

Principle 3

Third, relevant institutions should properly enforce sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions (enforcement).⁴ As noted by IFES in a recent American Bar Association publication, “The enforcement of remedies and sanctions is important not only to give substance to rights, but also to deter future instances of malpractice and fraud. The effectiveness of certain sanctions as a deterrent depends in part on enforcement. If the courts, [electoral management body], or other state bodies are unable, or unwilling, to enforce a sanction or implement a remedy, the deterrent effect decreases.”⁵

The ASR legal framework quantitative analysis is based on scores assigned by the expert assessment team to the three principles of effectiveness described above. Following extensive desk and field research, team members assigned scores to each of the three principles based on pre-determined scales and evaluation questions (as set out later in this report). Each question on the consistent scoring scale is coded so that a higher score indicates a more effective ASR framework.

ASR Enabling Environment

Enabling environment questions shed light on five additional contextual areas of interest:

- Public service framework
- Campaign finance framework
- Civil society oversight and advocacy
- Media environment and public information
- Public procurement

Given the availability of reliable global indices evaluating the categories that are part of the enabling environment, this methodology does not require the expert team to score these areas. The expert team chose the indicators that were available and most appropriate to Bosnia and Herzegovina. All indicators are re-scaled as needed on a 0-100 scale, where 100 is the best or highest score allocated. The composite score is the mean of the included indicators.

Figure 2: Important Definitions

Abuse of state resources: “the undue advantages obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, to influence the outcome of elections” (OSCE/ODIHR, Handbook for the Observation of Campaign Finance 66 (2015))

Financial resources/state funds: operating budgets of government institutions (e.g., travel budgets).

State physical resources: assets owned by the state, including buildings, vehicles, land, and equipment

Oversight body/authority: The entity or entities with monitoring, regulatory or supervisory control over the use of state resources

Immunity: Protection for public employees from politically-motivated prosecution, removal from office, and other reprisals based solely on conduct appropriate for carrying out their legal mandates

Remedy: The means to achieving justice in any matter in which legal rights are involved. For example, the enforcement of penalties, sanctions and restitution or other court order

⁴ Chad Vickery, ed., *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (Washington, D.C.: IFES, 2011). and Magnus Ohman and Megan Ritchie, "Campaign Finance," in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016).

⁵ Katherine Ellena and Chad Vickery, "Measuring Effective Remedies for Fraud and Administrative Malpractice," in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016), 111.

IV. ASR Legal Framework Analysis

This section of the analysis offers a window into the legal framework countering the abuse of state resources in elections in Bosnia and Herzegovina, as well as its practical implementation. The effectiveness of the legal and regulatory framework is evaluated to determine whether it enables the deterrence, detection, and remedy of ASR abuses in a manner commensurate with international standards. As discussed above, scores were assigned by the assessment team to each of the three principles, and arrayed on Figure 3 in blue (the orange lines represent the ideal score for each dimension). The detailed score profiles for each of the three principles – legal and regulatory frameworks; oversight institutions; and enforcement – are included below, and apply the following scoring rubric:

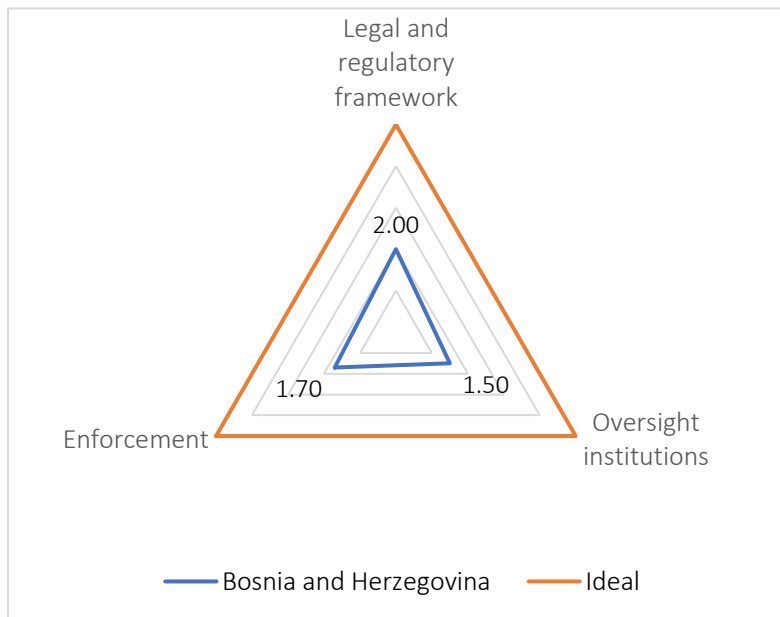
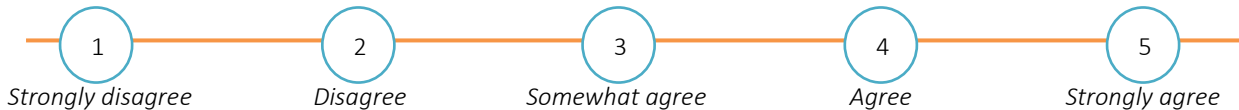


Figure 3: Bosnia and Herzegovina Legal Framework Scores

Principle 1, which focuses on the legal and regulatory framework as a mechanism for preventing public officials from taking advantage of their positions to influence election outcomes, received a score of 2.0 on the 1-5 scale (where 5 indicates strongest agreement with the scoring statements, as per the table below). This relatively low score captures the fact that the legal framework, including regulations and codes of conduct applicable to the election period, do not comprehensively address this issue or adequately anticipate potential abuses. As will be discussed further below, the available sanctions and penalties are also neither sufficient nor proportionate to the potential range of violations, limiting the ability of the legal framework to encourage fair competition and equality of opportunity to all candidates. This score is, however, the highest of the three components of Bosnia and Herzegovina’s ASR regime, reflecting serious weaknesses in institutional oversight and the enforcement of the law.

<i>Principle 1: Establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections (legal and regulatory framework)</i>	Score
The legal framework for ASR encourages fair competition and equality of opportunity to all candidates	1.0
The legal framework for ASR is clear and accessible to both political actors and the public servants governed by it	4.0
The legal framework for ASR is comprehensive	2.0
Legal sanctions and penalties available under the law are proportional to offenses committed	1.0
Principle 1 score	2.0

Principle 2, which addresses the oversight of the ASR legal framework by independent institutions, was scored as a 1.5 on the 1-5 scale. This principle received the lowest score of the three principles evaluated by the assessment team, reflecting a lack of both capacity and willingness on the part of multiple institutions to accept oversight responsibility as part of their mandate. Despite its prevalence, ASR in election campaigns has not been addressed by institutions that could play a proactive role in providing comprehensive monitoring and oversight. The mandates that institutions do have to address ASR are weak, but these institutions also face a range of challenges (including sustained threats to their independence and a lack of financial and human resources) to fulfilling existing responsibilities or taking a more aggressive stance on key issues.

<i>Principle 2: Ensure effective and transparent oversight by independent institutions (oversight institutions)</i>	Score
Oversight institutions fully exercise their legal authority and mandate to investigate parties and candidates for breaches of ASR laws and regulations	2.0
The assignment of mandates and resources to oversight institutions facilitates investigation of ASR cases	1.0
Oversight institutions are insulated from political pressure and reprisals	1.0
Removal of staff at oversight institutions is governed by predetermined and transparent procedures	2.0
Principle 2 score	1.5

Principle 3, focused on the effective enforcement of sanctions and penalties, received an aggregate average score of 1.7. This score reflects the challenges to enforcing sanctions and penalties for state officials who violate the ASR legal framework in Bosnia and Herzegovina. Multiple assessment interlocutors and observer reports highlighted ineffective prosecutors' offices at various levels, which limit the enforcement of penalties for criminal abuses. Political influence and complex administrative procedures further stymie the enforcement of disciplinary procedures that could deter civil servants and other public officials from misusing public resources during the election period.

<i>Principle 3: Properly enforce sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions (enforcement)</i>	Score
Legal sanctions and penalties are applied in a timely manner	2.0
Legal sanctions and penalties are enforced	2.0
Legal sanctions and penalties, as enforced, effectively deter violations	1.0
Principle 3 score	1.7

Principle 1: Establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections (*legal and regulatory framework*)

As recognized in international law and best practice, it is essential for states to draft legislation that clearly defines permissible and prohibited uses of state resources. Laws, regulations, and codes of conduct or ethics should require impartiality in the conduct of official duties and ensure that a clear distinction is made between “the operation of government, activities of the civil service and the conduct of the electoral campaign.”⁶ The legal framework should also “provide for an equal right to stand for elections and for equality of opportunity to all candidates, including public employees, and political parties during electoral processes.”⁷

In addition to clearly establishing parameters for the appropriate uses of state resources, the most effective ASR-prevention and mitigation systems will have a range of remedies available, and identify a clear remedy for each potential violation determined by the law.⁸ These options can include “formal warnings, fixed monetary penalties, reduction in public financing, or referral for criminal prosecution.”⁹ Even if restrictions are clearly and comprehensively defined in the law, and sufficient mandates and resources are provided to oversight institutions, ASR will likely continue without effective and enforceable sanctions and remedies.¹⁰

Assessment interlocutors characterized Bosnian society as permeated by political corruption; the abuse of state resources for electoral purposes is one significant component of this environment. While some foundational elements of anti-corruption language are in place, the legal and regulatory framework in BiH does not sufficiently address the use of state resources in election campaigns or adequately anticipate abuses. Despite the scattered array of legal provisions touching on the use of state resources and the electoral process at both the state and entity level, specific provisions governing the activity of civil servants and the use of state funds and other resources during the election period are largely missing. Many interlocutors concluded that legal fixes would be insufficient to remedy the pervasive abuses of state resources plaguing the system, as they believe that the civil service has been thoroughly “captured” by political forces and existing laws and regulations are regularly circumvented. However, stronger and more specific language and the closing of loopholes will be a necessary first step to address some ASR challenges, as reflected in the recommendations throughout this section.

The remainder of the Principle 1 narrative is divided into three sections, each focused on one type of state resources as emphasized by this assessment methodology: state personnel activities and time; state funds and physical assets; and official government communications to the public, including through public media.

Restrictions on State Personnel

States should place some restrictions on the electoral activities of government personnel, including regulations compelling impartiality by state agencies and employees.¹¹ Although these types of regulations are insufficient as a sole means of regulating the abuse of state resources, they can be beneficial in establishing an important principle by which public employees must abide.¹²

⁶ Venice Commission & OSCE/ODIHR, *Joint Guidelines for Preventing and Responding to Misuse of Administrative Resources during Electoral Process*, 106th Sess., Doc No.778/2014, A.5.2.

⁷ *Ibid.*, A.3-A.5.

⁸ Magnus Ohman and Megan Ritchie, "Campaign Finance."

⁹ *Joint Guidelines for Preventing and Responding*, C.2.3.

¹⁰ Erica Shein and Megan Ritchie, *Unfair Advantage: The Abuse of State Resources in Elections*.

¹¹ Magnus Ohman, *Training in Detection and Enforcement Political Finance Oversight Handbook (TIDE)* (Washington, D.C.: International Foundation for Electoral Systems, 2013), 138.

¹² *Ibid.*

In examining the legal and regulatory framework for ASR, it is also necessary to address the activities and responsibilities of public employees who are planning to run for office.¹³ The Venice Commission and OSCE/ODIHR’s 2016 Guidelines reference the need to consider “adequate and proportionate” rules in the legal framework pertaining to the “suspension from office or resignation of certain public authorities running for elections in order to ensure neutrality.”¹⁴ Finally, it is necessary to prevent incumbents from leveraging the considerable pool of government employees to gain an electoral advantage, and to conserve

Recommendations

- ✓ Amend the legal framework where most effective (e.g., the civil service and election laws, as appropriate) to include explicit restrictions on civil servants using their time, money and other resources to support election campaigns
- ✓ Consider amendments to the legal framework to protect civil servants and employees of public companies from political influence during the electoral period

government work-time strictly for governance functions. In addition, regulations regarding state personnel’s time and financial contributions to an electoral campaign can also serve to protect government employees from coercion with regard to their election activity.¹⁵

At the state level, the Law on Civil Service in the Institutions of BiH requires that the civil service adhere to a variety of principles, including professional impartiality.¹⁶ Article 14 of this law lays out more specific requirements for impartiality, including that a civil servant shall: “Refrain from any action or omission, which is incompatible with or infringes duties as established by this Law and in particular refrain from publicly manifesting his political or religious beliefs.”¹⁷ Article 16(1) of the Law on Civil Service also includes a provision barring civil servants from being a member of political parties and following the instructions of political parties.

However, beyond this general discussion of impartiality, the law does not specifically address the ability of civil servants to participate in campaign activities or engage in political work, whether during or after working hours, and makes no specifications regarding the election campaign period.¹⁸ Civil servants providing support to a campaign could theoretically be

sanctioned through existing legal provisions requiring impartiality, but specific restrictions on civil servant activity during the electoral period would significantly strengthen the ASR legal framework. Most interlocutors agreed that the participation of civil servants in election campaigns – whether through making phone calls, attending rallies, or other means – is challenging to prove but is a common avenue for misuse. Interlocutors also noted that this problem is prevalent at the local level. Some citizen observers mentioned

¹³ Ibid, 140.

¹⁴ *Joint Guidelines for Preventing and Responding*, A.4.2. However, Ohman warns that in some cases the implementation of such regulations could be counter-productive, if public employers are only willing to re-hire candidates that support the ruling party and refuse to re-hire representatives of the opposition. See TIDE.

¹⁵ Shein and Ritchie, *Unfair Advantage*.

¹⁶ Article 3, Law on Civil Service in the Institutions of Bosnia and Herzegovina. Certain public officials are not considered civil servants under the law, including members of parliament and the presidency, the Council of Ministers, Ministers, Deputy Ministers, judges of the Constitutional Court, judges of the court of BiH, and the Auditor-General and Deputy Auditors-Generals of the Supreme Audit Institution. Advisors to members of parliament, the presidency, ministers, and the Governor and Vice-Governors of the Central Bank are also not considered civil servants.

¹⁷ Under Article 16(2) of the Law on Civil Service, appointed civil servants must: provide all information about the assets available or available to members of his immediate family as well as the activities and functions performed by civil servants and members of his immediate family.

¹⁸ Article 47 of this law establishes: “By-laws shall further determine the conditions pursuant to which specific unpaid leave for civil servants may be taken as well as when a civil service position may be exercised parttime.” It does not appear that any such by-laws limit the participation of state personnel in election campaigns.

that they experienced problems with police while attempting to observe local rallies, such as falsely being told that certain observation activities were forbidden.

The root cause of the alleged large-scale participation of civil servants in campaign activities appears to be the wholesale politicization of the civil service. As is discussed in detail in the “Public Service Framework” section of this report, the nearly universal perception among interlocutors interviewed for this assessment in BiH is that politics permeates every aspect of the civil service apparatus, and it is not possible to get a job in the state administration without belonging to a political party. When considered in the context of an inadequate legal framework, the politicization of the civil service at the state, entity and municipal level further enables the misuse of civil servants during election campaigns.

The Law on Civil Service in the Institutions of Bosnia and Herzegovina does provide for both disciplinary and criminal sanctions in the event that the law is violated. A civil servant may be disciplined for violations of official duties, including abusing his position, and may also be held criminally liable.¹⁹ The relevant public service institution can discipline civil servants through written warning or reprimand, referring the case to the Agency for Civil Service if it believes a more severe sanction is needed. The available disciplinary

Recommendations

- ✓ Consider amendments to RS legal framework to restrict the ability of civil servants to stand as candidates without modifying their employment status

sanctions are: written warning; written reprimand; suspension of the right to participate in open competitions for a maximum of two years; suspension of duties and salary for a period of two to 30 days; demotion to a lower position or category; or dismissal from the Civil Service.²⁰ A detailed discussion of oversight institutions, including the Agency for Civil Service, can be found in Principle 2.

While the legal framework governing the support civil servants may provide to election campaigns is limited, the laws do stipulate the conditions under which the employment of civil servants is impacted should they run for office. Under the Election Law of

Bosnia and Herzegovina, judges, prosecutors, civil servants and some other public officials must resign in order to stand as a candidate for publicly elected office.²¹ Article 16(1) of the Law on Civil Service specifies that civil servants are considered to be on leave from the civil service after their candidacy for public office (whether through direct or indirect election) is confirmed, or when they are appointed to a position in any legislative or executive body at any level of the BiH government. Rather than taking leave, senior civil servants must resign in these circumstances. Also under Article 16, civil servants (with the exception of senior civil servants) are entitled to return to the same or similar position no later than one month following their defeat in the elections or the end of their mandate in an appointed position.

¹⁹ The Law on Civil Service in the Institutions of Bosnia and Herzegovina, Article 54. This article also provides: “Further By-laws shall further determine the breach of official duties.”

²⁰ Law on Civil Service in the Institutions of BiH, Article 56. Under the disciplinary procedure laid out in the Law on Civil Service in the Institutions of BiH (Article 55), “All civil servants and employees of the Institutions shall be entitled to file to the appointing authority confidentially a disciplinary case against a civil servant who has allegedly committed a violation” of the previous article, which outlines violations of official duties. Such violations include “abuse of the official position or exceeding of the authorizations.” These rights also apply to ministers and their deputies.

²¹ Election Law of BiH Article 1.8 (1): “Judges of regular and Constitutional courts, prosecutors and their deputies, attorneys and their deputies holding public office, Ombudsmen and their deputies, members of the Human Rights Courts/Chambers/Councils, notaries members of police forces, civil servants, members of the Armed Forces of BiH, members of the Intelligence and Security Agency, and diplomatic and consular representatives of BiH abroad who have a diplomatic status in accordance with the 1961 Vienna Convention on Diplomatic Relations, may stand as a candidate for public elected office only if they resign from their position or abide by the laws regulating their status.”

According to assessment interlocutors, legal requirements on state personnel running as candidates for public office are essentially the same in the Federation of Bosnia and Herzegovina (FBiH). The FBiH Law on Civil Service stipulates that senior civil servants must resign while lower-level civil servants are deemed to be on leave while seeking election. However, senior civil servants, lower-level civil servants, and municipal employees in the *Republika Srpska* (RS) do not have to resign or take leave in order to stand as candidates. Assessment stakeholders also noted that violations of these legal provisions are common but not extensively disclosed or monitored.

Restrictions on the Use of State Funds and Physical Resources

The physical assets (including buildings, equipment, and vehicles) and operating/administrative budgets wielded by state and local governing bodies are potential sources of abuse for election campaigns, absent appropriate restrictions. The legal framework can serve to limit potential abuses by clearly identifying inappropriate uses of these resources and requiring transparency in any permissible uses throughout the electoral process.²² There are a variety of approaches to doing so, including banning specific sources or expenditure types, and requiring detailed disclosure of funding from political parties and candidates to ensure that misuses of state resources will be revealed.

The lack of an adequate disclosure regime in the BiH campaign finance framework intersects with the abuse of state resources in election campaigns with respect to in-kind donations, which are often public

resources, used in support of political parties and candidates. BiH's Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption (discussed in Principle 2) notes that "little attention is devoted to unreported donations in kind to political parties such as printing services for election material, price discounts for advertising space, use of resources of public institutions and other types of support mostly for the purpose of elections."²³ This issue is discussed in detail in the "Campaign Finance Framework" section of this report.

Article 7.2 of the Election Law of BiH mandates the competent bodies to ensure that parties and candidates are treated equitably in response to requests to use "public places and public facilities for campaign purposes, including holding meetings, display of notices, placards, and posters." Parties and candidates are not permitted to "place their names or slogans related to the election campaign in or on the buildings of government authorities at all levels, public enterprises, public institutions and local communities, on religious facilities, on public roads and public areas, except for the places designated for distribution of posters and advertising." The OSCE/ODIHR noted that unequal access to

public premises was a concern in the 2014 general elections.²⁴ Due to the range and severity of other abuses cited by interlocutors, access to public premises was not of primary concern among those

Recommendations

- ✓ Amend the legal framework to tightly regulate the use of state vehicles and other physical resources for political purposes and ensure costs associated with using these resources are paid for with campaign funds
- ✓ Strengthen coordination between election commissions and police to efficiently track and address misuses of physical resources

²² Shein and Ritchie, *Unfair Advantage*.

²³ Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption, *Anti-Corruption Strategy for 2015-2019 and the Action Plan for the Implementation of the Anti-Corruption Strategy for 2015-2019: Bosnia and Herzegovina*, December 2014, 30.

²⁴ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 13.

interviewed for this assessment. However, interlocutors agreed that abuses in this area still exist and access to public premises for campaign events is not distributed equitably.

Citizen observers and assessment interlocutors did highlight the problem of the use of state vehicles (including helicopters) by public officials for political purposes. Local civil society organization *Pod Lupom*'s final report on the 2016 local elections in BiH identified 84 cases of public officials attending campaign rallies using official vehicles, and an additional five cases of the President of RS attending campaign events in an official helicopter.²⁵ A range of assessment interlocutors considered these challenges to be widespread at all levels of election, though they do not appear to specifically contravene the law. Allegations of high-level political officials or ministers attending rallies for local party officials or other events such as infrastructure unveilings (with which they are not directly affiliated), while using transportation funded by the state are also common.

Interlocutors also raised serious concerns about the use of public funds and other state resources in election campaigns through a variety of mechanisms, including procurement contracts, development

Recommendations

- ✓ Amend the legal framework to prohibit social assistance transfers and ceremonies related to development projects that were not publicly announced significantly in advance of Election Day (at a predetermined time that is determined based on stakeholder consultation)
- ✓ Strengthen disclosure and transparency measures on the use of the resources of public companies

projects, state-owned and public companies, employment, and advertising. The legal framework does not restrict the timeframe surrounding elections for the issuance of procurement contracts, public works projects, or the distribution of social services, such as pensions. Stakeholders viewed the completion of development projects in the lead-up to elections as an abuse of state resources. Most public funds in BiH are managed at the local level, and interlocutors noted that local councils (controlled by mayors, who are generally from the same party as the majority of the council) will build schools, roads, or conduct other development projects and ceremonies in the immediate run-up to Election Day. Often, the president or other high-level officials within a political party will attend the opening of a local development project, even if they themselves do not represent that community. These projects allow parties to sell achievements to the electorate just before voting commences. In addition, opaque procurement processes allow parties to obtain *de facto* donations from contractors. As discussed in the "Public Procurement" section of this report, there is the perception that in-kind donations to parties are "returned" to companies through public tenders following an election.

As introduced in the Executive Summary of this report, political parties in BiH are ethnically-based virtually without exception. As the National Democratic Institute's Democracy Assessment describes: "BiH's complex constitutional organization has the effect of segmenting the electorate along ethnic lines. As a result, parties tend to compete for votes within ethnic communities, and voters systematically vote along those lines."²⁶ Interlocutors also alleged that this structure encourages parties to collude to divide up budgets for projects at the local level. This approach gives each party with its own ethnic constituency a piece of the pie, and removes incentives for one party to speak out against the abuses of another.

²⁵ *Pod Lupom*, "2016 Local Elections in Bosnia and Herzegovina: Final Report on civic and nonpartisan observation of local elections," Sarajevo, December 2016, p. 37.

²⁶ National Democratic Institute. "Democracy Assessment in Bosnia and Herzegovina: Perspectives on the Democratic Transition." March 2017. *NDI*. 20.

Addressing the timing of development projects or the distribution of social benefits is particularly thorny, as most governing bodies appear to be working within the bounds of the law as it relates to setting and expending budgets. It is essential that the law balance the need to fulfill government mandates (for example, to provide social services and ensure maintenance of infrastructure) with the imperative that decisions about the timing of public resource expenditures should not be made as a result of a political calculus. The law should not have a chilling effect on spending for the genuine good of the public, but should instead emphasize advance planning, transparency, and avoiding the appearance of impropriety.

Finally, some interlocutors noted that the involvement of state-owned enterprises and public companies and institutions in promoting particular parties and candidates is a significant challenge. These bodies, according to stakeholders, are not adequately obligated to be transparent about how resources are distributed, including during the time period surrounding elections. A 2015 Transparency International (TI) National Integrity Assessment noted that public companies in BiH are significantly influenced by politics, and state-owned enterprises are run by individuals appointed by political parties.²⁷

In addition of the complete politicization of the public enterprise sector, observers have alleged that parties receive donations from public companies. The 2015 TI assessment elaborates on one example:

Despite the fact that the legal provisions of the law on political party financing expressly prohibit the financing of political parties by state-owned enterprises, there are evident violations of these provisions in practice. For example, before the 2014 general election information appeared in the media that the entire Electric Utility Company of RS was mobilised to provide support to the Alliance of Independent Social Democrats (SNSD). However, the competent authorities failed to impose any sanctions for these activities.²⁸

Deficiencies in the legal framework, as well as limited enforcement of violations (discussed in Principle 3), contribute to the alleged use of state resources as in-kind donations to political campaigns, misuse of state vehicles and public premises, and the political involvement of public institutions in election campaigns. While the timing of public procurement contracts and infrastructural and social development initiatives is a nuanced issue, interlocutors were also concerned that these issues contribute to an unfair advantage for particular political parties in BiH.

Restrictions on Official Government Communications to the Public

Official government communications, as well as publicly-managed or funded media sources, can heavily tilt the playing field in electoral campaigns towards the incumbent party if not properly regulated. It is important, therefore, for the legal and regulatory framework to clearly outline allowable and unallowable uses of official government communications during the electoral period, though specific approaches to this regulation may vary.²⁹ For example, as noted in an IFES white paper on the subject, “legal provisions may restrict the advertising activities of state agencies during the campaign period. Countries may also include provisions in the legal framework placing restrictions on the use of government funds to print or distribute communication during the electoral campaign period; for example, prohibiting mass mailings paid with official government funds or official publications that ‘prominently feature’ a public official from being sent during an established pre-election campaign period. Additionally, legal provisions may include *content*

²⁷ Blagovčanin, Srđan. “National Integrity System Assessment: Bosnia and Herzegovina 2015.” 2015. *Transparency International*. 227. <https://ti-bih.org/wp-content/uploads/2015/12/National-Integrity-System-Assesment-BIH-2015.pdf>.

²⁸ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 235.

²⁹ Shein and Ritchie, *Unfair Advantage*, 16.

restrictions (such as on the use of official symbols or other government insignia in election-related communication).”³⁰

This report section focuses on two types of government communications: the dissemination of information from official government bodies and individuals acting in an official capacity (including through the use of traditional sources such as mailings as well as websites and social media), and the use of public media outlets (including broadcast, radio, newspaper, and other media sources).

Recommendations

- ✓ Consider further regulating political content in official government communications, including social media and public advertisements

Assessment interlocutors raised some general concerns about the dissemination of information from official government bodies being used to influence electoral campaigns. There do not appear to be any specific legal requirements regarding the use of state funds to print or distribute communication specifically related to the time around the electoral campaign period, or the content of official communication. Social media use – both by civil servants and government entities – is not subject to any substantial regulation under the law, though social media campaigning from official accounts is not cited as a particular problem during this

assessment or in reporting on this subject. One problem cited by stakeholders interviewed for this assessment was that public institutions or ministries mount billboards and other advertisements, or hold non-political events that feature party logos, photos of ministers, and slogans similar to the those of the campaign. These activities do not appear to be illegal under the current legal framework.

In terms of official government communications, however, the most significant attention in both the law and among stakeholders is directed towards the public media. Article II of the Constitution of BiH provides for the freedom of expression, and journalists and broadcast media moderators are prohibited from expressing their possible party affiliations in both regular and special programming.³¹ The Election Law and supplemental CEC regulations are fairly comprehensive with respect to the campaign period. Article 16 of the Election Law of BiH addresses the role of the media – both public and private – in election campaigns. CEC regulations also address the broadcast time allocated to political entities.

The Election Law of BiH provides that the media shall “cover election activities in a just, professional and competent manner,” with a particular emphasis on upholding the freedom of expression.³² The electronic media is also required to adhere to the principles of fairness, balance and impartiality even for programming that does not explicitly relate to elections, including news, interviews, and other political conversations.³³ Stakeholders interviewed for this assessment generally felt that the adherence of the media to these standards varied by broadcaster, but balance and impartiality are not universally respected in a range of programming, including news.

The Election Law also provides specific mention of the campaign period, with Article 16.2 holding that the electronic media shall cover pre-election activities according to the principles of balance, fairness, and impartiality. Further, Article 16.3 stipulates that broadcast media must not give any political entity a privileged position with respect to another. Officials at “all levels of authority” standing as candidates must also not enjoy a privileged position in the electoral process. Under the BiH Election Law, the order that

³⁰ Ibid, 16-17.

³¹ Election Law of Bosnia and Herzegovina, Article 16.6

³² Election Law of Bosnia and Herzegovina, Article 16.1

³³ Election Law of Bosnia and Herzegovina, Article 16.4

political entities appear in special programs is established by drawing lot prior to the campaign.³⁴ The public broadcast media is specifically mandated to “present political entities in an equal and fair manner and shall inform the public of all issues related to the campaign and the election process during 30 days prior to the Election Day.”³⁵

In practice, the media in BiH is segmented along ethnic lines, and each entity has a public broadcaster – Radio and Television of FBiH (RTV FBiH) in the Federation and Radio and Television of RS (RTRS) in *Republika Srpska* – in addition to the state level Public Broadcasting System (PBS). The OSCE/ODIHR adds, “there are over 40 television channels and some 140 radio stations, of which about 70 are public, operating on the cantonal and municipal levels. Television is the primary source of information along with the Internet. The domestic press consists of some 600 print outlets, published in Bosnian, Croatian and Serbian languages. The leading daily newspaper *Dnevni Avaz* reports daily circulation of some 30,000 to 50,000 copies.”³⁶

According to the OSCE/ODIHR, during the 2014 elections, public media “offered voters the opportunity to learn about contestants through debates and election programmes. However, OSCE/ODIHR EOM media monitoring results showed widespread bias in broadcast media.”³⁷ Interlocutors emphasized that, as is the case with most issues, the local level is a key area of abuse of the public media. According to stakeholders interviewed for this assessment, there are more than 40 privately-owned public media broadcast companies, and they use municipal budgets for their operations and are under a significant amount of political pressure, as many are also struggling financially.

Assessment interlocutors noted that there is a problem with bias in the public media, though some broadcasters took a larger share of the blame than others. Many noted that it is an “open secret” that a party will exercise control over a public broadcaster, with the membership of political parties going as far as selecting the steering boards of broadcasters (while the law sets criteria, political appointees can exploit loophole to meet these criteria). RTV was the subject of the most criticism, with one interlocutor arguing that the “parallel reality” portrayed on the network was “at the level of North Korea.”

The law allows the media to cover official activities related to an official’s line of work as long as his or her candidacy or political party affiliation is not mentioned.³⁸ Assessment interlocutors emphasized that even when candidacy or party affiliation is not mentioned, the media grants coverage to press conferences, announcements, and public officials attending the opening of a development project or participating in another activity for which the political implications are clear – violating the spirit if not the letter of the law.

As noted by the OSCE/ODIHR election observation mission in 2014, the public media commonly violated provisions barring political bias during the campaign. For example, “[t]hrough the coverage of their official activities in these news programmes, state officials, also running as candidates, received more coverage in public media in comparison with other candidates, which is contrary to national legislation. Moreover, the media provided these political actors a platform for promotion without countering it with critical views or analysis.”³⁹ The main point stressed by assessment interlocutors was that the media generally adheres to the rules governing the 30-day campaign period, but the public media provides biased coverage, to varying degrees, outside of this timeframe.

³⁴ Election Law of Bosnia and Herzegovina, Article 16.7

³⁵ Election Law of Bosnia and Herzegovina, Article 16.14(1)

³⁶ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 15.

³⁷ Ibid, 2.

³⁸ Election Law of Bosnia and Herzegovina, Article 16.3

³⁹ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 16-17.

Article 16.14 of the BiH Election Law also provides that the public broadcast media shall provide political entities direct access to free broadcast time during the campaign period (30 days prior to Election Day). Article 7 of the CEC “Rulebook on media coverage of political entities from the day elections are announced until the Election Day” sets the amount of time for these direct advertisements to three minutes per political entity. According to OSCE/ODIHR media monitoring, public broadcasters complied with the legal obligation to provide equal airtime during the 2014 election campaign.⁴⁰

Article 16.14 of the Election Law further establishes that the public electronic media must provide equal conditions for paid political advertisements of political parties for a maximum of 30 minutes per week during the campaign period. Regulations for this provision are further spelled out in Article 8 of the CEC media Rulebook. Paid political advertising is prohibited between the date elections are announced and the start of the official campaign period by Articles 3 and 4 of the CEC media Rulebook. Article 16.9 of the Election Law of BiH also provides that the public electronic media shall broadcast CEC voter information free of charge, and the CEC will file a report with the Communications Regulatory Agency (discussed in Principle 2) in cases of violation of this provision.

Principle 2: Ensure effective and transparent oversight by independent institutions (oversight institutions)

As noted by IFES previously, “an independent, empowered oversight institution that is responsible for auditing and monitoring the use of state resources is essential in the development of a strong system to prevent or address potential abuse. Clarity is needed in the legal and regulatory framework as to an oversight institution’s mandate, and how compliance with the rule will be monitored.”⁴¹ Oversight bodies require “sufficient resources, independence, and political will to investigate potential violations and to initiate a remedy.”⁴² Although a clear demarcation of regulatory responsibilities between and among oversight institutions is generally considered desirable, research has shown that it may be theoretically possible to design an effective system characterized by “institutional multiplicity,” in which competing jurisdictions are enabled by “more than one institution [being] charged with performing a certain function.”⁴³ As the International Research Initiative on Brazil and Africa has noted, however, it is important to create a structure where the competing jurisdictions creates incentives to improve performance, rather than providing an option for institutions to shirk their responsibilities.⁴⁴

In BiH, there are several institutions whose legal mandates include, at least in part, oversight of the use of state resources in election campaigns. However, these mandates are generally weak or not fully pursued by the respective institution, whether due to lack of resources, awareness, or political will. As discussed in Principle 1, the legal framework does not sufficiently address ASR. As a result, even those institutions with a role to play in oversight often do not consider the abuse of state resources, particularly during election campaigns, to be part of their mandate. During assessment interviews, interlocutors commonly shirked the responsibility of addressing ASR and deferred to other actors or institutions. As one interlocutor commented, “no one” currently investigates ASR in BiH.

As noted in the recommendations in this report section, stronger legal mandates to monitor and investigate ASR and better coordination between and among agencies would – in conjunction with the provision of additional sanctions, as discussed in Principle 1 – contribute to greater accountability over the use of state

⁴⁰ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 17.

⁴¹ Shein and Ritchie, *Unfair Advantage*, 16-17.

⁴² Ohman and Ritchie, “Campaign Finance.”

⁴³ Lindsey Carson and Mariana Mota Prado, *Brazilian Anti-Corruption Legislation and its Enforcement: Potential Lessons for Institutional Design*, report no. 9, International Research Initiative on Brazil and Africa (Manchester: University of Manchester, 2014), 8.

⁴⁴ *Ibid.*

resources. The information that follows provides an overview of the institutions with legal mandates to provide ASR oversight in BiH:

Prosecutors' Offices

The Law on the Prosecutor's Office of BiH establishes the Prosecutor's Office as an independent entity at the state level based in Sarajevo. Relevant to potential investigations of the abuse of state resources, the legal framework also establishes entity prosecutors' offices in FBiH and *Republika Srpska* and a prosecutor's office in *Brčko* District, as well as 10 cantonal prosecutors' offices in FBiH and five district prosecutors' offices in *Republika Srpska*.⁴⁵

The Regional Anti-Corruption Initiative outlines the general contours of these prosecutors' offices:

The Prosecutor's Office of BiH is a unique institution, as it is not superior to the entity Prosecutor's Offices and its jurisdiction is limited to the prosecution of specific crimes, including cases of corruption involving BiH civil servants. The two entity-level Prosecutor's Offices of the Federation of BiH and of *Republika Srpska*, as well as the Public Prosecutor's Office of the *Brčko* District, are therefore each competent and "supreme" within their own area of jurisdiction.⁴⁶

Prosecutors' offices at various levels are ultimately responsible for sanctioning criminal cases of ASR and corruption, including abuses committed by civil servants. Assessment interlocutors argued that these institutions do not fulfill their respective mandates, and prosecution for such violations is rare to nonexistent. Enforcement of existing legal provisions is discussed in Principle 3.

Agency for Prevention of Corruption and Coordination in the Fight Against Corruption (APIK)

The Agency for Prevention of Corruption and Coordination in the Fight Against Corruption (APIK) was established in 2009 as an independent administrative agency reporting to parliament.⁴⁷ The law assigns a wide mandate to the agency to deter corruption in BiH through research and education, including "the analysis of corruption trends, development of anti-corruption policies and monitoring of their implementation."⁴⁸ APIK's role is preventative in nature and does not include an investigatory or sanctioning function.

In collaboration with relevant institutions and organizations, APIK develops the Anti-Corruption Strategy for BiH, as well as the action plan for its implementation. The Agency's Anti-Corruption Strategy also indicates that its mandate includes the development of "a uniform methodology for data collection on the property status of public servants" and responsibility for coordinating "the work of institutions with public jurisdiction in preventing corruption, monitoring the effects of preventive anti-corruption laws and

⁴⁵ There is also a "Special Prosecutor's Office operating under the District Prosecutor's Office Banja Luka charged with combating organised crime and most serious forms of economic crime." See Blagovčanin, "National Integrity System Assessment: Bosnia and Herzegovina 2015," 120.

⁴⁶ Regional Anti-Corruption Initiative, <http://rai-see.org/bosnia-and-herzegovina/>

⁴⁷ Law on the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption (Gazette No. 103 / 09)

⁴⁸ Regional Anti-Corruption Initiative, <http://rai-see.org/bosnia-and-herzegovina/>

regulations, and giving instructions regarding their application and the initiation of activities related to amendments to the existing laws and their harmonization.⁴⁹

Recommendations

- ✓ Provide adequate human and financial resources, as well as technical training, to APIK and expand the institution's mandate to explicitly include ASR in elections
- ✓ Convene anti-corruption institutions and CSOs under APIK to develop strategy for comprehensive ASR oversight and public education

APIK also notes that additional bodies for preventing corruption and developing anti-corruption strategies should be developed at all levels of government, including towns and municipalities, and that these bodies should coordinate their efforts as envisioned by the law establishing the Agency.⁵⁰ The Director of APIK is appointed by parliament from "among experts recognized in the relevant field" to a term of five years, with one possible renewal.⁵¹

Assessment interlocutors in BiH agreed that APIK is under-resourced and as such lacks the capacity to significantly alter the corruption environment. Additionally, APIK's role as a preventative institution without sanctioning power led interlocutors to view the agency as largely toothless and ineffective.

The Agency also does not see the abuse of state resources in elections as falling within its mandate of preventing corruption. However, APIK's anti-corruption strategy does address a variety of topics that contribute to ASR in BiH, including the financing of

political parties, challenges in public administration, and the role of the judiciary. There is a need to comprehensively target the root causes of ASR in elections, and a well-resourced APIK would be a well-suited organization to address the preventative side of the equation.

Parliamentary Commission for Deciding on Conflict of Interest⁵²

The Parliamentary Commission for Deciding on Conflict of Interest is primarily concerned with those abuses by public officials that would result in personal gain. The commission was established in 2014 through amendments to the Law on Conflict of Interest that transferred the mandate from the CEC to this parliamentary commission.⁵³ The decision to move the mandate was criticized by the international community at the time. Observers feared the possibility of corruption and a conflict of interest within the commission itself, as members of parliament are expected to make decisions about their colleagues.⁵⁴ Domestic interlocutors expressed similar skepticism about the independence and effectiveness of the commission. Commission members interviewed as part of the assessment also acknowledged the lack of

⁴⁹ Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption, *Anti-Corruption Strategy for 2015-2019 and the Action Plan for the Implementation of the Anti-Corruption Strategy for 2015-2019: Bosnia and Herzegovina*, December 2014, 22-23

⁵⁰ Ibid, 23

⁵¹ Law on the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption (Gazette No. 103 / 09), Article 13

⁵² The mandate of the Parliamentary Commission for Deciding on Conflict of Interest does not currently encompass abuses of state resources by public officials for electoral advantage. However, the commission's mandate and activities provide relevant context, and, as noted in report recommendations, the commission could take on an increased role in the oversight of ASR.

⁵³ Law on Conflict of Interest, Article 17

⁵⁴ https://www.foundationmaxvanderstoel.nl/nieuws/nieuws_item/t/bosnia_criticized_over_conflict_of_interest_law

public trust stemming from the structure of the commission and a reliance on individual will, rather than organizational safeguards, to prevent bias.

Recommendations

- ✓ Consider legal amendments that would shift mandate to investigate conflicts of interest from parliamentary commission to an independent body
- ✓ As an alternative to legal reforms that remove the commission's mandate, consider expanding the scope of Parliamentary Commission for Deciding on Conflicts of Interest to include examining abuses of an official position for campaign purposes

In 2014, the OSCE noted: “there remains a lack of legal clarity on the parliamentary commission’s authority. In addition, a number of OSCE/ODIHR EOM interlocutors voiced concerns about the lack of harmonization of the relevant legislation and questioned the parliamentary commission’s ability and resources to fulfill its duties in a timely and impartial manner.”⁵⁵ Interlocutors concurred that the status of the commission is still not precisely defined, and the lack of a budget hinders the work of the commission.

The commission has nine members: three from the BiH House of Representatives, three from the BiH House of Peoples, and three (the director and two deputy directors) seconded from the Agency for Prevention of Corruption and Coordination in the Fight Against Corruption.⁵⁶ Some interlocutors maintained that the institutional distinction between the commission and APIK is not well defined in practice. The law includes provisions to ensure that at least one-third of commission members, including the president, come from opposition parties.⁵⁷

Forbidden activities are outlined in Article 9 of the Law on Conflict of Interest. The assessment team shares concerns with interlocutors that the law does not precisely define abuses of an official position for campaign purposes, though the exploitation of position for various forms of personal gain are prohibited. The commission can suspend the payment of a portion of an elected official, executive officeholder, or advisor’s monthly salary or call for the individual to be dismissed or resign.⁵⁸ Interlocutors suggested that the earlier Conflict of Interest law was much stricter, giving the CEC the ability to take a mandate from an elected candidate or bar an individual from running as a candidate for a period of time.

Central Election Commission (CEC)

The Election Law of BiH establishes the CEC as an independent body reporting directly to the Parliamentary Assembly of BiH.⁵⁹ Members of the CEC are appointed for a period of seven years according to the following composition: two Croats, two Bosniaks, two Serbs, and one “other” member.⁶⁰ CEC candidates are nominated by members of the Commission for Selection and Nomination and selected from these nominees by the House of Representatives of the Parliamentary Assembly of BiH. Additional criteria under Article 2 of the Election Law are as follows: “The Central Election Commission of BiH nominees shall be legal experts with experience in the administration of elections and/or electoral experts and may not hold any office in the bodies of a political party, association or foundations organizationally or financially related to

⁵⁵ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 6.

⁵⁶ Law on Conflict of Interest, Article 17(2)

⁵⁷ Law on Conflict of Interest, Article 17. Members of the commission who are representatives/delegates can be reappointed only once, and the term of the mandate lasts for the length of the term of the BiH Parliamentary Assembly that appointed the members.

⁵⁸ Law on Conflict of Interest, Article 20

⁵⁹ Election Law of Bosnia and Herzegovina, Article 2.9

⁶⁰ “Other” refers to a group other than Croat, Bosniak, or Serb.

the political party, and may not be involved in any political party activity.” Article 2.12 of the Election Law of BiH further establishes that municipal election commissioners are appointed by the relevant municipal council/assembly and approved by the CEC. Municipal election commissions (MECs) consist of three, five, or seven members, as determined by the CEC, based on the number of registered voters and size of the municipality.

Recommendations

- ✓ As an alternative to legal reform by parliament, consider using CEC mandate to issue administrative regulations regulating the use of public resources in election campaigns, including state personnel, vehicles and premises

Among other operational elements of its mandate, the CEC is tasked with issuing administrative regulations to implement the election law.⁶¹ The CEC has not previously used this opportunity to promulgate regulations targeting the abuse of state resources in the electoral period, and interlocutors from the election administration at all levels generally did not identify ASR as part of their mandates.⁶² Explicitly enshrining ASR in the election law would be the most preferable outcome of any reform process, but, in the interim, the CEC should consider using its mandate to more forcefully target common misuses of public resources during the electoral period, as highlighted by this assessment and numerous citizen observation reports since 2014. If equipped with the proper resource and personnel capacity, the CEC could

also use its existing mandate to oversee campaign finance to ensure that in-kind campaign contributions – especially those derived from state resources – are properly monitored and regulated. This issue is discussed in detail in the “Campaign Finance” chapter of this report.

The CEC is also responsible for deciding complaints against political entities for media-related campaign violations.⁶³ As such, the CEC is responsible for sanctioning political parties, not the media, for actions such as hate speech. The law also mandates the CEC to issue by-laws to further regulate provisions related to the media in election campaigns, as described in Principle 1 above.⁶⁴ The CEC is not mandated with proactively monitoring the media and instead acts on complaints received from political parties. Assessment interlocutors noted that the commission generally fulfills its mandate with respect to media-related campaign violations.

The CEC and MECs also play a role in the election dispute resolution (EDR) process. As described by the 2014 OSCE/ODIHR election observation report:

The MECs have authority to decide on most cases of campaign violations, whereas the CEC serves as a first instance in reviewing most violations pertaining to the electoral process. All CEC decisions can be subject to judicial review before the Appellate Division of the Court of BiH, which is the final instance except in cases where constitutional rights are violated. The Constitutional Court accepts applications from any individual whose fundamental rights have been violated and when all other domestic remedies have been exhausted.⁶⁵

Also of note, some stakeholders interviewed for this assessment argued that the requirement that only individuals who have been directly harmed can seek redress for election violations hinders the pursuit of

⁶¹ Election Law of Bosnia and Herzegovina, Article 2.9

⁶² Election Law of Bosnia and Herzegovina, Article 16.14

⁶³ Election Law of Bosnia and Herzegovina, Article 16.16(2)

⁶⁴ Election Law of Bosnia and Herzegovina, Article 16.18

⁶⁵ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 18.

ASR complaints.⁶⁶ During the 2014 elections, the OSCE also noted that election disputes were often not decided within the legally mandated timeline, and as such numerous complaints filed prior to Election Day were ultimately not decided until after the election.⁶⁷ These challenges to the EDR process must be addressed holistically and could contribute to the enhanced deterrence and oversight of ASR violations during the electoral period.

Agency for Civil Service and Civil Service Board

Under the Law on Civil Service in the Institutions of BiH, public administration institutions are directly responsible for handling disciplinary cases against the civil servants they employ. The ombudsperson for

Recommendations

- ✓ Reform appointment process to Agency for Civil Service and Civil Service Board (and entity agencies as needed) to encourage greater independence

the employing agency (called the appointing authority) may also be involved in deciding disciplinary cases.⁶⁸ Following this internal process, the Agency for Civil Service may review disciplinary cases against civil servants if the relevant appointing authority believes a sanction more stringent than those it has available is required. Among other responsibilities, the Agency is also tasked with facilitating the civil servant recruitment process.⁶⁹ The head of the Agency is appointed by the Council of Ministers (BiH Cabinet) for a five-year term.

In the final instance, civil servants may ask for the Civil Service Board and competent court to review the ombudsperson report and/or decision of the appointing authority or Agency for Civil Service.⁷⁰ Article 63 of the Law on Civil Service gives the Civil Service Board the responsibility for “reviewing all final decisions, undertakings or non-undertakings of an Institution and/or of the Agency for Civil Service pertaining to the status of civil servants in accordance with this Law and its by-laws.” This duty may be undertaken at the request of the affected civil servant, the institution that employs the relevant civil servant, or the Agency for Civil Service.⁷¹ Decisions of the Board pertaining to disciplinary action against civil servants are final but subject to judicial review by the competent court.

The Council of Ministers appoints three members to the Civil Service Board through open public recruitment. Members are appointed to a fixed renewable term of four years. The law requires that

⁶⁶ In 2014, the OSCE found: “For these elections, the dispute resolution system was not consistently implemented. Some complaints were dismissed on the grounds that the complainants’ rights had not been directly violated, but then reviewed by the CEC on its own initiative.” See OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 18.

⁶⁷ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 18-19.

⁶⁸ Law on Civil Service in the Institutions of BiH, Article 55(3): “When receiving a disciplinary case against a civil servant, the appointing authority: a) Shall, upon being notified, issue a written confirmation to the person who files the case. The written confirmation shall at the same time be copied to the Agency for Civil Service; b) May transfer the case to the ombudsperson as referred to under Art. 61: 1) The ombudsperson shall issue a report and make it available to the person who filed a case, to the person against whom the case is filed and to the appointing authority; 2) The ombudsperson may make recommendations and/or suggest measures to the appointing authority; c) Shall ensure the confidentiality of the procedure for the person who files the case and before the ombudsperson; d) Shall, after the completion of the procedure, pronounce disciplinary measures of written warning or written reprimand, whereas in the case it considers that the violation of duty by the civil servant deserves the pronouncement of a more stringent sanction, shall refer the case to the Agency, upon prior opinion of the appointing authority”

⁶⁹ Law on Civil Service in the Institutions of Bosnia and Herzegovina, Article 62

⁷⁰ Law on Civil Service in the Institutions of Bosnia and Herzegovina, Article 55(5)

⁷¹ Under section 2 of Article 63 of the Law on Civil Service, “The Civil Service Board shall: a) Hear the applicant, if appropriate; b) Call witnesses and experts when deemed necessary; c) Ask and obtain from the authorities concerned all relevant information; d) Adopt rules of procedure, which shall be published in the Official Gazette of Bosnia and Herzegovina.”

Members be “independent and impartial,” and also may not hold directly or indirectly elected or appointed positions within any level of government in BiH.⁷²

Assessment interlocutors agreed that institutions responsible for disciplining members of the civil service do not fulfill their mandates and questioned their independence from political influence at both the state and entity level. Stakeholders interviewed for this assessment did not point to a lack of resources or capacity within these institutions as an explanation for the failure to hold civil servants accountable for ASR infractions. Principle 3 details structural barriers hindering the enforcement of legal provisions related to the impartiality and professionalism of state personnel. It should also be noted that an additional challenge with respect to the effective oversight of civil servants within public institutions is the lack of specific prohibitions on political activity, particularly during the campaign period. The duties and obligations of civil servants that are present in the law, as well as available sanctions for violations, are discussed in Principle 1. Finally, it should be emphasized that civil service management at the entity-level may vary in structure and organization from that of the state-level, and approaches to reform should be appropriately tailored.

Audit Offices

The Law on Auditing Institutions of BiH (*Official Gazette of BiH*, no. 12/06) establishes The Audit Office of Institutions of BiH (Audit Office) at the state level.⁷³ BiH has three additional audit offices at the entity level – one each for FBiH, *Republika Srpska* and *Brčko* District.⁷⁴

The BiH Audit Office is responsible for conducting audits to monitor the budgets of public institutions and the use of resources, including state property, by the Council of Ministers and public institutions in BiH. The Audit Office is mandated to conduct financial and performance audits, in addition to other special audits. All public institutions in BiH, including Parliament, the Presidency, and the Council of Ministers and government-financed institutions, and companies with at least 50 percent state ownership share, fall under the purview of the state-level audit office.⁷⁵ Among other areas, audits seek to evaluate whether institutions in BiH properly apply the law and regulations and properly use funds.⁷⁶ The Auditing Office may also conduct performance audits “with regards to cost-effectiveness, efficiency and effectiveness applied by this particular institution in utilization of its resources.”⁷⁷

Compared to the state Audit Office, which is responsible for auditing only 73 bodies,⁷⁸ entity-level audit offices have a more extensive mandate to audit hundreds of public companies and institutions at the local level, including municipalities. Audit offices (particularly in FBiH) remain understaffed and do not have the resources or capacity to audit all of the potential auditees that fall within their jurisdiction, and thus take a selective approach.⁷⁹ There are examples of particular municipalities being unaudited for years, and interlocutors believed this enables inappropriate uses of state funds at the entity level to go undetected. Interlocutors emphasized that this challenge is particularly relevant to the inadequate auditing of municipalities, where large portions of the budget are allocated to programs designed and implemented

⁷² Law on Civil Service in the Institutions of Bosnia and Herzegovina, Article 63

⁷³ Law on Auditing Institutions of Bosnia and Herzegovina, Article 20

⁷⁴ These institutions are regulated by separate laws: Law on Auditing of the Institutions of FBiH (*Official Gazette of FBiH*, no. 22/06), Law on Public Sector Auditing of RS (*Official Gazette of RS*, nos. 98/05 and 20/14), and Law on Audit of Public Administration and Institutions in *Brčko* District BiH (*Official Gazette of Brčko District BiH*, nos. 40/08 and 29/14).

⁷⁵ Law on Auditing Institutions of Bosnia and Herzegovina, Article 11: “Auditing includes all financial, administrative and other activities, programs and projects managed by one or several institutions and bodies of Bosnia and Herzegovina from this Article, including processing and revenues from sale of property, privatization and concessions.”

⁷⁶ Law on Auditing Institutions of Bosnia and Herzegovina, Article 13(2)

⁷⁷ Law on Auditing Institutions of Bosnia and Herzegovina, Article 14

⁷⁸ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 151.

⁷⁹ *Ibid.*

Recommendations

- ✓ Strengthen the capacity, including increasing budget and staff, of entity level audit offices
- ✓ Support coordination of state and entity-level audit institutions to develop explicit mechanisms for uncovering misuses of public resources during the election period, including developing standard methodology for monetizing in-kind donations
- ✓ Improve coordination between audit offices and prosecutors' offices to facilitate investigation of wrongdoing uncovered by audits
- ✓ Support collaboration between audit offices and CSOs on monitoring ASR and raising public awareness

directly by the mayor. Stakeholders also noted that state-level institutions are all audited annually (as required by law)⁸⁰ and as such are more prepared for audits than institutions and governments at the entity level.

Enhancing the resource and technical capacity of entity audit offices could contribute to the improved oversight of the abuse of state resources.⁸¹ Potential improvements include developing a standard method for monetizing in-kind contributions and services and expanding the scope of audited municipalities and institutions at the entity level. Ensuring productive communication between the four audit agencies in BiH could further enhance the sharing of good practices and policy coordination. It should be emphasized that audit reports compile information that could be relevant to identifying and deterring ASR, but it is then incumbent upon investigatory and enforcement agencies to apply proper penalties and sanctions. Interlocutors note that follow-up investigation and prosecution is rare, and coordination between prosecutors' offices and audit offices is reportedly weak.⁸² Stakeholders interviewed for this assessment expressed tension in this area; prosecutors allegedly demand information in audit reports to be fully investigated prior to the prosecutors' involvement, though such investigation is not the role of the audit agencies.

Political pressure and challenges to the independence of auditing offices represent a significant threat to the integrity of these institutions. Recently, such pressure has primarily targeted the audit office in *Republika Srpska*, where interlocutors say an Auditor General was forced to resign "because he was doing his job." Audit reports that highlight irregularities in the spending of public funds are often met with political attacks from state officials, particularly if they also receive media scrutiny.⁸³ Reported violations of the Public Procurement Law are also met

with attacks on auditors, and further: "more than two thirds of auditees at all administrative levels are found to be in violation of the public procurement legislation, but nobody has ever been sanctioned for

⁸⁰ Law on Auditing Institutions of Bosnia and Herzegovina, Article 13

⁸¹ Per the Law on Auditing Institutions of Bosnia and Herzegovina, Article 5, the annual budget of the Auditing Office is provided through the budget of BiH. The Auditing Office is tasked with drafting its annual budget and seeking approval from the Parliamentary Commission. The Ministry of Finances and Treasury of Bosnia and Herzegovina, Council of Ministers, and Presidency may provide an opinion on the draft budget, but may not make amendments after the budget has been approved by Parliamentary Commission. The [European Commission](#) notes potential threats to the financial independence of entity audit institutions, particularly in *Republika Srpska*.

⁸² Blagovčanin, "National Integrity System Assessment: Bosnia and Herzegovina 2015," 160.

⁸³ *Ibid*, 153.

these irregularities.”⁸⁴ Regulations and enforcement regarding public procurement is discussed in more detail in the “Public Procurement” section of this report.

Finally, the legal framework sets up adequate measures for reporting and ensuring the transparency of audit findings, including the provision of reports to the relevant parliaments and audited institutions, and analysis indicates that all audit institutions appropriately report on their activities as required.⁸⁵ The law further stipulates that Audit Office reports shall be published in the *Official Gazette of Bosnia and Herzegovina* and on the Audit Office’s website.⁸⁶ Again, while reports indicate that audit findings get widespread attention from the public and the media, recommendations are often not implemented (though the trend appears to be improving).⁸⁷

Communications Regulatory Agency (CRA)

The Communications Regulatory Agency (CRA) is mandated with regulating broadcasters, including during election periods, and has a range of sanctions at its disposal (for example, issuing warnings, imposing fines, and withdrawing media licenses).⁸⁸ The CRA budget is funded primarily by licensing fees.⁸⁹ The OSCE/ODIHR assessed the CRA’s activity during the 2014 elections as follows:

A total of 11 election-related complaints were filed with the CRA; a relatively small number when contrasted with the bias noted by civil society media monitoring in the pre-election period. The CRA does not conduct its own systematic monitoring of the media and only acts upon complaints received. The law regulating the CRA does not set deadlines for the review of complaints and none of the complaints received in the pre-election period were decided upon before election day. Combined with the lack of a proactive approach by the CRA to identify violations, this undermined the effective enforcement of several media-related regulations.⁹⁰

Recommendations

- ✓ Provide clear deadlines for the timely adjudication of complaints against the media during the electoral period
- ✓ Expand mandate and strengthen resource capacity of CRA to conduct systematic media monitoring during the election period
- ✓ Ensure continuation in CRA Director General and Council leadership through reformed appointment process that protects CRA independence

During assessment interviews, the CRA acknowledged that election complaints need to be addressed in a more timely manner, but argued that the required procedures are time-consuming. Parliament has previously tasked the CRA with monitoring public service broadcasters, though not during the election period. Widening the mandate and strengthening the capacity of the CRA to monitor public broadcasters during the election period could improve ASR oversight and enhance the integrity of the electoral process.

Recent challenges to the appointment of a Director General and Council of the Agency (responsible for strategic management) negatively impacted the perceived integrity and independence of

⁸⁴ Ibid.

⁸⁵ Ibid, 156.

⁸⁶ Law on Auditing Institutions of Bosnia and Herzegovina, Article 16

⁸⁷ “Commission Staff Working Document: Bosnia and Herzegovina 2016 Report,” https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf, p. 65

⁸⁸ Law on Communications of Bosnia and Herzegovina, Article 46

⁸⁹ Law on Communications of Bosnia and Herzegovina, Article 44

⁹⁰ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 15-16.

the CRA. The Director General, who is responsible for daily management of the CRA, is nominated by the Council of the Agency and approved by the Council of Ministers (BiH Cabinet) for a term of four years with the possibility of one reappointment.⁹¹ A Director General was not officially appointed for seven years due to the failure of political parties to come to an agreement, “thus politicizing the image of the CRA and reducing its capacity to realize its mandate.”⁹² The position was filled by acting directors until the Council of Ministers officially approved Predrag Kovač in April 2016.⁹³ The Council of the Agency, which provides strategic guidance on the implementation of the law, also faced recent challenges in its appointment process.⁹⁴

BiH Press Council

The BiH Press Council is charged with overseeing print and online media, though it may only offer non-binding regulations regarding adherence to the Press Code of BiH. As discussed in Principle 1, the Election Law of BiH holds that “political entities shall refer to the Press Council of BiH with their complaints to the content in the printed media concerning coverage of the electoral campaign.”⁹⁵ The print and online media are themselves responsible for self-regulation.

The OSCE/ODIHR observation mission reported that six complaints were registered with the Press Council during the 2014 campaign period.⁹⁶ Stakeholders interviewed for this assessment acknowledged that the Press Council struggles with capacity issues, including a lack of funding, and noted that the body’s lack of sanctioning power limits its efficacy. Interlocutors also noted, however, that print publications are not a popular source of news and all daily newspapers in BiH are privately owned. The overall role of the Press Council in providing ASR oversight during the election period is therefore limited.

Principle 3: Properly enforce sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions (enforcement)

As noted by IFES authors in a recent publication from the American Bar Association, enforcement of remedies “requires the cooperation of diverse authorities responsible for the implementation of administrative or judicial decisions.”⁹⁷ Due to insufficient resources or political will, the enforcement of sanctions and penalties may be ineffective or nonexistent in many nascent or developing democracies. As noted in the IFES chapter, “A lack of proper enforcement can undermine the right to an effective remedy and must be addressed if the electoral dispute resolution process – and the electoral process as a whole – is to be respected by the electorate and if electoral and judicial institutions are to be seen as legitimate... The enforcement of remedies and sanctions is important not only to give substance to rights, but also to deter future instances of malpractice and fraud. The effectiveness of certain sanctions as a deterrent

⁹¹ Law on Communications of Bosnia and Herzegovina, Article 40

⁹² OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 15-16.

⁹³ https://www.epra.org/news_items/bosnia-and-herzegovina-cra-s-director-general-officially-appointed

⁹⁴ A Council was not installed at the CRA for six years due to a disagreement between parliament and the Council of Ministers. Assessment interlocutors said that hasty amendments to the Law on Communications in 2012 created an ad hoc commission to overcome this gridlock, but it appears the legislation is structured in such a way as to apply to the appointment of only one council.

⁹⁵ Election Law of Bosnia and Herzegovina, Article 16.17

⁹⁶ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 16.

⁹⁷ Katherine Ellena and Chad Vickery, “Measuring Effective Remedies for Fraud and Administrative Malpractice,” in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016), 109.

depends in part on enforcement. If the courts, EMB, or other state bodies are unable, or unwilling, to enforce a sanction or implement a remedy, the deterrent effect decreases.”⁹⁸

Previous analyses cited throughout this report and numerous interviews conducted during assessment fieldwork acknowledge that clear abuses of state resources are detected throughout the electoral process. As discussed in Principle 2, existing oversight bodies and officials lack the resources and, in many instances, the political will needed to enforce the sanctions and penalties that are available to them in the law. Assessment interlocutors also consistently said that ASR claims, as well as other claims related to the electoral process, are not earnestly investigated by prosecutors’ offices or resolved by courts in a timely fashion, if at all. Both interlocutors and additional analyses point to a lack of political will within the prosecutors’ offices as the reason for limited investigation and prosecution of criminal ASR offenses. Explanations for this lack of political will include an unwillingness to pursue prominent officials and the flawed appointment process for prosecutors:

Relevant international and national reports point to persistent flaws in the independence and impartiality of the judiciary in general and in particular prosecutors’ offices. ... On the other hand, the executive openly exerts pressure on the prosecutors’ offices by issuing demands, threats and blackmail in public. Also present is a kind of self-censorship where prosecutors’ offices avoid undertaking investigations against high-ranking officials. Whether it is caused by fear or is simply a matter of returning favours to officials for their backing during appointment, this self-censorship has ultimately resulted in a virtually complete lack of prosecution of political corruption. There were numerous cases in which [the High Judicial and Prosecutorial Council] appointed prosecutors with clear political loyalties and affiliation.⁹⁹

Transparency International’s 2015 National Integrity System Assessment further describes the lack of action taken on corruption-specific cases, finding “a continued downward trend in the number of investigations undertaken by prosecutors’ offices in BiH... Furthermore, relevant studies and reports by international organisations in BiH indicate the existence of endemic corruption, particularly emphasising the acute problem of political corruption. At the same time, prosecutors’ offices conspicuously ignore cases of corruption at the highest levels of government, which are widely reported on in the media.”¹⁰⁰ The Assessment also notes that the investigations that are undertaken are mostly relating to cases of petty corruption by lower-level officials.¹⁰¹

The judiciary itself is also beset by significant challenges of widespread “political influence and direct interference in judicial proceedings.”¹⁰² The structure of the judiciary – with essentially four distinct judicial systems – results in a “lack of coordination, different legal practices and unequal treatment of similarly factual situations.”¹⁰³ A Transparency International assessment emphasizes that the justice sector is further hamstrung by “a huge backlog of cases and slow and protracted resolution of pending cases, making it difficult to access justice within a reasonable period.”¹⁰⁴

A failure to hold accountable civil servants who participate in the abuse of state resources for electoral advantage is in part a product of the failure of the prosecutors’ offices and judiciary described above.

⁹⁸ Ibid, 110-111.

⁹⁹ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 122.

¹⁰⁰ Ibid, 125.

¹⁰¹ Ibid.

¹⁰² Ibid, 86.

¹⁰³ Ibid, 48.

¹⁰⁴ Ibid, 88.

However, the administrative and disciplinary procedures outlined in Principle 1 are also not properly implemented in service of deterring misuses of state resources and holding perpetrators accountable. As discussed in Principle 2, public service institutions are theoretically the first line of defense to hold individual civil servants accountable for misusing state resources and abusing authority, but a combination of a lack of political will and the tedious procedures set out in the law results in what can be described as an abdication of responsibility on the part of these institutions. Assessment interlocutors also noted that violations of legal provisions restricting the employment status of public officials and civil servants standing as candidates are common, but little concrete evidence exists (no standardized monitoring by CSOs or civil service agencies) and the law is not regularly enforced.

Recommendations

- ✓ Streamline civil servant disciplinary regulations to reduce procedural barriers to enforcement
- ✓ Systematically monitor restrictions on the employment of public officials and civil servants while standing as candidates

Despite the impartiality requirements outlined in the legal framework, interlocutors emphasized (and it is clear from an examination of the law) that the administrative proceedings set out in the law are so onerous and require such a prolonged process that it is nearly impossible to enforce sanctions against civil servants who commit infractions. Several interlocutors mentioned that it takes two to three years to investigate wrongdoing within the civil service and to ultimately hold perpetrators accountable through termination from the civil service.¹⁰⁵ Even if electoral crimes are committed, discovered and prosecuted, it does not mean that the convicted civil servant would automatically lose his or her position. According to Article 50 of the Law on Civil Service, if a civil servant is convicted of a crime and must serve time in prison, the civil servant may only be terminated if that sentence exceeds six months.

Assessment interlocutors agreed that the functioning of the civil service in BiH is dependent upon political affiliation, limiting integrity and accountability. Enforcement at the local level is even more challenging as civil servants are directly accountable to mayors (in cities) and municipal executives (in municipalities), who are themselves political figures and likely encourage and enable the participation of civil servants in political activity. Combined with the legal framework's inadequate accountability mechanisms and the insufficient prosecution of electoral crimes discussed above, the politicization of the civil service helps ensure that there is no deterrence structure in place to keep civil servants in check. Further details regarding the structure of the civil service and factors contributing to its politicization are discussed in the "Public Service Framework" section of this report.

There are also avenues outside of individual public service institutions and the Civil Service Agency to pursue administrative complaints. The Law on Administrative Disputes of BiH establishes a process by which injured parties can raise complaints, but these complaints could also be "initiated by the Public Attorney of Bosnia and Herzegovina."¹⁰⁶ This same law states that "an administrative dispute may be initiated by the Ombudsman for Bosnia and Herzegovina" if the act violated "human dignity, rights and freedoms of citizens ensured by the Constitution of Bosnia and Herzegovina and instruments referred to in Annex I of the

¹⁰⁵ According to Article 50 of the Law on Civil Service, to terminate for performance issues, the employee must receive two consecutive negative performance appraisals; Article 30 § (5) states that performance appraisal must take place "at least every twelve months." According to interlocutors interviewed, in practice, this means that once a performance issue is highlighted, the supervisor waits until the performance period to address the issue and then they have to wait and address it again in twelve months later. This process can take anywhere between two and three years.

¹⁰⁶ Law on Administrative Disputes of Bosnia and Herzegovina, Art. 2 (2)

Constitution of Bosnia and Herzegovina.”¹⁰⁷ However, interlocutors said this was not a viable option for citizens to pursue issues surrounding ASR in BiH as the Ombudsperson does not have the resources and capacity to conduct an effective investigation or the political will necessary to resolve claims in a meaningful way. Transparency International summarized the challenges facing the Ombudsperson as follows:

The Ombudsman Institution formally operates as an independent institution. In practice, however, it faces a number of problems that substantially compromise its independence. These primarily relate to the method of electing the Ombudsman, lack of financial independence and self-censorship. At the same time, the Ombudsman does not have sufficient capacity and resources to carry out activities within his/her purview.¹⁰⁸

Whistleblower protections provide another potential avenue for punishing ASR violations. There are two such laws in BiH: one at the national level¹⁰⁹ and one in *Republika Srpska*.¹¹⁰ The first applies to the employees of the institutions of BiH, and the second applies to public and private citizens in the *Republika Srpska*. The national law extends the definition of corruption to "violations of laws and other regulatory acts, as well as irregularities and fraud that indicate the existence of corruption."¹¹¹ This law would also, in

Recommendations

- ✓ Conduct civic education on the whistleblower law through CSOs
- ✓ Strengthen enforcement of whistleblower law at the national level through expanded APIK mandate and capacity

theory, apply to the issue of public procurement (discussed in detail in the “Public Procurement” section of this report). However, the law is focused on “private gain,” which could hinder prosecution of wider public procurement violations that are meant to further the interests of political parties or candidates.¹¹² Furthermore, the whistleblower protection is only provided to employees of state institutions and public legal entities, not private citizens or candidates.¹¹³ The law in *Republika Srpska* extends whistleblower protection to the private sector, but narrows the subject matter jurisdiction to corruption crimes, with a definition focused on abuse of office.¹¹⁴

According to assessment interlocutors, however, the use of whistleblower protections is rare and the enforcement of the law is weak. Whistleblower protections within the national law reside within an administrative body – the Agency for the Prevention of Corruption and Coordination in the Fight against Corruption. APIK appoints an administrative inspector who can sanction the heads of institutions. A 2017 report released by APIK found that, since these whistleblower laws were enacted in 2014, only 16 whistleblower requests have been made, 3 of which were accepted.¹¹⁵ The *Republika Srpska* law allows whistleblowers to seek protection against retaliation by filing a claim in court. Considering the perception of corruption in BiH, 16 applications is a very low number of requests for whistleblower protection and signals a lack of knowledge of the existence of the law and/or trust in the administrative bodies and judiciary tasked with providing the

¹⁰⁷ Law on Administrative Disputes of Bosnia and Herzegovina, Art. 2 (2)

¹⁰⁸ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 139.

¹⁰⁹ Law on the protection of persons who report corruption in the institutions of Bosnia and Herzegovina

¹¹⁰ Law on the protection of persons who report corruption in the institutions of Bosnia and Herzegovina

¹¹¹ See Article 2, Law on the protection of persons who report corruption in the institutions of Bosnia and Herzegovina

¹¹² See Article 2, Law on the protection of persons who report corruption in the institutions of Bosnia and Herzegovina

¹¹³ Article 2 (b), Law on the protection of persons who report corruption in the institutions of Bosnia and Herzegovina

¹¹⁴ “Bosnia and Herzegovina: whistleblowing and distrust of institutions,” Osservatorio Balcani e Caucaso – Transeuropa, Trento, Italy (Dec. 2017): <https://www.balcanicaucaso.org/eng/Areas/Bosnia-Herzegovina/Bosnia-and-Herzegovina-whistleblowing-and-distrust-of-institutions-184416>

¹¹⁵ <http://www.paragraf.ba/propisi/republika-srpska/zakon-o-zastiti-lica-koja-prijavljaju-korupciju.html>

protection.¹¹⁶ This challenge ultimately makes whistleblower protections ineffective, as potential whistleblowers are discouraged from stepping forward.

Challenges to enforcement of both administrative and criminal sanctions described above are exacerbated by lacunae in the legal framework, as well as the weak mandates and limited capacity of oversight institutions addressed in previous sections of this report. The resulting ASR framework in BiH not only does not deter the abuse of state resources, but encourages it with a wink and a nod.

V. Enabling Environment Analysis

Enabling Environment Comparative Analysis

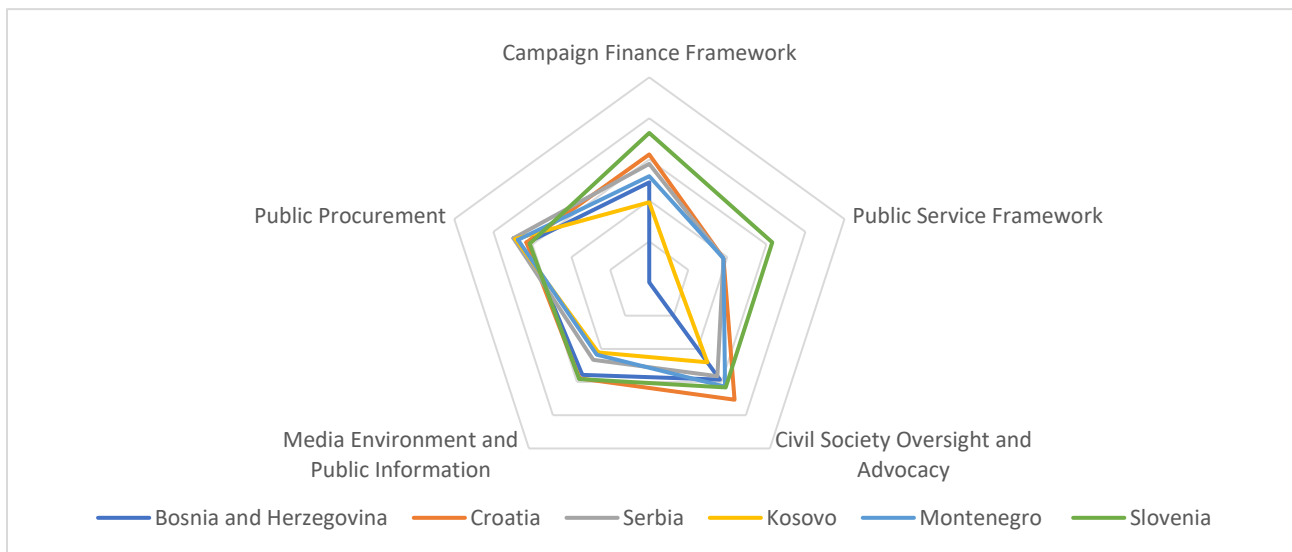


Figure 4: Bosnia and Herzegovina Enabling Environment Scores Comparison to Balkan Countries

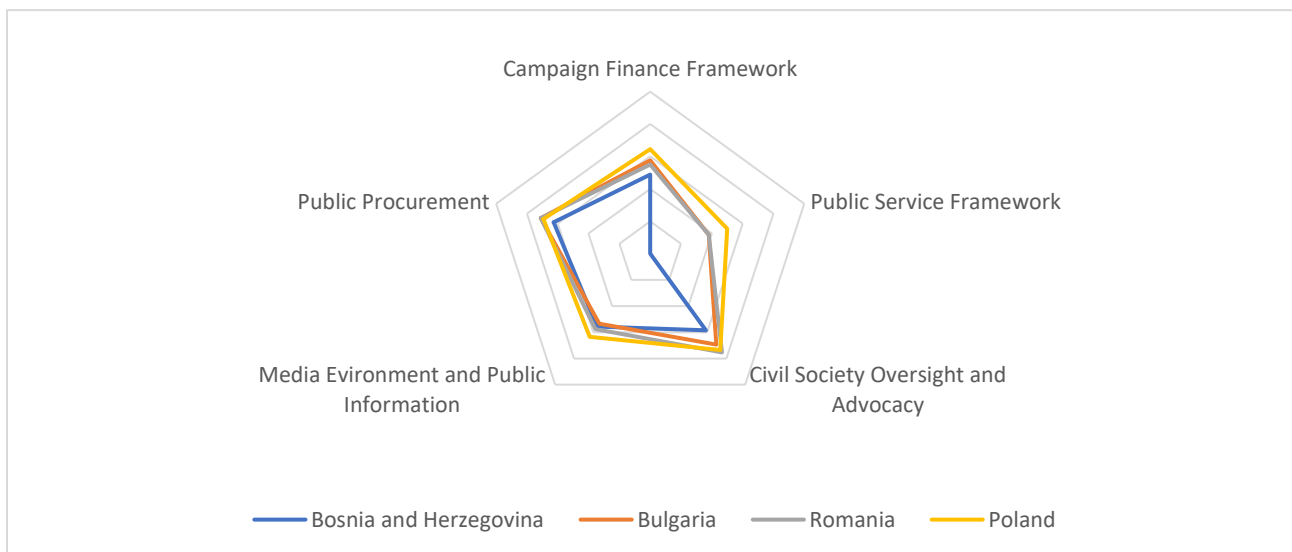


Figure 5: Bosnia and Herzegovina Enabling Environment Scores Comparison to EU Countries

¹¹⁶ "Bosnia and Herzegovina: whistleblowing and distrust of institutions"

As mentioned in the Methodology section earlier in this report, the assessment analysis of the legal framework regulating the use of state resources in elections is complemented by a review of five contextual factors: the public service framework; the campaign finance framework; civil society oversight and advocacy; media environment and public information; and public procurement. The scores for this section are provided to lend additional color to the brief analysis below, and draw on established indices that address similar questions, (including the World Justice Project *Rule of Law Index*, the Varieties of Democracy [V-Dem] index, the *Money, Politics, and Transparency* [MPT] database, the Economist Intelligence Unit's index on government effectiveness, Freedom House *Freedom in the World*, and the World Bank *Benchmarking Public Procurement* indicators). Detailed descriptions of the indices and the composite scores used in this report are included in Annex 1.

To provide an additional reference point for the reader, the scores for BiH's Enabling Environment have been arrayed against other Balkan and/or former Yugoslav countries (Croatia, Serbia, Kosovo, Montenegro, and Slovenia), as well as against members of the European Union whose GDP per capita is in the relative range of BiH (Bulgaria, Romania, and Poland).

Public Service Framework

The legal framework governing the civil service apparatus in BiH does not create clear distinctions between independent state administration and the elected positions within the government. As a result, the civil service is highly politicized and lacks independence.¹¹⁷ Assessment interlocutors emphasized that political parties rely on workers in public institutions for campaign support and that the civil service as a whole is not considered independent of political parties in any sense. The problematic politicization of the civil service is well-known to the public, though interlocutors argued that some citizens who benefit from the system are inclined to support the status quo.

The legal framework does establish the conditions by which the civil service can be professionalized. For example, at the state level, Article 2 of the Law on Civil Service in the Institutions of BiH mandates that the recruitment and promotion of civil servants is based on open competition and professional merit. Under Article 31 of this law, the promotion of a managerial civil servant to a higher position must take place through public open recruitment, whereas the promotion of lower-level civil servants is decided by the appointing authority on the basis of positive performance appraisals.¹¹⁸ Entity civil service laws include similar provisions for merit-based recruitment and promotion of managerial and other civil servants.¹¹⁹ However, assessment interlocutors, as well as additional reports and analyses, point to a civil service structure built in practice on political party affiliation rather than professional merit.

¹¹⁷ As discussed in the Legal Framework section of this report, different laws regulate the civil service at the state and entity level, including the Law on Civil Service in the Institutions of BiH, Law on Civil Service of the Federation of Bosnia and Herzegovina, Law on Civil Service in the *Republika Srpska*, Law on Ministries of the *Republika Srpska*, and the Law on Civil Service in Administrative Bodies of the *Brčko* District. While these laws regulate appointment, promotion, incompatibilities and other functions of civil service institutions at different levels within BiH, they create broadly similar frameworks by which these institutions are organized. Most legal provisions relate to the general structure and functions of the civil service and do not make additional references to exercising independence and impartiality during the electoral period.

¹¹⁸ Article 7 of the Law on Civil Service in Institutions of BiH: (1) A civil servant shall be appointed to one of the following positions:

a) Managerial civil servants (Rukovodeći državni službenici): 1) Senior Executive Manager (Sekretar) and Senior Executive Manager with a special assignment (Sekretar sa posebnim zadatkom), 2) Assistant Minister
b) Other Civil Servants: 1) Head of internal organizational unit (Šef unutrašnje organizacione jedinice), 2) Senior Advisor, 3) Senior Official, 4) Specialist.

¹¹⁹ For example, see Article 34 of the Law on Civil Service of the Federation of Bosnia and Herzegovina and Articles 46 and 47 of the Law on Civil Service in the *Republika Srpska*

Interlocutors described the politicization of the civil service as beginning with the leadership of each agency. For example, stakeholders interviewed for this assessment in the Federation outlined a process by which ministers head each agency, and their deputies – responsible for preparing projects and capital investments – are essentially pre-selected by the party in power. While regulations provide for a commission to select deputy ministers, the commission is comprised of two members of the ruling party and one representative of the Civil Service Agency. Additional hiring and promotion decisions flow from those initial choices and contribute to the politicization of the civil service.

The politicization of service selection committees is further described by Transparency International in a 2015 report:

In open competition recruitments it is difficult to ensure political impartiality because the commissions for evaluation of candidates are given an indication of the favoured candidate in advance. Also, a large number of job competitions are advertised for the vacancies that have already been filled by the persons for whom the competition was advertised in the first place...Although legal regulations do not allow politicisation in the public sector and partisan activities of employees working in it, what is observed in reality is a strong informal influence of political parties on recruitment in the public sector. This is particularly true of the local government, where a huge number of people were recruited ‘through partisan artifice’ following the 2012 local elections.¹²⁰

Assessment interlocutors agreed that politicized appointments are enabled by hiring practices that permit a good deal of discretion by the director of the hiring agency. At the entity level, for example, Article 31 of

Recommendations

- ✓ Strengthen training of civil servants on rights and responsibilities during the electoral period, and conduct targeted public outreach
- ✓ Develop state-level, universal code of conduct for civil servants employed in public institutions
- ✓ Consider improvements to performance management system for civil servants

the Law on Civil Service in the Federation of Bosnia and Herzegovina provides for discretion by the head of the relevant civil service authority, who appoints civil servants “upon prior opinion obtained from the Agency” from a list of candidates who passed open competition. Stakeholders interviewed for this assessment alleged that political parties use various methods to skirt the rules on merit-based recruitment, including supplying the civil service test to party members in advance and distributing jobs upon winning an election.

Interlocutors also argued that these problems are particularly acute at the local level. This problem is in part a product of the fact that municipal civil servants are directly accountable to local elected (partisan) officials who also have discretion in hiring. For example, Article 31(2) of the Law on the Civil Service in the Federation of Bosnia and Herzegovina provides that the Municipal Executive and city Mayor appoint municipal and city civil servants, respectively, from candidates who pass open competition. Municipal and city civil servants may only be dismissed by the Municipal Executive or Mayor, respectively. The only exception to this rule is that civil servants should be dismissed upon receiving two consecutive negative performance appraisals, which are carried out by the head of the relevant civil service authority a minimum of once a year.¹²¹

¹²⁰ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 98-99.

¹²¹ Law on the Civil Service in the Federation of Bosnia and Herzegovina, Article 33

Some interlocutors called for a new or updated legal framework as a starting point to addressing the blurred (or non-existent) line between political appointees and the professional civil service, while others argued that legal changes would do little to strengthen the independence of public administration in practice. This latter view was captured by one interlocutor's sentiment that "nobody in Bosnia is independent."

Some interlocutors emphasized that, as it is a *de facto* requirement to be a member of a political party to join the civil service, civil servants are often not qualified or knowledgeable about their positions and required functions. Transparency International raises further concerns regarding the lack of familiarity of civil servants with the "provisions and principles" of ethical codes governing the civil service.¹²² Assessment interlocutors argued that the budget for training and education of civil servants is not sufficient, and the lack of adequate training contributes to a misunderstanding of mandates and enables manipulation.

Gender disparity in both salary and employment is an additional concern impacting the public administration sector in BiH. A 2011 International Labor Office report on BiH found that while the country has passed a series of gender equality laws prohibiting discrimination, the full implementation of these policies has not been realized in practice. At the time this report was published, women occupied approximately one-third of the workforce in BiH. The report further elaborated: "While there has been an increase in the number of women with positions in public institutions, they are chiefly to be found in lower levels of the bureaucracy than men."¹²³ Additional problems with respect to hiring and promotion may adversely impact women:

Although, formally, hiring procedures are very clear and do not allow or support discrimination, much informality occurs in the process. In the case of public servants there are no clear procedures for the assessment of performance which means that promotions quite often are made based on preferential treatment. Other informal procedures include the use of personal connections...¹²⁴

Finally, while it is important for the salaries of civil servants to be high enough to reduce incentives for petty corruption, the salaries and benefits civil servants receive in BiH appear to create perverse incentives for large-scale corruption and politicization. Salary structures and scales for civil servants at the state level are articulated in Chapter 5 of the Law on Civil Service in the Institutions of BiH. Salaries are dependent upon the civil service position¹²⁵ and are increased by 0.5 percent for each year of service to a maximum of 20 percent. Civil servants who are promoted are entitled to salary increases of up to 30 percent of the salary established for that position.¹²⁶ Civil servants are also eligible for holiday cash grants and anniversary rewards, among other remuneration perks.¹²⁷

Average salaries in the civil service are relatively high compared to other sectors, and a Transparency International assessment indicates that the public sector employs almost one-third of the Bosnian workforce.¹²⁸ By comparison, in 2013 the Organization for Economic Cooperation and Development (OECD) reported that on average, the public sector comprised 21.2 percent of total employment in OECD

¹²² Blagovčanin, "National Integrity System Assessment: Bosnia and Herzegovina 2015," 103-104.

¹²³ http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_170832.pdf, 13.

¹²⁴ Ibid.

¹²⁵ Civil servants are categorized into six salary grades, and both the initial basis for a salary calculation (which shall be the same for all civil servants) and coefficients for salary grades are determined by the Council of Ministers.

¹²⁶ Law on Civil Service in the Institutions of BiH, Article 37. The amount of the salary increase is defined by the Council of Ministers.

¹²⁷ Law on Civil Service in the Institutions of Bosnia and Herzegovina, Article 40

¹²⁸ Blagovčanin, "National Integrity System Assessment: Bosnia and Herzegovina 2015," 97.

countries.¹²⁹ Stakeholders interviewed for this assessment felt that rather than discourage corruption, the high salaries, good benefits, and stable employment offered by the civil service, combined with insufficient employment opportunities in BiH more generally, incentivize political manipulation and control.

As an important aside, Transparency International notes that the generous salaries civil servants receive are not matched by high quality service delivery. In fact, BiH ranks 86 of 190 countries in the World Bank's *Doing Business 2018* rankings, holding the lowest position in the region.¹³⁰ A report published by the OECD further explains: "The size of the public sector poses a challenge to the growth of the Bosnian economy: a large state with considerable influence over the private sector creates high financial, administrative and regulatory costs and uncertainty."¹³¹ Additional challenges to economic growth and development highlighted by this report include difficulties in navigating construction permits, starting a business, and paying taxes.

It is also not clear that high civil servant salaries discourage basic corruption as might be expected – a 2013 Transparency International report noted that "civil servants often charge 'extra fees' for delivery of public services."¹³² The report published by the OECD discussed above also found that wage increases in BiH have not been matched by comparative increases in productivity.¹³³

The issues discussed here, including political control of civil servants, are deeply entrenched in Bosnian society. These challenges have a direct impact on corruption in BiH; Transparency International reported that a lack of trust in the transparency of the civil service, coupled with a lack of capacity among public officials, limits the success of anti-corruption initiatives.¹³⁴ There was a consensus among interlocutors surveyed for this assessment that the only factor with the possibility of motivating change is external pressure. For example, one possible leverage point in reforming the civil service, particularly with respect to the legal framework and training programs, is the potential for European Union (EU) membership. EU members states are required to meet certain criteria for the state administrative structure, and interlocutors felt that an agenda for transparency and the reform of the public administration will be necessary for BiH's application to be successful.

Campaign Finance Framework

The campaign finance framework in BiH substantially contributes to an environment in which political actors can abuse state resources with impunity. According to the OSCE, "[t]he campaign finance regulatory system is not adequate to ensure transparency, integrity and accountability..."¹³⁵ Specifically, the campaign and political finance framework has five major weaknesses: (1) the reporting regime makes it difficult for observers and citizens to track campaign expenditures outside of the campaign period; (2) the CEC audit department is under-staffed and under-resourced; (3) in-kind contributions are not identified or adequately regulated; (4) the small donation exemption and opacity around personal assets of candidates

¹²⁹ http://www.keepeek.com/Digital-Asset-Management/oecd/finance-and-investment/oecd-pensions-outlook-2016/public-sector-employment-as-a-percentage-of-total-employment-2013_pens_outlook-2016-graph20-en#.WpBuVujwY-U

¹³⁰ <http://www.doingbusiness.org/rankings>

¹³¹ http://www.keepeek.com/Digital-Asset-Management/oecd/development/sme-policy-index-western-balkans-and-turkey-2016_9789264254473-en#page1

¹³² Divjak, Boris. "National Integrity System Assessment: Bosnia and Herzegovina 2013." 2013. *Transparency International*, p. 91. <https://ti-BiH.org/wp-content/uploads/2012/12/National-Integrity-System-Assessment-BiH-2013-en.pdf>.

¹³³ http://www.keepeek.com/Digital-Asset-Management/oecd/development/sme-policy-index-western-balkans-and-turkey-2016_9789264254473-en#page1

¹³⁴ Blagovčanin, "National Integrity System Assessment: Bosnia and Herzegovina 2015," 49.

¹³⁵ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 2.

allows parties to escape regulation of major sources of funds; and (5) the remedies regime fails to deter campaign finance malfeasance and the practice of abusing state resources to support political campaigns.

The first set of problems consistently raised by assessment interlocutors relates to weaknesses in the reporting regime. There are two types of campaign finance reports required: an annual report, which focuses on sources of political party income outside of the campaign period; and campaign finance reports, which are focused on income and expenditures associated with the campaign period. The annual income report has a narrow focus and, according to interlocutors interviewed, does not properly capture activities and costs associated with campaigning that are incurred outside of the official campaign period. Campaign finance reports, on the other hand, track income and expenses incurred during the official campaign period, but these reports are not audited and released until well after the election is over. As summarized by the OSCE/ODIHR, Article 15.1 of the Election Law of BiH states that electoral contestants are only required to submit two financial reports on campaign income and expenditures, without interim reporting: “first at the time of certification, covering the last three months prior to certification, and [the] second within 30 days

Recommendations

- ✓ Provide the CEC with sufficient material resources and clarify its legal authority to audit and identify inappropriate campaign activity (including the use of state resources through in-kind contributions) in annual party reports, as well as levy sanctions on political parties based on third-party complaint or its own initiative

after the announcement of the final election results for the period following certification.”¹³⁶ The scope and timing of these reports makes it difficult for observers and citizens to track and properly evaluate candidate and party income and their use of campaign funds.

Although stakeholders believe that the CEC competently performs audits of financial reports, the effectiveness of these audits is in question. Assessment interlocutors believe that the reporting regime creates a major loophole in the law that is regularly taken advantage of by candidates, civil servants and parties participating in campaign activities outside of the scrutinized time period. According to these accounts, civil servants, media companies and others provide transportation, facilities, billboards and other contributions to parties outside of this period, knowing that these activities will not be reported and audited. Stakeholders believe that these activities, which –

in many cases – are examples of the abuse of state resources, are necessary for successful election campaigns. In addition, the intent of these activities is to reinforce clientelistic relationships with party representatives that result in the distribution of prized assets, such as jobs and procurement contracts, to civil servants and donors after election victories.

The combination of constant campaigning and the lack of oversight of fundraising and spending outside of the official campaign period, minimal oversight of civil servants generally (discussed in the “Public Service Framework” section of this report), and the belief that clientelistic relationships are needed to win elections, creates an environment that encourages and fuels the abuse of state resources. Interlocutors therefore believe that the law should be amended to require reporting and audits to be extended to non-campaign periods, and that audits should better track in-kind contributions that include state resources (discussed further below). Some stakeholders believe that the CEC should also be responsible for conducting these non-campaign period audits. However, due to the lack of resources and the controversy surrounding the issue, the CEC believes that another agency should serve this function. Possible candidates, besides the CEC, include the Agency for the Prevention of Corruption and Coordination in the Fight Against Corruption. It is important to note, however, that local stakeholders stated that this anti-corruption agency

¹³⁶ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 14.

has limited resources, and they were concerned about its credibility. Regardless of who is tasked to conduct audits, extending the scope of the audit process to cover non-campaign periods is a reform that is needed to strengthen the transparency of party finance. The OSCE/ODIHR recommended that BiH consider “requiring electoral contestants to provide preliminary reports before election day to inform voters of the financing of campaigns prior to casting their vote.”¹³⁷

The timeliness of CEC audit reports was also highlighted as a weakness. Many interlocutors stated that campaign finance reports are often very late and are overly focused on donations, with limited emphasis on expenditures. It is common for finalized reports to be released up to two years after an electoral event.¹³⁸ The CEC does not have the staff needed to increase the timeliness of their audits without sacrificing quality, and the resulting reports still do not “contain sufficient information of interest to the public.”¹³⁹ There are only five people on staff to audit 150 parties and their financial reports per election. The tardiness of these reports contributes to voters not being informed of violations of campaign finance laws and any potential reports of the abuse of state resources during the election period. Furthermore, stakeholders believe that even when violations are highlighted in these financial reports, they are not properly addressed. As indicated by OSCE/ODIHR in 2014, “the absence of interim reporting and the lengthy auditing process of finance reports negate the effectiveness of existing regulations and leaves violations unaddressed.”¹⁴⁰

In addition to being frequently delayed, audited financial reports lack information on how and when candidates and parties use and disclose in-kind contributions. Our field research indicates that in-kind contributions are a major source of campaign resources. These in-kind contributions include “volunteer” labor supplied by civil servants, state vehicles, security forces, state media, and performers. Article 15.1 of the Law on Political Party Financing stipulates that these in-kind contributions should be disclosed in financial reports submitted to the CEC.¹⁴¹ However, assessment interlocutors stressed that the law is not specific and does not provide adequate guidance to facilitate or encourage disclosure, and in-kind contributions are not properly monetized, reported and tracked. Any effort to disrupt the systemic misuse of state resources in the electoral process must include legal changes that provide guidance to candidates and parties regarding how to monetize and disclose in-kind contributions. Most importantly, guidance must be provided that makes it clear how these contributions fit within current campaign spending limits,¹⁴² and that institute effective oversight mechanisms that lead to prosecution and sanctions.

Another area of concern raised by interlocutors is how candidates and parties use their personal assets to support their campaign activities both during and outside of the election period. Candidates must submit

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Divjak, “National Integrity System Assessment: Bosnia and Herzegovina 2013.”

¹⁴⁰ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 2.

¹⁴¹ Art 15.1 (2) of the Election Law of Bosnia and Herzegovina discusses some information that must be included in financial reports submitted to the CEC: “All income and disbursements based on: memberships; transparent contributions from abroad; contributions from individual and legal entities; contributions in the form of goods and services (hereinafter referred to as “in-kind contributions”); returns on its own assets and entrepreneurial activities in accordance with provisions of the Law on Political Party Financing; credits; loans; donations; rebates; refunds; other operating expenditures; and other sources for the reporting period as determined by the Central Election Commission of BiH.”

¹⁴² Per the Law on Political Party Financing, Article 6: “(3) The total amount of contributions made by a natural person to a political party shall not exceed the amount of 10.000,00KM (ten thousand convertible marks) in a calendar year. (4) The total amount of contributions made by a legal entity to a political party shall not exceed the amount of 50.000,00 KM (fifty thousand convertible marks) in a calendar year. (5) The total amount paid to the political party by a member of the political party during one calendar year shall not exceed the amount of 15.000,00KM (fifteen thousand convertible marks), membership fees included.”

a property statement within 15 days of being registered,¹⁴³ and Article 15.1 of the BiH Election Law requires the CEC to enable the public to access these reports. The CEC previously stopped publishing candidate

Recommendations

- ✓ Better define and train candidates and parties on how to properly monetize and report in-kind contributions
- ✓ Develop a consistent methodology for civil society organizations to monitor in-kind contributions and jointly issue reports on these contributions before, during and after the electoral campaign period
- ✓ Enhance transparency of campaign finance by updating disclosure forms and regulations to include interim reports (during the campaign period)
- ✓ Close the gaps in the law that allow candidates and parties to bundle small donations (100 KM or less) without disclosing their source

property statements on the basis of the decision made by the Agency for Personal Data Protection and affirmed by the Appellate Council of the Court of BiH, which advised against publishing scanned property statements containing personal data on the CEC website.¹⁴⁴ However, in a positive development, the CEC began uploading property forms in a new format that adheres to principles of personal data protection in December 2017. It is not yet known whether this practice will address an earlier Transparency International concern regarding corroboration of the information provided by candidates in property statements. Prior reporting described an “absence of a credible system of verification of property statements filed by every candidate standing for elected office.”¹⁴⁵ This spending loophole adds to the lax campaign finance regulation regime that emboldens candidates to disregard and even exploit campaign finance laws.

Finally, interlocutors indicated that the provision allowing candidates and parties to accept donations under 100 KM without disclosure is flawed.¹⁴⁶ According to party representatives interviewed, this provision allows donors to bundle small donations into larger ones and give these large donations to parties and candidates without disclosing the sources. Inadequate provisions on political party expenditures results in financial reporting that fails to fulfill its intended function (that is, to bring transparency to the process so that observers can hold parties, candidates and donors accountable for their actions).¹⁴⁷

Finally, there is an “inadequate system of sanctions”¹⁴⁸ in place to deter candidate and parties from violating campaign finance laws and abusing state resources in BiH, a sentiment that was confirmed by a majority of stakeholders interviewed for this assessment. According to interlocutors, available sanctions are either too minimal to alter behavior (such as fines)¹⁴⁹ or

¹⁴³ Election Law of Bosnia and Herzegovina, Article 15.7

¹⁴⁴ See the Agency for Personal Data Protection Decision No 03-1-37-19-369-1/11 from 2 August 2011; the Appellate Council of the Court of BiH Decision No S1 3 U 007099 12 Uvp from 4 April 2012; and Divjak, “National Integrity System Assessment: Bosnia and Herzegovina 2013.”

¹⁴⁵ Divjak, “National Integrity System Assessment: Bosnia and Herzegovina 2013.”

¹⁴⁶ Article 15.1 of the Election Law of Bosnia and Herzegovina lists required information on financial reports submitted to the CEC, including: “3. Identification of the person or source of any payment and in-kind contribution, as well as the identification of a person who received that payment, in excess of one hundred (100) convertible marks, together with the date and amount of any such receipt”

¹⁴⁷ Divjak, “National Integrity System Assessment: Bosnia and Herzegovina 2013,” 146.

¹⁴⁸ Divjak, “National Integrity System Assessment: Bosnia and Herzegovina 2013.”

¹⁴⁹ Article 15 of the Election Law of BiH gives the CEC the ability to impose “fines not to exceed ten thousand (10,000) convertible marks.”

too severe (such as the ability of the CEC to decertify parties).¹⁵⁰ Many also believe party decertification is not an effective remedy because members of the decertified party can simply form a new party that will be certified to run in the next election. Assessment interlocutors also pointed out that “fake” parties often proliferate around the time of elections and do not meet reporting requirements as their purpose is to assist larger parties during the formation of Polling Station Committees (PSCs).¹⁵¹ As local interlocutors indicated, fines in the Law of Financing Political parties are so minor that parties that overspend are more likely to pay the fine (a maximum of 10,000 KM) and continue with their current practice. A detailed study evaluating the effectiveness, proportionality, timeliness, enforceability, and credibility of the campaign finance remedies regime would permit the development of a new sanction regime that addresses these fundamental weaknesses.

Civil Society Oversight and Advocacy

The rights of civil society organizations (CSOs) and associated fundamental freedoms in BiH are enshrined in the 1995 General Framework Agreement for Peace (Dayton Accords). The legal framework formally enshrines the right of both citizen and international observers to observe electoral processes, and in the past numerous organizations have exercised this right. A ranking of BiH by the 2016 World Justice Project Rule of Law Index placed it well above average in “civic participation,” “right to information,” “non-governmental checks,” “freedom of association,” and “freedom of expression” indicators, particularly compared to other countries in its region.¹⁵²

Recommendations

- ✓ In collaboration with relevant stakeholders, develop a consistent and rigorous method for CSOs to collect evidence of the misuse of state resources, including state personnel and physical resources

Civil society in BiH is relatively robust and has enjoyed substantial international assistance for more than two decades. There are a number of credible CSOs that engage in regular electoral and political monitoring, reporting, and advocacy. Nevertheless, the assessment team found that the general approach taken by these groups to the issue of abuse of state resources in elections appears somewhat *ad hoc*, rather than grounded in a formalized and comparable methodological framework. CSO activities in this realm have mainly focused on transparency of information, and their recommendations largely remain unimplemented. The international community should use bilateral and multilateral mechanisms to bring greater political attention to this issue. This includes targeted assistance from the

international donor community and a greater call for a more stringent examination of ASR.

Numerous organizations are active in the field of ASR oversight in BiH. For example, the Coalition for Free and Fair Elections – *Pod Lupom*, an internationally recognized election observer group,¹⁵³ has been particularly active in electoral observation in BiH and has enjoyed considerable international support and technical assistance. The umbrella organization came together in 2014, prior to the autumn general

¹⁵⁰ One penalty available to the CEC under Article 15 of the Election Law of BiH is “de-certification of a political party, coalition, list of independent candidates or independent candidate(s).”

¹⁵¹ The OSCE/ODIHR report on the 2014 general elections explains (p. 8-9) that PSCs are responsible for administering voting and counting in polling stations, and should be “randomly assigned through a lottery organized by the CEC and implemented by the [Municipal Election Commissions] MECs.” However, “While the appointment of PSCs was formally carried out according to the law, there were numerous credible allegations that contestants engaged in the trading of PSC positions to get representation in areas of their specific interest, leading to politically unbalanced PSCs. . . . Some OSCE/ODIHR EOM interlocutors alleged that there were PSCs where essentially only one political party was represented.”

¹⁵² <http://data.worldjusticeproject.org/#/groups/BIH>

¹⁵³ *Pod Lupom* is also a member of the Global Network of Domestic Election Monitors (GNDEM). See <http://www.gndem.org/>.

elections, and is comprised of six organizations.¹⁵⁴ For Election Day in 2014, the group covered 25 percent of all polling stations in BiH and published a number of recommendations, including the adoption of an election campaign code of conduct to prevent the abuse of state resources during elections and to improve the financing regime for political parties. Additional organizations that play a role in monitoring and oversight include Transparency International BiH, which examines issues of political corruption;¹⁵⁵ the Association of Election Officials of BiH,¹⁵⁶ which works with election commissions at all levels; and media organizations such as the Center for Investigative Reporting.¹⁵⁷

CSOs that focus on ASR regularly publish reports about their observation of the election period. Some CSOs also make formal presentations/press conferences and are regularly invited to international organization roundtables and discussions, which try to factor in their findings. Organizations interviewed for this assessment also expressed a generally positive relationship with the media. However, the contribution of CSOs to addressing ASR is generally limited to these forms of contributions to the public debate. There are no formal consultation mechanisms established between and among oversight bodies, civil society, and political parties and candidates. An National Democratic Institute (NDI) assessment published in 2017 found that collaboration between civil society organizations and political parties in identifying policy priorities and developing solutions is weak, and when it does take place it is not institutionalized. The report elaborates:

There is an absence of real dialogue between political parties and civil society, which would be reflected in established approaches to expressing positions, exchanging arguments, and finding solutions on the basis of mutually-agreed positions. The situation is aggravated by the lack of awareness on the part of political parties regarding the role and position of civil society in these processes, as well as in the lack of mechanisms for the promotion of dialogue and partnership.¹⁵⁸

Further, as is the case in other aspects of Bosnian society discussed throughout this report, much of the CSO space is politicized. Rather than sincerely seeking input from civil society, “politicians and parties often misuse CSOs which are aligned with them as a tool for reinforcing their political positions.”¹⁵⁹ It should be emphasized that this analysis refers to the civil society sector as a whole and not the specific corruption and ASR monitoring organizations discussed in this section.

Overall, the civil society framework is relatively unrestrictive and conducive to pursuing issues of ASR within the BiH context, and the CSO community has the potential to be a real champion for addressing ASR. However, organizations focused on this issue do not appear to have concrete methodologies and therefore report on ASR in a relatively informal manner. CSOs do not collaborate among themselves or formally consult with oversight bodies, political parties, or candidates.

Media Environment and Public Information

The media landscape in BiH is generally considered diverse, but it lacks critical analysis and is decidedly biased and politicized along ethnic and party lines. Assessment interlocutors and numerous analytical

¹⁵⁴ These include the Centre for Civic Initiatives (CCI); the Association of Citizens 'Democracy-Organizing-Progress' Prijedor (DON Prijedor); the Institute for Youth and Community Development “Perpetuum Mobile,” Banja Luka; the Center for Civic Cooperation Livno (CGS Livno); the Social Innovation Incubator “Munja” Sarajevo (Munja Incubator); and the Forum of Tuzla Citizens (FGT Tuzla).

¹⁵⁵ <https://ti-bih.org/?lang=en>

¹⁵⁶ www.aeobih.com.ba/

¹⁵⁷ <https://www.cin.ba/>

¹⁵⁸ National Democratic Institute, “Democracy Assessment in Bosnia and Herzegovina: Perspectives on the Democratic Transition,” 25-26.

¹⁵⁹ *Ibid*, 26.

reports highlight a lack of quality journalism in reporting on government affairs in particular. NDI's Democracy Assessment summarized: "the media treat violations of the law, bad policy, and corruption as entertainment news rather than breaches of the public trust."¹⁶⁰ In addition, while there are six professional journalist associations in BiH, all but one is divided along ethnic lines.¹⁶¹ Membership in these professional associations is voluntary, and Transparency International notes that the training of journalists by media outlets is generally very limited.¹⁶²

Interlocutors interviewed for this assessment believed that the public is well aware of misuses of state resources, both related to and outside of the electoral process, and that high-profile abuses are generally reported in the media. However, as mentioned above, some interlocutors expressed concern that reporting on these issues cleaves – as much does in BiH – along ethnic and political lines. For example, interlocutors argued that, if a case of abuse by a leader who belongs to a certain ethnic group is uncovered, media outlets affiliated with that group will present the story from a biased perspective or avoid it altogether. Some assessment interlocutors went so far as to say that leading political parties control the media by installing political actors on management boards. This perspective is supported by Freedom House reporting in 2015, which noted that:

"BiH's media outlets are strongly divided along ethnic lines, and many are openly affiliated with political parties.... The cozy relationship between progovernment media outlets and the ruling political parties includes financial benefits such as government purchasing of advertising space, and, in some cases, direct budget transfers. Shrinking advertising revenues and advertiser affiliations with political parties compel many outlets to practice self-censorship in order to protect the interests of their advertisers. The law bars community media from drawing funds through advertisements, a provision that has stifled their growth."¹⁶³

The Center for Investigative Reporting (CIN) invests explicitly in investigating corruption throughout the country, but on the whole, there is not a robust tradition of investigative journalism in BiH. Transparency International's 2015 National Integrity Assessment noted that CIN is the most high-profile investigative journalism unit in the country, but relies on foreign sources for funding.¹⁶⁴ Assessment interlocutors generally agreed that there are not many independent or investigative journalists in the country, and the quality of the investigative journalism that does exist is inadequate. Transparency International described the reasons for the rarity of investigative journalism as a combination of insufficient funding and a close relationship between the media and politics, specifically "the fact that most of the media depend on government institutions, either through direct control, or indirectly through advertising, as government institutions and state-owned companies continue to be the biggest advertisers."¹⁶⁵ Assessment interlocutors further alleged that media organizations reduce advertising prices for certain parties. Some reports have noted that the reliance on government and its accompanying challenges to independence and critical analysis have been exacerbated by the recent economic downturn.

Analysis indicates that the letter of the legal framework safeguarding freedom of expression and an independent press is strong in BiH. Transparency International's 2015 integrity report states: "The rights

¹⁶⁰ National Democratic Institute, "Democracy Assessment in Bosnia and Herzegovina: Perspectives on the Democratic Transition," 19.

¹⁶¹ Blagovčanin, "National Integrity System Assessment: Bosnia and Herzegovina 2015," 196.

¹⁶² Ibid.

¹⁶³ *Freedom of the Press 2015*. "Bosnia and Herzegovina." <https://freedomhouse.org/report/freedom-press/2015/bosnia-and-herzegovina>

¹⁶⁴ Blagovčanin, "National Integrity System Assessment: Bosnia and Herzegovina 2015," 197.

¹⁶⁵ Ibid, 196.

and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms are directly applicable in BiH. The Law on Communications of BiH is founded on the principles of impartiality, fairness, non-discrimination, and separation of the broadcasters from political control and manipulation.”¹⁶⁶

Recommendations

- ✓ Adhering to a “do no harm” principle, train journalists on investigative journalism techniques, and specifically focus on misuses of state resources during the electoral period at all levels
- ✓ Harmonize legislation related to the freedom of information and close gaps in existing laws that limit access
- ✓ Conduct training for public institutions/agencies on proactive transparency and adherence to freedom of information laws

However, the protections enshrined in the law are decidedly not realized in practice. The same TI report found that the media environment with respect to press freedom remained stagnant or even worsened since the last assessment was conducted in 2013: “Press freedoms and the power of civil society have generally seen a decline in the last few years. Threats, attacks and pressures against media and civil society organisations and activists, particularly those involved in investigating human rights violations and corruption, are still very common.”¹⁶⁷ The report also found that media outlets pursuing investigative journalism were often subject to sudden government investigations and fiscal and tax controls. In 2015, Freedom House similarly found “politicians and business leaders exert considerable pressure on journalists, which undermines their independence and negatively impacts their editorial polices.”¹⁶⁸

Journalists also face risks of intimidation and pressure while reporting during the electoral period. The OSCE Representative on Freedom of the Media issued multiple condemnations of attacks and intimidation targeting journalists covering protests and other political events during the 2014 general elections. The OSCE/ODIHR final observation report on the 2014 general elections also noted some pre-election statements from political figures targeting journalists and their independence.¹⁶⁹

Interlocutors echoed these sentiments and expressed concern about limited access for journalists to campaign events and other activities during the campaign period. These threats, along with the political influence born of the close relationship between most media outlets and government institutions discussed above, reportedly results in a significant amount of media self-censorship.

BiH’s legal framework contains provisions regarding freedom of information in the form of three freedom of information laws at the state and entity levels.¹⁷⁰ However, several analyses have noted that these laws lag behind international standards in their implementation and do not adequately enable access to public information.

Transparency International’s 2015 National Integrity System Assessment discusses challenges to the implementation of freedom of information laws in BiH: “Chief obstacles include the still inadequate capacities of public institutions for their implementation, failure to deliver information in an adequate form, lack of knowledge among the wider public of the rights provided for under these Laws, and the fact that

¹⁶⁶ Ibid, 192.

¹⁶⁷ Ibid, 29

¹⁶⁸ *Freedom of the Press 2015*. “Bosnia and Herzegovina.” <https://freedomhouse.org/report/freedom-press/2015/bosnia-and-herzegovina>

¹⁶⁹ OSCE/ODIHR Election Observation Mission Final Report: Bosnia and Herzegovina, 2014, 15.

¹⁷⁰ The Freedom of Access to Information Act for Bosnia and Herzegovina, Freedom of Access to Information Act for the Federation of Bosnia and Herzegovina, and Freedom of Information Act for *Republika Srpska*

they are still not harmonised with other laws, such as the Law on Personal Data Protection, which is an essential prerequisite for their full implementation.”¹⁷¹ NDI’s Democracy Assessment in BiH similarly found that harmonizing legislation and enhancing proactive transparency among public institutions (such as publishing information on websites) would lead to significant improvements.¹⁷²

Interlocutors expressed similar concerns that the promise of access to information under the freedom of information laws is not adequately fulfilled. An example cited by one interlocutor is that there are legal methods to prolong the timeline for handing over information, such as relying on the court to adjudicate on the freedom of information laws in the last instance.¹⁷³ Currently, all three laws only require that information be provided following a written request.¹⁷⁴ Freedom House summarizes: “The process of obtaining information through the country’s Law on Freedom of Access to Information can be cumbersome, and the law is not always heeded by government bodies. These complications discourage journalists from requesting official information.”¹⁷⁵

Articles 21 and 22 in the Freedom of Information Act for BiH establish an Information Ombudsman within the Ombudsman Institution to “examine the activities of public authorities” with respect to the Freedom of Information Act. However, Transparency International discusses challenges to the work of the ombudsman due to non-compliance from public authorities: “According to the annual report of the Ombudsman for Human Rights of BiH, public authorities continue to ignore their obligations under the [Freedom of Information Act]. Thus, of 61 public authorities at the state level, 27 regularly submit statistical reports to the ombudsmen, and of 72 institutions, only three have appointed an information officer and submitted the guide and index register of information.”¹⁷⁶

Interlocutors were also not satisfied with the transparency of judicial proceedings and availability of public officials for media interviews. In some cases, interlocutors claimed that filmed statements are the maximum level of access attainable to journalists or the public. Interlocutors also expressed concerns that political parties are not adequately transparent, particularly with respect to reporting on finances, alleged involvement in public companies, and use of state resources.

Public Procurement

Subversion of the public procurement process in BiH fuels the abuse of state resources related to elections. As discussed in the “Campaign Finance Framework” section of this report, stakeholders interviewed for this assessment believe that elected government officials use the procurement process specifically to reward those entities that provided campaign assets and funding during the electoral process. Other secondary source reporting, including election observer reports, support this conclusion. This problem is acute because public procurement makes up a large percentage of government spending as well as the gross

¹⁷¹ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 49-50.

¹⁷² National Democratic Institute, “Democracy Assessment in Bosnia and Herzegovina: Perspectives on the Democratic Transition,” 15.

¹⁷³ The right to appeal is discussed in Article 23 of the Freedom of Information Act of Bosnia and Herzegovina: “(1) Every requester has the right to file an internal administrative appeal against any decision made under this Act with the head of the public authority that issued the decision. In hearing such an appeal, the head of the public authority shall apply the common principles of the laws on Administrative Procedure of the Federation of Bosnia and Herzegovina and of the *Republika Srpska* insofar as these provisions do not regulate the same subject matter as provided for in this Act.

(2) Nothing in this Act shall prejudice the rights of a natural or legal person to administrative appeal and judicial review.”

¹⁷⁴ National Democratic Institute, “Democracy Assessment in Bosnia and Herzegovina: Perspectives on the Democratic Transition,” 15.

¹⁷⁵ *Freedom of the Press 2015*. “Bosnia and Herzegovina.” <https://freedomhouse.org/report/freedom-press/2015/bosnia-and-herzegovina>

¹⁷⁶ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 50.

domestic product (GDP) of BiH. According to the *Analitika* Center for Social Research, an independent think tank based in Sarajevo, “[t]he public sector as a buyer holds enormous financial power, because a significant portion of the budget is used for the procurement of various goods, services, and works. ... [in] 2013, the value of public procurement amounted to 2.7 billion BAM, and the year before it was 3.5 billion BAM, which is almost 10% and 13% of the gross domestic product, respectively.”¹⁷⁷ According to assessment interlocutors, this phenomenon is more pernicious at the local level where public employment (including employment by public contractors) makes up a majority of the economic opportunities available to citizens and local service providers or businesses.

The procurement process in BiH is particularly vulnerable to manipulation because it is highly decentralized, with local elected officials making most decisions regarding how and to whom to award public contracts for goods and services. Political influence over the process starts with the managers of contracting authorities, who are appointed by political parties and exercise a great deal of influence over the public procurement process.¹⁷⁸ Furthermore, according to interlocutors, the oversight regime in place is weak, and clear abuses of the procurement process are not consistently investigated and prosecuted. As noted in the “Campaign Finance Framework” section of this report, stakeholders believe that this weak oversight process enables donations to political parties or candidates to impact how public procurement contracts are awarded. This sentiment is supported by the results of the *Analitika* survey of private companies, which found that 94.2 percent of respondents believed that there are “very close connections between the private sector and politics in BiH,” leading to corruption in the procurement process.¹⁷⁹ Further, 80.3 percent of respondents believe that “having political connections is the only way to survive in the BiH market.”¹⁸⁰ It should be noted that this survey was conducted before the implementation of the new Law on Public Procurement in 2014 and is used here to illustrate the basis for general sentiments towards the process in BiH. This link between the private sector, politicians, public procurement and elections is a major source of corruption and substantially undermines the overall credibility of the electoral process.

There are several ways the procurement process is manipulated in BiH. These include, but are not limited to, restrictive technical requirements that limit the number of companies that can apply for contracts and too much discretion being given to contracting authorities in terms of ranking bids, which allows the contracting authorities to pick specific firms based on these predetermined requirements.¹⁸¹ Several interlocutors also stressed that other forms of manipulation include splitting up large procurements to avoid triggering the requirement to conduct an open procurement process for procurements over 50,000 KM for services and 80,000 KM for works projects.¹⁸² The new Law on Public Procurement in Bosnia and Herzegovina, adopted in 2014, could have a positive impact on this trend, as competitive requests for even lower value contracts are made available through public notices on the public procurement portal. This could make it easier to identify instances of splitting procurements.¹⁸³ Nearly 66 percent of respondents to the *Analitika* survey stated that fragmenting procurement to avoid applying the appropriate procedure was a very or somewhat widespread practice.¹⁸⁴

¹⁷⁷ “Key Problems in Public Procurement in Bosnia and Herzegovina: Experiences of Private Companies,” Policy Brief 15, *Analitika* Center for Social Research, January 2015, pp. 8-9.

¹⁷⁸ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 217.

¹⁷⁹ “Key Problems in Public Procurement in Bosnia and Herzegovina: Experiences of Private Companies,” 9.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*, 10.

¹⁸² See Art. 14 of the Law on Public Procurement for Bosnia and Herzegovina

¹⁸³ Voloder, Nermina. “Transparency of Public Procurement in Bosnia and Herzegovina: Between Theory and Practice.” 2015. *Analitika* Center for Social Research. 34. http://www.analitika.ba/sites/default/files/transparentnost_javnih_nabavki_eng_-_izvjestaj.pdf

¹⁸⁴ “Key Problems in Public Procurement in Bosnia and Herzegovina: Experiences of Private Companies,” 3.

The Law on Public Procurement in Bosnia and Herzegovina includes some improvements to the prior law, but both law and practice still fall short of ensuring a fair and transparent public procurement regime. As explained by Transparency International BiH: “Despite the fact that this Law has to some extent improved transparency and aligned with EU directives, effective mechanisms for successful prevention of corruption and sanctioning of irregularities in public procurement, as well as transparency, efficiency and rational use of public resources, have not been established.”¹⁸⁵ This report further argues that the new law was a political compromise with the actual goal of maintaining the status quo of political influence over procurement process outcomes.¹⁸⁶ However, some notable improvements, specifically in terms of public transparency, have been made through the online public procurement portal.¹⁸⁷

Recommendations

- ✓ Close loopholes that allow government agencies conducting public procurement to set target technical requirements that limit competition in public procurement
- ✓ Narrow and strengthen the public procurement bidding scoring criteria to encourage a fair and competitive process
- ✓ Introduce regulations that discourage fragmenting procurements to evade more highly regulated procurement processes
- ✓ Use existing online public procurement portal to create a database of bidders (winners and losers of contracts) to engender demand for reform

The Law on Public Procurement in Bosnia and Herzegovina establishes two central authorities that are tasked with overseeing the public procurement process: the Public Procurement Agency (PPA) and the Procurement Review Body (PRB). According to the law, the authority of the PPA includes proposing amendments to the Public Procurement Law to ensure the effectiveness of the legislation; promoting awareness and understanding of public procurement regulations among contracting authorities and suppliers; collecting, analyzing and publishing information about public procurement procedures and awarded public contracts; establishing systems for monitoring the compliance of the contracting authorities with the law; initiating and supporting the development of electronic procurement; organizing and holding trainings for accredited trainers and public procurement officers; and submitting an annual report to council of Ministers of BiH.¹⁸⁸

The PRB is responsible for second-instance administrative review of all decisions made by contracting authorities. The PRB reports to the parliamentary assembly of BiH, which also appoints its members. The decisions of the PRB, within the jurisdiction outlined in the Law on Public Procurement, are “final and enforceable.” There is also an avenue to raise an administrative dispute against the PRB within 30 days of the PRB’s decision.¹⁸⁹

Although the Law on Public Procurement largely establishes the structure needed to properly oversee the procurement process, trust in the process is limited; the first level of review of a complaint against a procurement decision is with specific contracting authorities,¹⁹⁰ which are generally mistrusted by the

¹⁸⁵ Blagovčanin, “National Integrity System Assessment: Bosnia and Herzegovina 2015,” 48.

¹⁸⁶ *Ibid*, 217.

¹⁸⁷ National Democratic Institute, “Democracy Assessment in Bosnia and Herzegovina: Perspectives on the Democratic Transition,” 16.

¹⁸⁸ See Art 92 § 3 (a-k) of the Law on Public Procurement for Bosnia and Herzegovina

¹⁸⁹ See Art. 111 § 13 and Art. 115 of the Law on Public Procurement for Bosnia and Herzegovina.

¹⁹⁰ The definition of “contracting authority” under Articles 2 (b) and 4 of the Law on Public Procurement is as follows:

(1) Contracting authority in the context of this Law shall be: a) Every institution in Bosnia and Herzegovina, the entities, *Brčko* District of Bosnia and Herzegovina, at the cantonal, city, or municipal level (hereinafter: institution at State, entity, or local level); b) legal persons established for a specific purpose with the objective of meeting the needs of general interest, not having an

public. In addition, some believe the PRB, which is responsible for the second level of review or appeal,¹⁹¹ is highly politicized. According to assessment stakeholders, the appointees to the PRB know that their jobs are contingent upon the approval of the politicians who are abusing the procurement process. Furthermore, the law provides inadequate sanctions for violations. Assessment interlocutors also noted that there is a lack of political will to provide the political space and resources needed to strengthen, empower and increase the independence of the PPA and PRB.

The apparent manipulation of the procurement process results in a perception among citizens that the overall process is corrupt and implicates both the companies that bid on these contracts and the politicians that award them. According to the *Analitika* survey:

[The] business community perceives a high level of corruption in public procurement. As many as 88.2% of the total of 2500 respondents to the [computer-assisted telephone interviewing] survey believe that corruption in the form of bribery and other types of abuse of public authority for personal gain is somewhat or very widespread in public procurement in BiH. Similarly, 87.1% of the total of 511 respondents from the face to face survey stated that corruption in public procurement procedures is somewhat or very widespread.¹⁹²

There are sanctions available in the Public Procurement Law to address corruption in the public procurement process, but they are weak or not actively pursued. Under Article 116 of the law, the PRB has the power to file criminal charges with the relevant court or impose a fine amounting up to KM 15,000. The PRB can also award the cost of preparing the bid or 5 percent of the overall awarded contract as damages if the complainant can prove that they have suffered loss or damage as defined by the law.¹⁹³ However, the enforcement of these penalties is rare. Therefore, as is the case with political finance monitoring, the sanction regime exists but is weak in practice when it comes to holding those that abuse the public procurement process accountable.

In addition to content made available on the Public Procurement Portal, Article 92 §3(k) of the Public Procurement law requires the PPA to submit an annual report to the Council of Ministers of BiH. This report has the potential to increase transparency and oversight of the overall procurement process. However, interlocutors indicated that although the PPA has the adequate office space and equipment needed to function, they do not have staff with the unique skill set needed to properly investigate and monitor the process in a thorough and timely manner.

industrial or commercial character and meeting at least one of the following conditions: (1) financed, for the most part, from public funds, or (2) subject to management supervision by the contracting authorities defined in items a) and b) of this paragraph, or (3) having an assembly, managerial or supervisory board, more than half of whose members are appointed or elected representatives of contracting authorities referred to in items a) and b) of this paragraph; c) Association established by one or more institutions or legal persons defined in items a) and b) of this paragraph.

¹⁹¹ Law on Public Procurement for Bosnia and Herzegovina, Article 93

¹⁹² "Key Problems in Public Procurement in Bosnia and Herzegovina: Experiences of Private Companies," 8.

¹⁹³ Law on Public Procurement for Bosnia and Herzegovina, Article 110

Finally, the weak integrity of the public procurement process greatly contributes to the enabling environment that leads to the abuse of state resources during elections in BiH. According to stakeholders interviewed, in-kind contributions and off-the books donations provided to political parties and candidates

Recommendations

- ✓ Train the PRB on comparative standards for procurement oversight and conduct training on independence and capacity-building for the PPA and PRB, in collaboration with APIK
- ✓ Collaborate with civil society organizations, such as Transparency International and *Pod Lupom*, to conduct civic education and consistently monitor the procurement process

by contractors are an integral element of campaigning. Assessment interlocutors expressed a belief that many of these contributions are part of a quid-pro-quo relationship, where the donors receive lucrative public procurement contracts to help offset the costs of providing in-kind contributions and off-the-books donations to candidates. This type of arrangement appears to be used to circumvent restrictions on the financing of political parties established by Article 8 of the Law on Political Party Financing, which prevents private companies awarded public procurement contracts from providing financial support to political parties if the contract value exceeds 10,000,000 KM in one calendar year. Article 13 of the Law on Conflict of Interest was deleted from new iterations of the law; this law previously provided that public and private companies conducting business with the government in excess of 5,000 KM per year that submit a bid to provide goods or services: “shall also submit a written statement together with the bid with a listing of any contributions to political parties that the enterprise has made within the preceding two years.” As discussed in the ASR Legal Framework section of this report, assessment interlocutors also raised concerns that the timing of public works projects, often funded

through this contracting process, coincides with the election period in an effort to sway voters. As a whole, the public procurement system fuels corruption, captures and diverts state resources, and severely undermines the integrity of elections and faith in governance in BiH.

Scores

<i>Enabling Environment Component</i>	<i>Aggregate Score</i>
Public Service Framework	0/100
Campaign Finance Framework	49/100
Civil Society Oversight and Advocacy	59/100
Media Environment and Public Information	56/100
Public Procurement	63/100

VI. Annex

The following table displays quantitative Enabling Environment scores for Bosnia and Herzegovina based on publicly available global and regional indices. All indicators are re-scaled as needed on a 0-100 scale, where 100 is the best or highest score allocated. The composite score is the mean of the included indicators. Enabling Environment scores and aggregation calculations for all comparison countries included in this report are available upon request.

Bosnia and Herzegovina									
Category	Composite Indicator	Indicator 1		Indicator 2		Indicator 3		Indicator 4	
		Source	Scaled Score	Source	Scaled Score	Source	Scaled Score	Source	Scaled Score
Campaign Finance Framework	49	Money, Politics and Transparency database	48	Varieties of Democracy*	50				
Public Service Framework	0	EIU, Government Effectiveness	0						
Civil Society Oversight and Advocacy	59	WJP ROL Index, Freedom of Association	68	WJP ROL Index, Civic Participation	59	Freedom House, Associational and Organizational Rights	58	Varieties of Democracy*	49
Media Environment and Public Information	56	WJP ROL Index, Right to Information	58	Varieties of Democracy*	53				
Public Procurement	63	World Bank Benchmarking Public Procurement, needs assessment	58	World Bank Benchmarking Public Procurement, bid opening	57	World Bank Benchmarking Public Procurement, content	73		

* Varieties of Democracy (V-Dem) scores were determined by scaling and averaging the following individual V-Dem indicators for each category:

Campaign Finance Framework

- Disclosure of campaign donations
- Public campaign finance

Civil Society Oversight and Advocacy

- CSO repression
- CSO consultation

Media Environment and Public Information

- Government censorship effort – media
- Print/broadcast media critical
- Harassment of journalists
- Media self-censorship
- Media bias
- Media corrupt



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