

Overall Score:

63 - Weak

Legal Framework Score:

87 - Strong

Actual Implementation Score:

41 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶²Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the Constitution of the country; Laws on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, No.32/01, 42/03

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

Laws on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, No.32/01, 42/03

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

Laws on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, No.32/01, 42/03

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

25

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The law allows nongovernmental organizations to register at the Ministry of Civil Affairs and Communications and therefore to operate anywhere in the country. However, some NGOs and NGO associations experienced difficulties registering, including long delays and inconsistent application of the law. Some NGOs, frustrated by bureaucratic delays at the state level, chose instead to register their organizations at the entity level in one or both entities.” From Country Reports on Human Rights Practices

References:

European Commission Bosnia and Herzegovina 2007 Progress Report, Brussels, July 11, 2007, <http://www.dei.gov.ba/en/?ID=386>

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | **25** | 0

Comments:

Civil society organizations have very limited influence in the policymaking process. There is little evidence that the government responds to CSO initiatives; it particularly ignores CSO anticorruption initiatives.

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

Transparency International Bosnia and Herzegovina (TI BiH) was forced to temporarily close its office and suspend operations due to ongoing unwarranted and damaging attacks that have recently escalated with the Serbian Republic (RS Republika Srpska). Prime Minister Milorad Dodik s claims that staff of TI BiH are engaged in racketeering and organized crime.

“On Wednesday, July 9, 2008, the principal deputy high representative provided evidence to the BiH chief prosecutor suggesting that the Serbian Republic executive establishment was planning accusations against TI BiH late in 2007. It took some months until the action was put in motion, and today, the staff of TI BiH lives in an extremely uncertain environment. “

References:

Transparency International Chapter in Bosnia and Herzegovina forced to suspend operations due to safety concerns,” press release, Transparency International, July 10, 2008, http://www.transparency.org/news_room/latest_news/press_releases/2008/2008_07_10_bih_operations

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO’s work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | **NO**

Comments:

The Association of Old Foreign Exchange Savings Depositors threatened a lawsuit against the Serbian Republic (RS Republika Srpska) government for RS police officers' alleged use of excessive force during a protest in Gradiska on December 28, 2007." From Country Reports on Human Rights Practices – 2007

References:

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

Police confronted citizens," Dec. 28, 2007, News portal 24 sata

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on

corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

63

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Annex VI to the General Framework Agreement for Peace in Bosnia Herzegovina

Laws on Associations and Foundations, Official Gazette of BiH, No.32/01, 42/03

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

The law allows workers in both entities (except members of the military) to form and join unions of their choice without previous authorization or excessive requirements, and workers did so in practice. However, the Bosnia Herzegovina (BiH) government refused to register the Confederation of Independent Trade Unions of Bosnia and Herzegovina, an umbrella organization of entity-level unions at the state level, which effectively blocked the activity of the principal unions above the entity level. This failure was due in large part to differing legal interpretations from Serbian Republic (RS Republika Srpska) and Federation legal experts working in the Council of Ministers. The International Labor Organization (ILO) submitted a letter to the BiH Council of Ministers suggesting it register the Confederation of Independent Trade Unions as soon as possible, in accordance with applicable international conventions, or change the law, but the Council of Ministers had not done so by year's end. In June the government attended the ILO conference committee on application of standards." From Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007

References:

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008. <http://sarajevo.usembassy.gov/hr2007.html>

Black Market Labor: The Shadow Workers," The Center for Investigative Reporting Sarajevo (CIN), 2007, <http://www.cin.ba/Reports/1/?cid=693,1,1>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

BiH Law on Communications, Official Gazette BiH No. 33/02

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Constitution of Bosnia and Herzegovina, Annex IV of the Dayton Peace Agreement

BiH Law on Communications, Official Gazette BiH No. 33/02

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

75

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

No print license is necessary.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

MSI Europe & Eurasia 2008: Bosnia and Herzegovina: The Development of Sustainable Independent Media in Europe and Eurasia-IREX, http://www.irex.org/programs/MSI_EUR/2008/bih.asp

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

MSI Europe & Eurasia 2008: Bosnia and Herzegovina: The Development of Sustainable Independent Media in Europe and Eurasia-IREX, http://www.irex.org/programs/MSI_EUR/2008/bih.asp

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, Released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

75

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

References:

MSI Europe & Eurasia 2008: Bosnia and Herzegovina: The Development of Sustainable Independent Media in Europe and Eurasia-IREX, http://www.irex.org/programs/MSI_EUR/2008/bih.asp

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

Law on Communications, Official Gazette BiH No. 33/02

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

MSI Europe & Eurasia 2008: Bosnia and Herzegovina: The Development of Sustainable Independent Media in Europe and Eurasia-IREX, http://www.irex.org/programs/MSI_EUR/2008/bih.asp

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Communications Regulatory Agency (CRA) is the state agency that licenses and regulates broadcasters and the field of telecommunications generally. There are two types of fees that should be paid in the registration process, license fees and administrative fees, which run between KM1,000 and KM5,0000 (US\$651 and US\$32,524).

References:

MSI Europe & Eurasia 2008: Bosnia and Herzegovina: The Development of Sustainable Independent Media in Europe and Eurasia-IREX, http://www.irex.org/programs/MSI_EUR/2008/bih.asp

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Annex VI to the General Framework Agreement for Peace in BiH

Law on Protection from Defamation

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil

service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Self-censorship is evident in the differing forms of pressure on journalists. A 2007 study on Labor Relations and Media showed that 18 percent of respondents considered that stories on labor relations within the media sector actually demand a certain censorship, or self-censorship, while 40 percent argued that there are occasional cases of censorship or self-censorship. Poor socioeconomic status leads to migration of some journalists into other, more profitable sectors and presumably increases the likelihood of self-censorship.” from MSI

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

Media Sustainability Index (MSI) – Europe and Eurasia, Bosnia and Herzegovina 2008

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Ljiljana Zurovac, executive director of the Press Council, cited several examples of the Serbian Republic (RS Republika

Srpska) prime minister reacting inappropriately to the media: [RS Prime Minister Milorad] Dodik has uttered so many threats this past year, and they are not harmless threats; they are specific threats and pressure, which have silenced the media [including] entire newsrooms. In practice in the past year we have been the dark country. In the end we will avoid writing about things where we can place ourselves in a situation of being threatened.” From (MSI).

“Borka Rudi and Boro Kontić called the previously mentioned RS government boycott of [national television station] BHT1 a blatant case of media pressure, characterizing it as a testing ground for amplifying divisions in the media along entity and ethnic lines rather than employing legally prescribed procedures to resolve disputes over media content. The response, or lack of it, from the professional community and the general public to cases of media pressuring was crucial in such cases. Borka Rudi said that the police and other social actors sometimes react satisfactorily to cases of media pressuring but that society very often remains silent. [T]here are many cases when police forces support pressure on journalists, arresting them and taking their material from them, he said.”

References:

Conclusions of the Conference on the Freedom of the Media, organized by OSCE Mission to Bosnia and Herzegovina, May 8, 2008, Sarajevo, <http://www.oscebih.org/documents/11370-eng.pdf>

South East Europe Media Organisation (SEEMO) Expresses Concern Regarding Recent Developments in Bosnia and Herzegovina’s Media Environment,” Public statement, April 29, 2008, http://www.freemedia.at/cms/ipi/statements_detail.html?cixid=CH0055&docid=CMS1209481908991&year=2008

Media Sustainability Index (MSI) – Europe and Eurasia, Bosnia and Herzegovina 2008

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

60

10a. In law, print media companies are required to publicly disclose their ownership.

YES

NO

References:

Framework law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH No. 42/04

Law on Enterprises, Official Gazette of Republic Srpska, No.24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of Republic Srpska, No.42/05

Law on Business Companies, Official Gazette of Federation BiH, No. 23/99, Amendments Nos. 45/00, 2/02, 6/02, 29/03

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

BiH Law on Communications, Official Gazette BiH No. 33/02

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

Professional standards in journalism are extensively neglected, despite a relatively large number of journalism faculties and short-term educational programs. This suggests that educational programs have serious limitations and do not produce journalists who are able to perform their tasks to professional standards." From MSI.

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

Two public broadcasters, Federation Television (FTV) in the Federation and Radio Television of Republika Srpska (RTRS) in the Serbian Republic (RS Republika Srpska), remained the largest television broadcasters in the country. RTRS increasingly reported pro-RS ruling party views. BHT 1, a nationwide public broadcaster, gradually increased its audience and outreach. Most public broadcasters remained vulnerable to political influence.” From Bosnia and Herzegovina, Country Reports.

References:

MSI Europe & Eurasia 2008: Bosnia and Herzegovina: The Development of Sustainable Independent Media in Europe and Eurasia-IREX, http://www.irex.org/programs/MSI_EUR/2008/bih.asp

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | **25** | 0

Comments:

Two public broadcasters, Federation Television (FTV) in the Federation and Radio Television of Republika Srpska (RTRS) in the Serbia Republic (RS Republika Srpska), remained the largest television broadcasters in the country. RTRS increasingly

reported pro-RS ruling party views. BHT 1, a nationwide public broadcaster, gradually increased its audience and outreach. Most public broadcasters remained vulnerable to political influence.” From Bosnia and Herzegovina, Country Reports .

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008 , <http://sarajevo.usembassy.gov/hr2007.html>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist’s work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

The physical attack by a police officer on journalist Sanjin Be iragi in November 2007 was mentioned as an example of positive community and official reaction to media pressuring. The incident was publicly condemned and the officer was relieved of his duties until the conclusion of disciplinary actions.” From MSI.

References:

South East Europe Media Organisation (SEEMO) Expresses Concern Regarding Recent Developments in Bosnia and Herzegovina’s Media Environment,” public statement, April 29, 2008, http://www.freemedia.at/cms/pi/statements_detail.html?ctxid=CH0055&docid=CMS1209481908991&year=2008

“Deteriorating State of Media Freedom in BiH,” OSCE Mission in the BiH press release, Sarajevo, May 15, 2008, <http://www.oscebih.org/public/default.asp?d=6&article=show&id=2223>

Media Sustainability Index (MSI) – Europe and Eurasia, Bosnia and Herzegovina 2008

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual’s work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

75
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

67

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

Law on Administrative Procedure of BiH, Official Gazette of BiH No. 29/02, 12/04

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The Law on Freedom of Access to Information in Bosnia and Herzegovina (LFAI) is the so-called special law; the Law on Administrative Procedure (LAP) is the so-called general law. Regarding access to information, LFAI takes precedence over LAP procedure in accordance with the principle *lex specialis derogat legi generali*. In areas that are not regulated in LFAI, however, the law relies on LAP, particularly with regard to procedure.

LFAI establishes written notice as the act used to notify requesters whether access to information is granted. LAP does not provide for written notice. LAP mentions only the decision as the act that may be appealed and that may become final and binding. Use of the term "written notice" in situations in which it has the function of the decision under LAP may result in a legal threat, as it's possible that the party dissatisfied with the initial decision is deprived of the right of appeal in the form of written notice. As a consequence, the aggrieved party may not be able to take an administrative procedure before the relevant court and is thus deprived of legal protection.

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

45

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Massive violation of freedom of information law," Transparency International Bosnia and Herzegovina, press release, Sept. 28, 2007

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2007

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The public authority shall not levy a fee or tax for requests submitted or for notices provided under the access to information act. Charges may be levied only for duplication costs. The first 10 pages are free of charge; each subsequent page costs 50 pfenings at the state level and in the Federation of Bosnia and Herzegovina, and 20 pfenings in the Serbian Republic (RS Republika Srpska).

References:

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2007

Right to Know Day 2007, press release, Transparency Internatioanl Bosnaia and Herzegovina, Sept. 28, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Transparency International submitted eight cases of violation of the freedom of information law to courts two years ago. Decisions are still pending.

References:

Advocacy and Legal Advice Centre Report, Transparency International Bosnia and Herzegovina, 2007

Right to Know Day 2007, press release, Transparency Internatioanl Bosnia and Herzegovina, Sept. 28, 2007

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

The public authority shall not levy a fee or tax for requests submitted or for notices provided under this act. Charges may be levied only for duplication costs. The first 10 pages are free of charge; each subsequent page costs 50 pfenings at the state level and in the Federation of Bosnia and Herzegovina, and 20 pfenings in the Serbian Republic (RS Republika Srpska).

References:

Advocacy and Legal Advice Centre Report, Transparency International Bosnia and Herzegovina, 2007

Right to Know Day 2007, press release, Transparency Internatioanl Bosnia and Herzegovina, Sept. 28,.2007

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | **50** | 25 | 0

Comments:

The Laws on Freedom of Access to Information in BiH do not contain penal provisions. There are particular problems with access

to information in privatization and public contracting. In numerous cases, the government, without providing a reason, will not release any information about public contracting and privatization.

References:

Massive violation of freedom of information law, Transparency International Bosnia and Herzegovina, press release, Sept. 28, 2007

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2007

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷⁸Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | **75** | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Official website of the Election Commission Bosnia and Herzegovina: <http://www.izbori.ba>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

80

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

Law on Political Organizations of BiH, Official Gazette of BiH No.27/91

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | **50** | 25 | 0

Comments:

Opposition parties have very limited influence in advancing legislation or forcing a debate on sensitive topics (for example, privatization or corruption).

References:

Official website of the Parliamentary Assembly of Bosnia and Herzegovina: <http://www.parlament.ba>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

65

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

According to law, appointments to the Central Election Commission (CEC) should be based on professional qualifications, but the majority of CEC members have clear party loyalties.

References:

Interview with ex-member of Central Election Commission, July 2008, Sarajevo

Interview with several civil society organization representatives, July 2008

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Website of the BiH Election Commission: <http://www.izbori.ba>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

Website of the BiH Central Election Commission: <http://www.izbori.ba>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Central election commission (CEC) decisions are politically biased when penalizing offenders. The CEC failed to implement the court's decision in the case against the opposition Social Democratic Party. The commission also faced problems with its capacity for implementing several important laws (election law, law on party financing, conflict of interest law). The Office of the High Representative decided to appoint international advisers.

References:

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

79

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

Freedom House: Nation in Transit 2008 Bosnia and Herzegovina, <http://www.freedomhouse.org/template.cfm?page=17&year=2007>

Interview with a former member of Central Election Commission

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters

may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

An overwhelming backlog of unresolved cases before the BiH courts could hamper timely reactions to complaints.

References:

BiH main election body reviews parties' complaints," Oct. 22, 2006, <http://SETimes.com>

http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2006/10/22/nb-07

Freedom House: Nation in Transit 2008 Bosnia and Herzegovina, <http://www.freedomhouse.org/template.cfm?page=17&year=2007>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Bosnia and Herzegovina: OSCE-ODIHR Election Observation Mission Final Report on General Elections (2006)

Freedom House: Nation in Transit 2008 Bosnia and Herzegovina, <http://www.freedomhouse.org/template.cfm?page=17&year=2007>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | **50** | 25 | 0

Comments:

Observers generally have access to the election process. In municipalities strongly dominated by one political party, observers from other parties are often prevented from observing the whole election process (particularly counting). Reports of buying of votes are common in Bosnia and Herzegovina, as are irregularities regarding the manipulation of open lists by local polling station committees made up of political party representatives, inter-party agreements made long before the election day, and irregularities in the counting of votes. Only political parties have observers in polling sites, and the number of observers depends on the financial resources of each political party. A huge number of irregular ballots indicates irregularities in the election process.

References:

Bosnia and Herzegovina: OSCE-ODIHR Election Observation Mission Final Report on General Elections (2006)

Freedom House: Nation in Transit 2008 Bosnia and Herzegovina, <http://www.freedomhouse.org/template.cfm?page=17&year=2007>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Central Election Commission of Bosnia and Herzegovina is assigned to ensure the integrity of the election process.

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

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II-3. Political Financing

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH No.49/00

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

References:

Law on Party Financing. Official Gazette of BiH, No.49/00

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The Central Election Commission is assigned to monitor and enforce laws and regulations governing the financing of political parties.

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

50

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

Regulations govern only private contributions to political parties.

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | **NO**

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH No.49/00

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The Central Election Commission is assigned to monitor and enforce laws and regulations governing the financing of political parties.

References:

Law on Party Financing, Official Gazette of BiH No.49/00

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

42

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission is the relevant authority responsible for overseeing all aspects of party financing. The CEC Auditing Office is responsible for reviewing and auditing financial reports submitted by the political parties. Most of these reports had similar findings. In most cases, parties were found to be in breach of the provisions regulating the allowed amount of contributions from legal entities; parties also failed to present in their financial reports contributions from individual contributors exceeding KM100 (US\$65), received illicit contributions and failed to submit financial reports by the prescribed deadline.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party," Nezaisne Novine, daily newspaper, Feb. 11, 2008

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission is the authority responsible for overseeing all aspects of party financing. The CEC Auditing Office is responsible for reviewing and auditing financial reports submitted by the political parties. Most of these reports had similar findings. In most cases, parties were found to be in breach of the provisions regulating the allowed amount of contributions from legal entities; parties also failed to present in their financial reports contributions from individual contributors exceeding KM100 (US\$65), received illicit contributions and failed to submit financial reports by the prescribed deadline.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party,” Nezaisne Novine, daily newspaper, Feb. 11, 2008

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party’s ability to fund campaigns or politically-related activities.

100 | 75 | **50** | 25 | 0

Comments:

The Central Election Commission is the authority responsible for overseeing all aspects of party financing. The CEC Auditing Office is responsible for reviewing and auditing financial reports submitted by the political parties. Most of these reports had similar findings. In most cases, parties were found to be in breach of the provisions regulating the allowed amount of contributions from legal entities; parties also failed to present in their financial reports contributions from individual contributors exceeding KM100 (US\$65), received illicit contributions and failed to submit financial reports by the prescribed deadline.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party,” Nezaisne Novine, daily newspaper, Feb. 11, 2008

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

In May, the Central Election Commission (CEC) decided to fine the ruling Party of Democratic Action (SDA – Stranka Demokratske Akcije) KM34,000 (US\$26,840) for receiving free services from Holiday Inn Hotels in an amount that exceeds the limit of contributions established in the Law on Political Party Financing. The SDA appealed to the Court of BiH. The CEC also fined the opposition Social Democratic Party of BiH (SDP – Srpska demokratska stranka) KM555,000 (US\$438,000) for its violations of the Law on Political Party Financing. The SDP and SDA won two appeal cases. This new area for the Court of BiH caused difficulties and prevented the CEC from fully applying this law.” From Freedom House.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party,” Nezaisne Novine, daily newspaper, Feb. 11, 2008

Freedom House Nation in Transit Report 2008 Bosnia and Herzegovina

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

In May, the Central Election Commission (CEC) decided to fine the ruling Party of Democratic Action (SDA – Stranka Demokratske Akcije) KM34,000 (US\$26,840) for receiving free services from Holiday Inn Hotels in an amount that exceeds the limit of contributions established in the Law on Political Party Financing. The SDA appealed to the Court of BiH. The CEC also fined the opposition Social Democratic Party of BiH (SDP – Srpska demokratska stranka) KM555,000 (US\$438,000) for its violations of the Law on Political Party Financing. The SDP and SDA won two appeal cases. This new area for the Court of BiH caused difficulties and prevented the CEC from fully applying this law.” From Freedom House.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party,” Nezaisne Novine, daily newspaper, Feb. 11, 2008

Freedom House Nation in Transit Report 2008 Bosnia and Herzegovina

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission BiH Auditing Office is responsible for reviewing and auditing financial reports submitted by the political parties, but the quality of CEC BiH' s audit reports is questionable. Vacant positions in the administrative and professional services are filled through the BiH Civil Service Agency, and the salaries are within the range applied to civil service jobs, which is significantly lower than the salaries in the supreme audit institutions. It is therefore very difficult to fill the vacancies in the election commission's auditing office and to employ staff with appropriate qualifications. This is especially worrying in view of the fact that political parties are constantly perfecting their money-laundering systems and are always several steps ahead of slow-moving legal regulations and investigations.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party,” Nezaisne Novine, daily newspaper, Feb. 11, 2008

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

50

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | **50** | 25 | 0

Comments:

The Central Election Commission BiH is the authority responsible for overseeing all aspects of party financing. The CEC BiH Auditing Office is responsible for reviewing and auditing financial reports submitted by the political parties. Most of these reports had similar findings. In most cases, parties were found to be in breach of the provisions regulating the allowed amount of contributions from legal entities; parties also failed to present in their financial reports contributions from individual contributors exceeding KM 100 (US\$65), received illicit contributions, and failed to submit financial reports by the prescribed deadline.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party," Nezavisne Novine, daily newspaper, Feb. 11, 2008

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission BiH is the authority responsible for overseeing all aspects of party financing. The CEC BiH Auditing Office is responsible for reviewing and auditing financial reports submitted by the political parties. Most of these reports had similar findings. In most cases, parties were found to be in breach of the provisions regulating the allowed amount of contributions from legal entities. Parties also failed to present in their financial reports contributions from individual contributors exceeding KM 100 (US\$65), received illicit contributions, and failed to submit financial reports by the prescribed deadline.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party," Nezavisne Novine, daily newspaper, Feb. 11, 2008

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In May, the Central Election Commission (CEC) decided to fine the ruling Party of Democratic Action (SDA – Stranka Demokratske Akcije) KM34,000 (US\$26,840) for receiving free services from Holiday Inn Hotels in an amount that exceeds the limit of contributions established in the Law on Political Party Financing. The SDA appealed to the Court of BiH. The CEC also fined the opposition Social Democratic Party of BiH (SDP – Srpska demokratska stranka) KM555,000 (US\$438,000) for its violations of the Law on Political Party Financing. The SDP and SDA won two appeal cases. This new area for the Court of BiH caused difficulties and prevented the CEC from fully applying this law." From Freedom House.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party," Nezaisne Novine, daily newspaper, Feb. 11, 2008

Freedom House Nation in Transit Report 2008 Bosnia and Herzegovina

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission BiH still has not imposed any sanctions for such violations of the law.

References:

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosic only leader who received salary from party," Nezaisne Novine, daily newspaper, Feb. 11, 2008

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

Official website of Central Election Commission Bosnia and Herzegovina: <http://www.izbori.ba>

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

67

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

On the CEC website, the MAP Database is searchable for information about party finances, campaign finances of parties and candidates, the assets and liabilities of elected officials, where the money came from and how it was spent.

References:

Official website of the Central Election Commission (CEC) Bosnia and Herzegovina: <http://www.izbori.ba>

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of Central Election Commission Bosnia and Herzegovina: <http://www.izbori.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Official website of Central Election Commission Bosnia and Herzegovina: <http://www.izbori.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of Central Election Commission Bosnia and Herzegovina: <http://www.izbori.ba>

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of Central Election Commission Bosnia and Herzegovina: <http://www.izbori.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

On the CEC website, the MAP Database is searchable for information about party finances, campaign finances of parties and candidates, the assets and liabilities of elected officials, where the money came from and how it was spent.

References:

Official website of Central Election Commission (CEC) Bosnia and Herzegovina: <http://www.izbori.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ~~59~~ Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

50

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

At meetings organized by High Representative, leaders of the six ruling Bosnian parties create the political agenda in BiH. The chief executive (chair of Council of Ministers) has only formal power to influence policies decisions.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?" Transparency International Bosnia and Herzegovina, 2007, Sarajevo

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

<http://www.balkaninsight.com/en/main/news/12598/>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Law on Administrative Procedure of BiH, Official Gazette of BiH No.19/02

Law on the Court of BiH arts.14, 19, Official Gazette of BiH No. 29/00

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Court of BiH is the highest judiciary authority in the country. It is responsible for upholding the constitution and

protecting the human rights it guarantees. BiH, however, is the only country in the world to have a Constitutional Court without having a unified Supreme Court. That, and the fact that the Constitutional Court has been given the authority of an appeals court has resulted in such a burden of cases that citizens are waiting increasingly long times for justice. Many experts also worry that the political independence of the Constitutional Court is endangered by the possibility of Parliament ignoring professional qualifications and appointing judges on the basis of political affiliations.” From CIN.

Please see for more information, see <http://reportingproject.net/court/index.php?lang=en>

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?” Transparency International Bosnia and Herzegovina, 2007, Sarajevo

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

The Center for Investigative Reporting in Sarajevo (CIN), <http://www.cin.ba>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

Comments:

[T]he authorities of Bosnia and Herzegovina have not demonstrated the capacity to take further political ownership and responsibility over reform. Due to the tense political situation and the lack of reform, the High Representative has continued to play an important role in facilitating reform and governance issues. Between Jan. 1, and Sept. 30, 2007, the High Representative used his executive powers on 31 occasions, which included the imposition of legislation and the removal of officials. This suggests that the Office of the High Representative (OHR) may play an important role both as a policy leader and as a constraint on executive branch excess. However, with the envisaged transformation of the OHR into the Office of the EU Special Representative and the ensuing implementation of the Stabilization and Association Agreement (SAA), it is generally expected that the EU will become the leading pull factor for Bosnia and Herzegovina’s policy decisions in the future.” From Commission on the European Communities

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?” Transparency International Bosnia and Herzegovina, 2007, Sarajevo

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

Law on Immunity of BiH, Official Gazette of BiH No.32/02

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Law on Immunity of BiH, Official Gazette of BiH No.32/02

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

41

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH No. 16/02, 12/04

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

There is no legal ground.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

The only restrictions are with regard to entering public enterprise.

References:

There is no legal ground.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

There is no legal ground.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Comments:

The law provides for criminal penalties for official corruption; however, the government did not implement the law effectively, and officials frequently engaged in corrupt actions with impunity. The World Bank's worldwide governance indicators reflected that corruption was a serious problem. There is no government agency with a mandate to combat government corruption.

"While the law bars citizens from holding positions of public responsibility if they have pending criminal indictments against them, this prohibition was not always observed in practice. For example, Mato Tadic, whom authorities charged with accepting bribes in the tax evasion and bribery case involving former BiH presidency member and current Croatian Democratic Union President Dragan Covic, continued to serve as president of the Constitutional Court while the trial against him was underway. Tadic was later acquitted of all charges. In November 2006, the court convicted Covic of one count of abuse of office and sentenced him to five years in prison. In September, the Appellate Panel ordered a retrial in the Covic case.

"Only candidates for certain public offices were subject to financial disclosure laws" From Bosnia and Herzegovina, Country Reports

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?"Transparency International Bosnia and Herzegovina, 2007, Sarajevo

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, <http://sarajevo.usembassy.gov/hr2007.html>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

References:

There is no legal ground.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

83

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of Central Election Commission Bosnia and Herzegovina: <http://www.izbori.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | **75** | 50 | 25 | 0

References:

Official website of Central Election Commission Bosnia and Herzegovina: <http://www.izbori.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Law on Civil Procedure before the Court of BiH, Official Gazette of BiH, No.36/04

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as

failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

25

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | **25** | 0

Comments:

Political parties could operate without restriction or outside influence. While political parties did not compel individuals to become members, many viewed membership in the leading party of any given area as the surest way of obtaining and retaining jobs in government-owned companies and, especially, positions on steering boards of profitable, public companies, including in the electric, telecom and media industries. Nevertheless, opposition parties were not excluded from participation in political life. Membership in large, well-funded parties conferred formal advantages, as nonparty members were often excluded from appointment to many key government positions.” From Bosnia and Herzegovina, Country Reports.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?”Transparency International Bosnia and Herzegovina, 2007, Sarajevo

Transparency International Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007

Bosnia and Herzegovina, Country Reports on Human Rights Practices – 2007, Released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008 <http://sarajevo.usembassy.gov/hr2007.html>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

32. Can members of the legislature be held accountable for their actions?

50

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

Constitutional Court of Bosnia and Herzegovina, <http://www.ccbh.ba/eng/>

The Center for Investigative Reporting in Sarajevo: Constitutional Court of Bosnia and Herzegovina Between Law and Politics 2008, http://reportingproject.net/court/index.php?option=com_content&task=view&id=16&Itemid=1

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | **NO**

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

36

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

References:

There is no legal ground.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH Nos. 16/02, 12/04

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

References:

There is no legal ground.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

There are no legal regulation.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The law provides for criminal penalties for official corruption, however, the government did not implement the law effectively, and officials frequently engaged in corrupt actions with impunity. The World Bank’s worldwide governance indicators reflected that corruption was a serious problem. There is no government agency with a mandate to combat government corruption.

While the law bars citizens from holding positions of public responsibility if they have pending criminal indictments against them, this prohibition was not always observed in practice. For example, Mato Tadic, whom authorities charged with accepting bribes in the tax evasion and bribery case involving former BiH presidency member and current Croatian Democratic Union resident Dragan Covic, continued to serve as president of the Constitutional Court while the trial against him was underway. Tadic was later acquitted of all charges. In November 2006 the court convicted Covic of one count of abuse of office and sentenced him to five years in prison. In September the Appellate Panel ordered a retrial in the Covic case.

Only candidates for certain public offices were subject to financial disclosure laws.” From Bureau of Democracy

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?”Transparency International Bosnia and Herzegovina, 2007, Sarajevo

“Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina,” Transparency International Bosnia and Herzegovina, 2007

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

There is not legal ground.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

75

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of Central Election Commission: <http://www.izbori.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The statements on assets of candidates and elected candidates used to be publicly accessible on the website of the Election Commission of BiH but were subsequently removed for unknown reasons. Informal sources report that these data were allegedly removed due to pressure from certain elected officials. Resistance to public accessibility of these data is very strong and often comes from the most senior officials .

References:

Official website of Central Election Commission: <http://www.izbori.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

75

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of the Parliament Assembly Bosnia and Herzegovina: <http://www.parlament.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The statements on assets of candidates and elected candidates used to be publicly accessible on the website of the Election Commission of BiH, but were subsequently removed for unknown reasons. Informal sources report that these data were allegedly due to pressure from certain elected officials. Resistance to public accessibility of these data is very strong and often comes from the most senior officials .

The data used to be accessible online, but nowadays it is not.

References:

Official website of the Central Election Commission www.izbori.ba

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

A lack of clear qualifications for Constitutional Court judges in the constitution, law or court rules leaves it mostly up to lawmakers in the two entities to ensure that the best-qualified candidates are put on the bench. The Parliament of BiH selects four of the top judges; the Serbian Republic (RS – Republika Srpska) Assembly two more and the European Court of Human Rights in Strasbourg chooses three international jurists who also must be approved by the BiH Presidency. Relying on entity-level politicians to put the best people on the court makes many people nervous. Politicians, legal experts say, have to be tempted, at the very least, to forgo the top legal minds for the candidates most loyal to their own interests. For example, the constitution is silent on the issue of ethnic origin of judges, yet lawmakers have adopted a strict formula in practice that does not give an individual's professional qualifications the highest priority. The Constitutional Court always consists of two Serb, two Croat and two Bosnian judges, in addition to the three internationals. Earlier this month, High Representative Miroslav Lajcak wrote to a working group of the parliamentary commission considering judge candidates and urged that it spell out precisely the qualifications to which only the constitution alludes. He wrote that judges should be appointed based on objective criteria that underline their merits, including education, moral integrity, ability and efficiency. "Judges should be capable and experienced and properly qualified if we want an independent Constitutional Court," he added. He also said that a better definition of qualifications would improve the transparency of judge selection and help ensure the integrity of the Constitutional Court." From CIN

References:

The Annual Report of the High Judicial and Prosecutorial Council 2007, <http://www.hjpc.ba>

Freedom House: Nations in Transit 2008: Bosnia and Herzegovina, released on June 24, 2008, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Bosnia-final.pdf

Center for Investigative Reporting (CIN): <http://www.cin.ba>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

83

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Criminal Procedure Code of BiH, Official Gazette of BiH No. 36/03, 26/04

Civil Procedure Code of BiH, Official Gazette of BiH No. 36/04

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Website of the Court of Bosnia and Herzegovina: <http://www.sudbih.gov.ba>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The Office of Disciplinary Counsel (ODC) is an independent office within the HJPC BiH. The ODC acts upon complaints or on its own initiative, and it has the competence to assess the legality of complaints, to investigate allegations against judges or prosecutors regarding misconduct, and to initiate disciplinary proceedings and represent disciplinary cases before disciplinary panels of the HJPC. A complaint can be filed by any person and in any form. Anonymous complaints are considered, as is information obtained in a different manner, such as those published in press articles. During 2007, the ODC had eight employees. The ratio of received and processed complaints per employee significantly exceeds the output generated in similar offices in modern democratic states. Reviewing the performance of the ODC for 2007, it is obvious that the available resources of the ODC were still insufficient to adequately respond to public needs. Taking into account that three of the overall five disciplinary counsels filed resignation and left the ODC in December 2007, it is certain that in 2008, the ODC will be facing even greater challenges.”
From High Judicial and Prosecutorial Council

References:

The Annual Report of the High Judicial and Prosecutorial Council (HPJC) BiH 2007, <http://www.hjpc.ba>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

Comments:

The Office of Disciplinary Counsel (ODC) is an independent office within the HJPC BiH. The ODC acts upon complaints or on its own initiative, and it has the competence to assess the legality of complaints, to investigate allegations against judges or prosecutors regarding misconduct, and to initiate disciplinary proceedings and represent disciplinary cases before disciplinary panels of the HJPC. A complaint can be filed by any person and in any form. Anonymous complaints are considered, as is information obtained in a different manner, such as those published in press articles. During 2007, the ODC had eight employees. The ratio of received and processed complaints per employee significantly exceeds the output generated in similar offices in modern democratic states. Reviewing the performance of the ODC for 2007, it is obvious that the available resources of the ODC were still insufficient to adequately respond to public needs. Taking into account that three of the overall five disciplinary counsels filed resignation and left the ODC in December 2007, it is certain that in 2008, the ODC will be facing even greater challenges." From High Judicial and Prosecutorial Council. During 2007, in addition to three resignations, a total of 22 disciplinary measures were imposed. Taking into account that, as law allows, in some of the finalized proceedings combined measures were imposed, the number of imposed disciplinary measures is larger than the number of finalized disciplinary proceedings. Also, on December 31, 2007, there were 14 disciplinary proceedings before the HJPC that were at different stages of processing. It is necessary to note that there have been the cases of disciplinary recidivism by judges who have been previously disciplined. In three cases, disciplinary proceedings were initiated because new disciplinary offenses were perpetrated. It is important to note that in 2007, only 1.75% of judicial officeholders were sanctioned or have filed resignations because of a disciplinary case." From the High Judicial and Prosecutorial Council

References:

The Annual Report of the High Judicial and Prosecutorial Council 2007, <http://www.hjpc.ba>

The High Judicial and Prosecutorial Council starting procedure before Constitutional court," daily news paper Nezavisne Novine, July 11, 2008, <http://www.nezavisne.com/vijesti.php?meni=2&vijest=25794>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

32

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES

NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Code of Judicial Ethics, <http://www.hjpc.ba>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

There is no legal ground.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

There is no legal ground.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal ground.

References:

Transparency International BiH, National Integrity System Study BiH", 2007, Banja Luka

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to relevant opinion polls, citizens perceived the judiciary as highly corrupt.

References:

Transparency International Global Corruption Barometer 2007, http://www.transparency.org/policy_research/surveys_indices/gcb

People See No Progress in Fight Against Corruption,” The Center for Investigative Reporting, July 7, 2008, <http://www.cin.ba/Stories/AdHoc/?cid=850,1,1>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal ground.

References:

Index Register of information, administered by the High Judicial and Prosecutor Council of Bosnia and Herzegovina, <http://www.hjpc.ba/pr/?cid=2197,1,1>

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such information is publicly available.

References:

Index Register of information, administered by the High Judicial and Prosecutor Council of Bosnia and Herzegovina, <http://www.hjpc.ba/pr/?cid=2197,1,1>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

Comments:

No such information is publicly available.

References:

Index Register of information, administered by the High Judicial and Prosecutor Council of Bosnia and Herzegovina, <http://www.hjpc.ba/pr/?cid=2197,1,1>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

50

40a. In law, the legislature can amend the budget.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

An important deficiency is that significant categories of public expenditure remain outside of the budget and thus do not require legislative approval per se. These categories include pensions, health, employment and child-support funds, and road directorates. Moreover, a significant portion of donor funding remains outside the official budget and therefore does not require legislative approval.

References:

Billions for major new energy projects in the Balkans but why not a penny for renewables, demand NGOs, December 2007, open letter signed by coalition of nongovernmental organizations from southeast Europe

Transparency International Bosnia and Herzegovina," Advocacy and Legal Advice Center Report 2007

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

In spite of a relatively sound legal framework, the entire budget process in Bosnia, and within it the part played by the Parliament, is known to be quite weak. The most notable deficiency is the lack of obvious linkage between policy and budget, which is, in most instances, even further undermined by the parliamentary committees that lack capacity and knowledge to appropriately scrutinize government's budget proposals.

References:

It Is Not About the Amount It Is About the Structure of the Budget, Center of Civic Initiative, press release, Jan. 21, 2008

Analysis of the Budget of Bosnia and Herzegovina, ALDI, Transparency International BiH, 2008

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

25

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

It Is Not About the Amount It Is About the Structure of the Budget, Center of Civic Initiative, press release, Jan. 21, 2008

Analysis of the Budget of Bosnia and Herzegovina, ALDI, Transparency International BiH, 2008

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to assess the state's role in the independent civic sector, as the state of BiH hardly exercised its powers during the year, and the country's institutions did not provide a positive environment for any sector, let alone civil society, while the lower levels of government showed no responsiveness to civil society demands. It was clear that civil society advocacy was not on their agenda unless the organizations were of a religious origin or of a type that could be manipulated for political purposes or economic gain. This refers mainly to all three major religious communities in BiH, which tried to influence politicians or serve them, in cases of a common agenda, or to veteran and union organizations, which often served political goals. There was no significant growth in the number of charitable, nonprofit, and nongovernmental organizations (NGOs), nor were there significant improvements in the quality of performance of civil society groups or active public participation. The three primary religious organizations and their leaders (Islamic, Catholic, and Orthodox) were very active, never missing an opportunity to give their view on any major political issue, from future constitutional reform to the design of local police areas, or to support the claim of a particular political party. There is little evidence that the government responded to civil society pressure as there were no well-organized advocacy actions connected to real issues in 2007." From Freedom House

References:

It Is Not About the Amount It Is About the Structure of the Budget, Center of Civic Initiative, press release, Jan. 21, 2008

Analysis of the Budget of Bosnia and Herzegovina, ALDI, Transparency International BiH, 2008

Freedom House, Nations in Transit 2008, Bosnia and Herzegovina

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

Comments:

Citizens, journalists, and civic society organizations can access itemized lists of budget allocations, according to the act. However, there are a lot of examples of violations of right to free access to information, particularly in cases of privatization contracts, budget process etc.

References:

Opinion poll on citizens participation in the budget process 2007, ALDI

Freedom of information Act

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

33

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | **25** | 0

Comments:

Departments submit reports to the committee, but very often they are incomplete and not turned in on time.

References:

Foreign Policy Initiative BH: Governance Structures in BiH, Capacity, Ownership, EU Integration, Functioning State," Sarajevo, 2007

Center of Civil Iniatives, press release, June 17, 2008

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | **50** | 25 | 0

Comments:

In spite of a relatively sound legal framework, the entire budget process in Bosnia, and within it the part played by the Parliament, is known to be quite weak. The most notable deficiency is the lack of obvious linkage between policy and budget, which is in most

instances even further undermined by the parliamentary committees that lack capacity and knowledge to appropriately scrutinize the government's budget proposals and reports.

References:

Foreign Policy Initiative BH: Governance Structures in BiH, Capacity, Ownership, EU Integration, Functioning State," Sarajevo, 2007

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | **25** | 0

Comments:

In spite of a relatively sound legal framework, the entire budget process in Bosnia, and within it the part played by the Parliament, is known to be quite weak. The most notable deficiency is the lack of obvious linkage between policy and budget, which is in most instances even further undermined by the parliamentary committees that lack capacity and knowledge to appropriately scrutinize the government's budget proposals and reports.

References:

Foreign Policy Initiative BH: Governance Structures in BiH, Capacity, Ownership, EU Integration, Functioning State," Sarajevo, 2007

Center of Civil Initiatives, press release, June 17, 2008

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

Rules of Procedure for the House of People of the Parliamentary Assembly of BiH, Official Gazette of BiH No. 27/00

Rules of Procedure for the House of Representatives of the Parliamentary Assembly of BiH, Official Gazette of BiH No. 20/00

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁴³Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

According to law there are three types of redress:

a. control of legality of administrative acts: by means of lodging an appeal through an administrative procedure or through court control of final administrative acts, i.e. administrative court proceedings (provided for in the laws on general administrative procedure and laws on administrative court proceedings).

b. inspection oversight of the application of relevant laws: through administrative inspections. These inspections oversee the application of the Law on General Administrative Procedure when administrative bodies regulate rights and obligations of citizens and legal entities.

c. administrative oversight of a public authority, which is carried out by the heads of administrative bodies. This oversight takes place through application of rules regarding the observance of work discipline and, in particular, through application of the Codes of Conduct for civil servants.

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

44

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

Public administration reform in BiH has no political support and has failed to empower state institutions. Efforts to reform public administration have failed to address the acute problems of the administration, which include inadequate human resources; overlapping competencies; lack of coordination between and across levels of government; the marked absence of a consensual, cooperative administrative culture; and commonplace political interference in the hiring and management of civil servants. These exacerbate ethnic cleavages within public administration. These issues appear to remain in 2008, despite some improvements in standards and salaries in the public sector. Salaries for many state-level positions were adequate when they were established, but without adjustment for cost-of-living or merit increases, they soon became uncompetitive enough to attract the best-qualified personnel. One ongoing issue is the need for ethnic balance among Serbs, Croats and Bosnians based on the proportions in the 1991 census; other ethnic groups are not considered. research.

Non-meritorious hiring practices are the source of any number of inefficiencies, and many positions remain vacant for want of a candidate of the required ethnicity to achieve the expected ethnic balance. This same concern leads to the tendency to transfer poor performers rather than train or dismiss them. Maintaining ethnic balance is more important than delivering services or other government objectives. It is also evident that ethnicity, which in the BiH context generally translates into political affiliation, usually overrides considerations of merit. This is especially true in the case of managerial appointments. The civil service agencies have not been scrutinized by any institution in Bosnia and Herzegovina, as they are viewed as the top in achieving professional standards in the process of selection of civil servants. The extent to which civil service agencies in fact met the professional standards, or have just fossilized traditional favor exchange, remains questionable. From Foreign Policy Initiative

References:

Public Administration Reform Monitoring Report," Centre for Human Politics, Dobož, Jan. 22, 2008

"Foreign Policy Initiative BH: Governance Structures in BiH, Capacity, Ownership, EU Integration, Functioning State, Sarajevo, 2007

Foreign Policy Initiative research

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

Recruitment of a civil servant is conducted through open competition, i.e. employment advertisements as well as through internal vacancy notices (for lower positions). The Agency for Civil Service is responsible for advertising the vacancy. The selection committee must be composed of civil servants of the institution concerned and experts approved by the agency. The composition of the selection committees varies between three and five members depending on the level of governance. Likewise, the laws are based on the principle that no discrimination is permitted in the employment process. Although open competition for vacancies in civil service was introduced, the selection commission often receives instructions in advance from their superiors on how to score candidates, i.e. which candidate to offer the job to through the Agency. Some members of selection commissions discreetly refuse such a humiliating function. However, the laws still leave ample room for exertion of political pressure on the public sector while being in seeming compliance with the Law on Civil Service.

References:

Public Administration Reform Monitoring Report," Centre for Human Politics, Dobož, Jan. 22, 2008

"Foreign Policy Initiative BH: Governance Structures in BiH, Capacity, Ownership, EU Integration, Functioning State, Sarajevo, 2007

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | **25** | 0

Comments:

Recruitment of a civil servant is conducted through open competition, i.e. employment advertisements as well as through internal vacancy notices (for lower positions). The Agency for Civil Service is responsible for advertising the vacancy. The selection committee must be composed of civil servants of the institution concerned and experts approved by the agency. The composition of the selection committees varies between three and five members depending on the level of governance. Likewise, the laws are based on the principle that no discrimination is permitted in the employment process. Although open competition for vacancies in civil service was introduced, the selection commission often receives instructions in advance from their superiors on how to score candidates, i.e. which candidate to offer the job to through the Agency. Some members of selection commissions discreetly refuse such a humiliating function. However, the laws still leave ample room for exertion of political pressure on the public sector while being in seeming compliance with the Law on Civil Service.

References:

People See No Progress in Fight Against Corruption, opinion poll, Center for Investigative Reporting, Sarajevo, through Prism Research, Sarajevo, 2008

Transparency International: Global Corruption Barometer 2007, http://www.transparency.org/policy_research/surveys_indices/gcb

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | **75** | 50 | 25 | 0

References:

Civil Service Agency website: <http://www.ads.gov.ba/en/index.html>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

Interviews with civil servants

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Public administration reform in BiH has no political support and has failed to empower state institutions. Efforts to reform public administration have failed to address the acute problems of the administration, which include inadequate human resources; overlapping competencies; lack of coordination between and across levels of government; the marked absence of a consensual, cooperative administrative culture; and commonplace political interference in the hiring and management of civil servants. These

exacerbate ethnic cleavages within public administration. These issues appear to remain in 2008, despite some improvements in standards and salaries in the public sector. Salaries for many state-level positions were adequate when they were established, but without adjustment for cost-of-living or merit increases, they soon became uncompetitive enough to attract the best-qualified personnel. One ongoing issue is the need for ethnic balance among Serbs, Croats and Bosnians based on the proportions in the 1991 census; other ethnic groups are not considered.

Non-meritorious hiring practices are the source of any number of inefficiencies, and many positions remain vacant for want of a candidate of the required ethnicity to achieve the expected ethnic balance. This same concern leads to the tendency to transfer poor performers rather than train or dismiss them. Maintaining ethnic balance is more important than delivering services or other government objectives. It is also evident that ethnicity, which in the BiH context generally translates into political affiliation, usually overrides considerations of merit. This is especially true in the case of managerial appointments. The civil service agencies have not been scrutinized by any institution in Bosnia and Herzegovina, as their very establishment has been seen as the formal top in achieving professional standards in the process of selection of civil servants. The extent to which civil service agencies in fact met the professional standards, or have just fossilized traditional favor exchange, remains questionable. From Foreign Policy Initiative

References:

Public Administration Reform Monitoring Report," Centre for Human Politics, Doboj, Jan. 22, 2008

"Foreign Policy Initiative BH: Governance Structures in BiH, Capacity, Ownership, EU Integration, Functioning State," Sarajevo, 2007

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

Public administration reform in BiH has no political support and has failed to empower state institutions. Efforts to reform public administration have failed to address the acute problems of the administration, which include inadequate human resources; overlapping competencies; lack of coordination between and across levels of government; the marked absence of a consensual, cooperative administrative culture; and commonplace political interference in the hiring and management of civil servants. These exacerbate ethnic cleavages within public administration. These issues appear to remain in 2008, despite some improvements in standards and salaries in the public sector. Salaries for many state-level positions were adequate when they were established, but without adjustment for cost-of-living or merit increases, they soon became uncompetitive enough to attract the best-qualified personnel. One ongoing issue is the need for ethnic balance among Serbs, Croats and Bosnians based on the proportions in the 1991 census; other ethnic groups are not considered.

Non-meritorious hiring practices are the source of any number of inefficiencies, and many positions remain vacant for want of a candidate of the required ethnicity to achieve the expected ethnic balance. This same concern leads to the tendency to transfer poor performers rather than train or dismiss them. Maintaining ethnic balance is more important than delivering services or other government objectives. It is also evident that ethnicity, which in the BiH context generally translates into political affiliation, usually overrides considerations of merit. This is especially true in the case of managerial appointments. The civil service agencies have not been scrutinized by any institution in Bosnia and Herzegovina, as their very establishment has been seen as the formal top in achieving professional standards in the process of selection of civil servants. The extent to which civil service agencies in fact met the professional standards, or have just fossilized traditional favor exchange, remains questionable. From Foreign Policy Initiative

References:

Public Administration Reform Monitoring Report," Centre for Human Politics, Dobož, Jan. 22, 2008

"Foreign Policy Initiative BH: Governance Structures in BiH, Capacity, Ownership, EU Integration, Functioning State," Sarajevo, 2007

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Report on realization of the budget, Ministry of Finance and Treasury, Bosnia and Herzegovina

Higher salaries for 22 thousand workers of state institutions," Nezavisne Novine, daily newspaper June 6, 2008

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

There is no legal ground.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

39

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

There is no such restriction.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

People See No Progress in Fight Against Corruption, opinion poll, Center for Investigative Reporting, Sarajevo, through Prism Research, Sarajevo, 2008

Transparency International: Global Corruption Barometer 2007, http://www.transparency.org/policy_research/surveys_indices/gcb

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | **25** | 0

References:

Public Administration Reform Monitoring Report," Centre for Human Politics, Dobo, Jan. 22, 2008

"Foreign Policy Initiative BH: Governance Structures in BiH, Capacity, Ownership, EU Integration, Functioning State," Sarajevo, 2007

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | **0**

References:

There is no legal ground.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

References:

GRECO:Second Evaluation Round, Evaluation Report on Bosnia and Herzegovina, Strasbourg, Dec. 8, 2006, <http://www.coe.int/greco>

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

There is no legal ground.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | **0**

References:

There is no legal ground.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

References:

There is no legal ground.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

There is no legal ground.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

There is no legal ground.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

There is no legal ground.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

There is no such internal reporting mechanism.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

There is no such internal reporting mechanism.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There is no such internal reporting mechanism.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

There is no such internal reporting mechanism.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

There is no such internal reporting mechanism.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

51. Is the public procurement process effective?

60

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH No. 16/02, 12/04

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH No. 16/02, 12/04

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict of interest regulations do not exist for procuremnt officials according to law.

References:

Transparency International, Bosnia and Herzegovina, Open Society Fund Bosnia and Herzegovina: Improving National Integrity System, Bosnia and Herzegovina,” 2007

Public procurement law

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

No such mechanism exists.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Comments:

No such mechanism exists.

References:

Transparency International, Bosnia and Herzegovina, Open Society Fund, Bosnia and Herzegovina, Improving National Integrity System Bosnia and Herzegovina," 2007

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

75

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All regulations, procurement notices, contract award notices and cancellation notices are published in the above sources.

References:

Official Gazette of Bosnia and Herzegovina

Website of Public Procurement Agency: <http://www.javnenabavke.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Official Gazette of Bosnia and Herzegovina

Website of Public Procurement Agency: <http://www.javnenabavke.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Official Gazette of Bosnia and Herzegovina

Website of Public Procurement Agency: <http://www.javnenabavke.ba>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

Official Gazette of Bosnia and Herzegovina

Website of Public Procurement Agency: <http://www.javnenabavke.ba>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH

Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina, Official Gazette of BiH No 14/98

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH No. 16/02, 12/04

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The key positions in privatization agencies and directorates, as well as in managing boards and other managing functions in public companies, are held by persons whose most important qualification for carrying out such responsible duties is that they belong to a specific political party. This leads the public to perceive the political parties as the most corrupt institutions in the country, introducing fraud, theft, cronyism and other corrupt behavior into the executive and legislative areas, as well as into indirect rule-of-law institutions (the judiciary and law-enforcement agencies).

References:

There are no such regulations.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH

Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina, Official Gazette of BiH No. 14/98

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The key positions in privatization agencies and directorates, as well as in managing boards and other managing functions in public companies, are held by persons whose most important qualification for carrying out such responsible duties is that they belong to a specific political party. This leads the public to perceive the political parties as the most corrupt institutions in the country, introducing fraud, theft, cronyism and other corrupt behavior into the executive and legislative areas, as well as into indirect rule-of-law institutions (the judiciary and law-enforcement agencies).

References:

Report on Privatization of the Oil Industry, Serbian Republic (RS Republic Srpska),” Transparency International Bosnia and Herzegovina 2007, Banja Luka

“Bosnia Serb PM makes disputed sell-off deals public,” Reuters, Nov. 28,, 2007, <http://www.reuters.com/article/%20rbssIndustryMaterialsUtilitiesNews/idUSL2871159620071128>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH

Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina, Official Gazette of BiH No. 14/98

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The legal framework in BiH, with 13 different laws governing the privatization process and 13 bodies charged with conducting privatization, creates fertile ground for corruption and conflict of interest. Privatization and concession-granting procedures are conducted in a completely non-transparent way. Direct selection of the buyer is a commonly used method, while other public institutions have no access to information regarding the content of the contract or the buyer's ownership structure.

References:

National Assembly of the Serbian Republic (RS - Republika Srpska): <http://www.narodnaskupstinars.net/eng/naslovna/naslovna.php>

The Serbian Republic (RS - Republika Srpska) Investment-Development Bank (IRBRS): <http://www.irbrs.net/Kredit.aspx?lang=lat>

Parliament of the Federation of Bosnia and Herzegovina: <http://www.parlamentfbih.gov.ba/>

Agency for Privatization in FBiH: <http://www.apf.com.ba/Home.aspx?langTag=en-US>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

National Assembly of the Serbian Republic (RS Republika Srpska): <http://www.narodnaskupstinars.net/eng/naslovna/naslovna.php>

The Republic of Serbian Republic (RS Republika Srpska) Development Bank (IRBRS): <http://www.irbrs.net/Kreditni.aspx?lang=lat>

Parliament of the Federation of Bosnia and Herzegovina: <http://www.parlamentfbih.gov.ba/>

Agency for Privatization in FBiH: <http://www.apf.com.ba/Home.aspx?langTag=en-US>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. National Ombudsman

56. Is the national ombudsman effective?

34

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH Nos.19/02, 32/06

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances." From the Helsinki Committee

References:

Bosnian State Ombudsman Forced into an Absurd Legal Situation, Bosnia News, Sept. 17, 2007, <http://bosniannews.blogspot.com/2007/09/bosnian-state-ombudsmen-forced-into.html>

Premier Spiric tribked parliamentary assembly and the public," Federal News Agency (FENA), July 30, 2008, <http://www.sarajevox.com/clanak/080730112>

Human rights ombudsman Vitomir Popovic resigned, Dnevni Avaz, daily newspaper, Aug. 15, 2008, <http://www.dnevniavaz.ba/dogadjaji teme/vitomir-popovic-podnio-ostavku>

"Report on the Status of Human Rights in Bosnia and Herzegovina," The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances." From the Helsinki Committee

References:

Office of High Representative Calls for Transparent Appointment of BiH Ombudsmen, press release, July 8, 2008, http://www.ohr.int/ohr-dept/preso/pressr/default.asp?content_id=41957

The OSCE and the OHR are monitoring the election of ombudsman, Nezavisne Novine, daily newspaper, March 20, 2008

A premeditated murder (Interview with Srdjan Dizdarevic, chair of of Helsinki Committee for Human Rights in Bosnia and Herzegovina), Oslobodjenje, daily newspaper, July 19, 2008

Report on the Status of Human Rights in Bosnia and Herzegovina," The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting

human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances.” From the Helsinki Committee

References:

Government resistive and rugged, interviews with ombudsman and nongovernmental organization activists), Radio Free Europe, Feb. 1, 2008, <http://www.bihinfo.com/analize-proajte-55/48/3957.html>

Journal of the Helsinki Committee for Human Rights in Bosnia and Herzegovina, Nov. 10, 2007, <http://www.bh-hchr.org/index2.htm>

Report on the Status of Human Rights in Bosnia and Herzegovina,” The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances.” From the Helsinki Committee

References:

Office of High Representative Calls for Transparent Appointment of BiH Ombudsmen, press release, July 8, 2008, http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=41957

The OSCE and the OHR are monitoring the election of ombudsman, Nezavisne Novine, daily newspaper, March 20, 2008

A premeditated murder (Interview with Srdjan Dizdarevic, chair of of Helsinki Committee for Human Rights in Bosnia and Herzegovina), Oslobodjenje, daily newspaper, July 19, 2008

Report on the Status of Human Rights in Bosnia and Herzegovina,” The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Report on Realization of the Budget, Ministry of finance and Treasury Bosnia and Herzegovina, 2007

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances." From the Helsinki Committee report

References:

Government resistive and rugged, interviews with ombudsman and nongovernmental organization activists), Radio Free Europe, Feb. 1, 2008, <http://www.bihinfo.com/analize-proajte-55/48/3957.html>

Journal of the Helsinki Committee for Human Rights in Bosnia and Herzegovina, Nov. 10, 2007, <http://www.bh-hchr.org/index2.htm>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances." From the Helsinki Committee report

References:

Government resistive and rugged, interviews with ombudsman and nongovernmental organization activists), Radio Free Europe, Feb. 1, 2008, <http://www.bihinfo.com/analize-proajte-55/48/3957.html>

Journal of the Helsinki Committee for Human Rights in Bosnia and Herzegovina, Nov. 10, 2007, <http://www.bh-hchr.org/index2.htm>

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

There is no legal ground.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances." From the Helsinki Committee report

References:

Government resistive and rugged, interviews with ombudsman and nongovernmental organization activists), Radio Free Europe, Feb. 1, 2008, <http://www.bihinfo.com/analize-proajte-55/48/3957.html>

Journal of the Helsinki Committee for Human Rights in Bosnia and Herzegovina, Nov. 10, 2007, <http://www.bh-hchr.org/index2.htm>

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances." From the Helsinki Committee

References:

Council of Europe Progress Report, Bosnia and Herzegovina, SG/Inf, 2008, 2; Jan. 17, 2008, http://www.coe.ba/pdf/14_CoM_monitoring_izvjestaj.pdf

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

50

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH Nos.19/02, 32/06

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances." From the Helsinki Committee

References:

Council of Europe Progress Report, Bosnia and Herzegovina, SG/Inf, 2008, 2; Jan. 17, 2008, http://www.coe.ba/pdf/14_CoM_monitoring_izvjestaj.pdf

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

Comments:

It should be noted that reform of the institution of Ombudsman of Bosnia and Herzegovina was not completed last year either, although the final deadline for this was Dec. 31, 2006. The continuation of agony, with the only institution for the protection of human rights in Bosnia and Herzegovina remaining solely on paper, is a reflection of authorities' lack of interest in protecting human rights and establishing appropriate mechanisms and institutions for their protection. This means that human rights are practically left to the nongovernmental sector, which is not able to respond to all the challenges in this field under current circumstances." From the Helsinki Committee

References:

Council of Europe Progress Report, Bosnia and Herzegovina, SG/Inf, 2008, 2; Jan. 17, 2008, http://www.coe.ba/pdf/14_CoM_monitoring_izvjestaj.pdf

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2007

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH Nos.19/02, 32/06

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

59

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH Nos.17/99, 12/06

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There are three Supreme Audit Institutions in Bosnia and Herzegovina, which reflect the constitutional arrangements of the country. These are formally independent institutions entrusted with financial and performance audit of public offices. However, politics influences the appointment of auditors. Political pressures and threats may also be why the Serbian Republic (RS Republika Srpska) Auditor General Bosko Ceko, who had been a vociferous critic of excessive and irregular government spending, recently changed his rhetoric about financial business of RS institutions. The work of audit institutions is weakened by a lack of auditing capacity within public institutions themselves. The three institutions have received considerable technical assistance but are still in the process of building capacities.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?"Transparency International Bosnia and Herzegovina, 2007, Sarajevo

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution of BiH: <http://www.revizija.gov.ba>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

There are three Supreme Audit Institutions in Bosnia and Herzegovina, which reflect the constitutional arrangements of the country. These are formally independent institutions entrusted with financial and performance audit of public offices. However, politics influences the appointment of auditors. Political pressures and threats may also be why the Serbian Republic (RS Republika Srpska) Auditor General Bosko Ceko, who had been a vociferous critic of excessive and irregular government spending, recently changed his rhetoric about financial business of RS institutions. The work of audit institutions is weakened by a lack of auditing capacity within public institutions themselves. The three institutions have received considerable technical assistance but are still in the process of building capacities.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State? Transparency International Bosnia and Herzegovina, 2007, Sarajevo

“Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina,” Transparency International Bosnia and Herzegovina, 2007

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution of BiH: <http://www.revizija.gov.ba>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution of BiH: <http://www.revizija.gov.ba>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | **25** | 0

Comments:

Supreme Audit Institutions carry out auditing of almost all public institutions at all levels of government and issue regular reports on excessive, inappropriate and nontransparent spending and violations of public procurement procedures. Though reported by the auditors, no action was taken by Parliament, prosecutors or the police, but the media gave this matter considerable attention. This is, in part, a result of the dysfunctional relationship among institutions; namely, the prosecution service does not respond efficiently or ignores irregularities pointed out by audit reports.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?"Transparency International Bosnia and Herzegovina, 2007, Sarajevovo

"Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina," Transparency International Bosnia and Herzegovina, 2007

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?"Transparency International Bosnia and Herzegovina, 2007, Sarajevo

"Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina," Transparency International Bosnia and Herzegovina, 2007

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH Nos.17/99, 12/06

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution of BiH: <http://www.revizija.gov.ba>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution of BiH: <http://www.revizija.gov.ba>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

Supreme Audit Institutions (SAIs) exist in parallel: one at the state level (the Audit General Office of the Joint Institutions of BiH) the two at the entity level: Audit General Office of the Federation of BiH (responsible for the 10 Federal cantons) and Audit General Office of the Serbian Republic (RS Republika Srpska).

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH Nos.17/99, 12/06

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

81
V-3. Taxes and Customs

62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 31, February 2008

European Commission, Bosnia and Herzegovina 2007 Progress Report

Official website of the Indirect Taxation Authority of Bosnia and Herzegovina: <http://www.uino.gov.ba/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 31, February 2008

European Commission, Bosnia and Herzegovina 2007 Progress Report

Official website of the Indirect Taxation Authority of Bosnia and Herzegovina: <http://www.uino.gov.ba/>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 31, February 2008

European Commission, Bosnia and Herzegovina 2007 Progress Report

Official website of the Indirect Taxation Authority of Bosnia and Herzegovina: <http://www.uino.gov.ba/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 31, February 2008

European Commission, Bosnia and Herzegovina 2007 Progress Report

Official website of the Indirect Taxation Authority of Bosnia and Herzegovina: <http://www.uino.gov.ba/>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

Law on Indirect Taxation System in Bosnia and Herzegovina, Official Gazette of BiH Nos.44/03, 52/04

Law on Indirect Taxation Authority, Official Gazette of BiH, No.89/05

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

Bosnia and Herzegovina needs to refrain from introducing excise legislation that would discriminate against imports. This would be contrary to the EU Acquis, as well as to WTO and CEFTA rules. Some progress has been made on the harmonization of direct taxation. The Serbian Republic (RS – Republika Srpska) and the Brčko District now have similar rates of corporate and personal income tax. The Federation has taken steps toward harmonizing direct taxation with RS and Brčko. The new legislation in the Federation is expected to go into force in January 2008.

In the field of business taxation, a gap analysis is being carried out to identify existing measures that could be contrary to the Code of Conduct on business taxation. VAT collection units have been staffed, procedures have been set up and training has been provided. However, additional training is needed to further enhance tax collection, including training on risk-analysis techniques.

The authorities have made no progress on selecting an indirect tax revenue allocation model, and disputes over the methods for revenue distribution have continued. The High Representative imposed a decision setting the share of revenue to be distributed to the Brčko District. However, this is only an interim solution until an agreement is reached. Bosnia and Herzegovina's preparations in the fields of customs and taxation are moderately advanced, but only limited progress was made over the reporting period toward addressing the issues identified in last year's report. Herzegovina has not dismantled its customs fees for the processing of customs declarations. From European Commission

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 31, February 2008

European Commission, Bosnia and Herzegovina 2007 Progress Report

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

Law on Customs Policy of BiH , Official Gazette of BiH No. 57/04

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Limited progress has been made in the area of customs and taxation. As far as customs rules are concerned, customs legislation reflects the EU Acquis as it stood in September 2003. It needs to be adjusted for subsequent changes. There is room for improvement in implementation of the existing legislation, among other things, because operational instructions have not yet been adopted on a number of customs procedures. The customs tariff of Bosnia and Herzegovina needs to be aligned with the most recent version of the EU Combined Nomenclature, notably with a view to implementation of the future Stabilization and Association Agreement (SAA).

Supervision of the five operational free zones in Bosnia and Herzegovina has not improved. There has been no adequate and consistent control on goods entering or leaving the free zones. Imports of equipment for production activities are still exempted from customs duties. This provision is not in line with the EU Acquis and needs to be adjusted. In some cases, Bosnia and Herzegovina has continued to use price lists instead of the transaction value to determine the customs value of imported goods. This method is contrary to the EU Acquis, the SAA and the country's own customs legislation. In addition, the customs valuation rules have not been consistently applied throughout the country. New, comprehensive GATT-compliant instructions on valuation addressing this issue were adopted in September 2007. Bosnia and Herzegovina has not dismantled its customs fees for processing customs declarations."

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 31, February 2008

European Commission, Bosnia and Herzegovina 2007 Progress Report

Official website of the Indirect Taxation Authority of Bosnia and Herzegovina: <http://www.uino.gov.ba/>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

40

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

According to law, appointing of the internal audit committee should be based on merit.

References:

Law on Public Companies of the Serbian Republic (RS Republic Srpska) 75/04

Law on Public Companies of Federation of Bosnia and Herzegovina

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | **25** | 0

Comments:

State Owned Enterprises (SOEs) are subject to oversight by Supreme Audit Institutions (SAIs). Existing findings of the audit reports in the sector of SOEs are soft, as the auditors don't want to arouse the anger of the political leadership. Even a fleeting glance at some media reports will provide much more information on such embezzlements than the SAIs has ever managed to provide in their official reports.

References:

President of the Federation Bosnia and Herzegovina warned government on appointing supervisory board in the state-owned companies," Sept. 17, 2007, <http://bihinfo.com/component/content/article/51-susjedne-afere/2914-kristo-upozorava-federalnu-vladu-na-nezakonitosti.html>

Ombudsman of the Federation of Bosnia and Herzegovina: Open Letter to the Government of the Federation of Bosnia and Herzegovina, Sept. 15, 2007

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

The funds made available to the auditors are hardly sufficient. By comparison, the small and recently founded Statistic Agency, Concession Commission or the Institute for Standards receive a larger amount from the annual budget.

References:

Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina," Transparency International Bosnia and Herzegovina, 2007

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

There is no such mechanism.

References:

President of the Federation Bosnia and Herzegovina warned government on appointing supervisory board in the state-owned companies," Sept. 17, 2007, <http://bihinfo.com/component/content/article/51-susjedne-afere/2914-kristo-upozorava-federalnu-vladu-na-nezakonitosti.html>

Ombudsman of the Federation of Bosnia and Herzegovina: Open Letter to the Government of the Federation of Bosnia and Herzegovina, Sept.15, 2007

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | **0**

Comments:

There is no legal ground.

References:

President of the Federation Bosnia and Herzegovina warned government on appointing supervisory board in the state-owned companies," Sept. 17, 2007, <http://bihinfo.com/component/content/article/51-susjedne-afere/2914-kristo-upozorava-federalnu-vladu-na-nezakonitosti.html>

Ombudsman of the Federation of Bosnia and Herzegovina: Open Letter to the Government of the Federation of Bosnia and Herzegovina, Sept.15, 2007

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

50

69a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

Law on Enterprises, Official Gazette of the Serbian Republic (RS Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

In practice, it is very difficult to access the financial records of state-owned companies.

References:

Transparency International Bosnia and Herzegovina: State-owned companies for private interests, press release, Nov. 19, 2007

Interview with Professor Fikret Causevic, Oslobođenje, daily newspaper, April 19, 2008

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

Official websites of the Supreme Audit Institutions:

<http://www.saifbih.ba/>

<http://www.revizija.gov.ba/>

<http://www.gsr-rs.org/>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, it is very difficult to access the financial records of state-owned companies.

References:

Transparency International Bosnia and Herzegovina: State-owned companies for private interests, press release, Nov. 19, 2007

Interview with Professor Fikret Causevic, Oslobodjenje, daily newspaper, April 19. 2008

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, it is very difficult to access the financial records of state-owned companies.

References:

Transparency International Bosnia and Herzegovina: State-owned companies for private interests, press release, Nov. 19, 2007

Interview with Professor Fikret Causevic, Oslobodjenje, daily newspaper, April 19. 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

According to law, public enterprises should form its own internal audit committees.

References:

Law on Public Companies of the Serbian Republic (RS Republic Srpska) 75/04

Law on Public Companies of Federation of Bosnia and Herzegovina

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

63
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

YES | NO

References:

Framework Law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH No. 42/04

Law on Enterprises, Official Gazette of the Serbian Republic (RS Republika Srpska) Nos .24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS Republika Srpska) No.42/05

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

Law on Enterprises, Official Gazette of the Serbian Republic (RS Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS Republika Srpska) No.42/05

Framework Law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH No. 42/04

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The time it takes to register a business ranges from 45 days (Sarajevo) to 61 days (Mostar). From Doing Business

References:

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina, <http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

Doing Business 2008: Bosnia and Herzegovina, <http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Interview with with Bojan Kovacevic, Republic Agency for the Development of Small Business, May 20, 2008, Banja Luka

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of licensing is 30 percent of income per capita in Sarajevo. From Doing Business

References:

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina, <http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

Doing Business 2008: Bosnia and Herzegovina, <http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Interview with with Bojan Kovacevic, Republic Agency for the Development of Small Business, May 20, 2008. Banja Luka

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Law on Enterprises, Official Gazette of the Serbian Republic (RS Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS Republika Srpska) No.42/05

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

Law on Enterprises, Official Gazette of the Serbian Republic (RS Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS Republika Srpska) No.42/05

Law on Business Companies, Official Gazette of Federation BiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

Law on Enterprises, Official Gazette of the Serbian Republic (RS Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS Republika Srpska) No.42/05

Framework Law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH No. 42/04

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Most citizen complaints (10,000 over the 4 years) are about inspections. Citizens usually perceive the inspections as the most corrupt. From Transparency International

References:

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina, <http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

Doing Business 2008: Bosnia and Herzegovina, <http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Interview with with Bojan Kovacevic, Republic Agency for the Development of Small Business, May 20, 2008. Banja Luka

Transparency International Advocacy and Legal Advice Center

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

Comments:

Most citizen complaints (10,000 over the 4 years) are about inspections. Citizens usually perceive the inspections as the most corrupt. From Transparency International

References:

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina, <http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

Doing Business 2008: Bosnia and Herzegovina, <http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Interview with with Bojan Kovacevic, Republic Agency for the Development of Small Business, May 20, 2008. Banja Luka

Transparency International Advocacy and Legal Advice Center

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Most citizen complaints (10,000 over the 4 years) are about inspections. Citizens usually perceive the inspections as the most corrupt. From Transparency International

References:

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina, <http://www.doingbusiness.org/subnational/exploreEconomies/SEE.aspx>

Doing Business 2008: Bosnia and Herzegovina, <http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Interview with Bojan Kovacevic, Republic Agency for the Development of Small Business, May 20, 2008. Banja Luka

Transparency International Advocacy and Legal Advice Center

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁸Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

Law on Prevention of Money Laundering, Official Gazette No. 29/04

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

44

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Law on the Prosecutors Office BiH, Official Gazette Nos. 24/02, 42/03

Amendment, Official Gazette Nos. 03/03, 37/03, 42/03, 09/04, 35/04, 61/04

Law on the State Investigation and Protection Agency, Official Gazette No. 27/04

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There are no dedicated government anticorruption agencies (ACAs). Instead, anticorruption tasks are divided among existing police agencies, ministries and prosecutors. Absence of rule of law and an inadequate judicial system are considered among the major causes of corruption in Bosnia and Herzegovina (BiH), as are complicated political and administrative systems and inadequate influence of the private sector and civil society on the governments.

A legislative framework for combating corruption by the judiciary has been established. BiH's criminal legislation specifies what constitute acts of corruption. Only the Prosecutors Office and the Court of BiH have special departments for processing such cases. These special departments have been staffed mostly by international prosecutors and judges, as it is believed that local judges and prosecutors are unable to prosecute local power-wielders, politicians and oligarchs. It is believed that these responsibilities should be transferred sooner rather than later, but skeptics, mostly among the international community, feel that local judges and prosecutors would not be able to fight off pressure from politicians and organized crime. Only a handful of indictments for corruption (mostly abuse of office) were processed in the BiH court over the past four years. These were brought against high officials, including the former Federation Minister of Finance, former Croat and Serb members of the presidency of BiH, and the former Serbian Republic (RS - Republika Srpska) prime minister.

Because local courts and prosecutors offices do not have special departments to handle corruption, corruption is treated like any other crime. Specialization and the capability to process corruption cases which prosecutors consider the most complex cases, requiring considerable economic and financial expertise are lacking. An exception is the RS Special Prosecutors Office, established at the initiative of RS Prime Minister Milorad Dodik to fight organized crime and corruption, but this institution is under his direct control.” From Power and Change Analysis

References:

Political leaders still want control over police, Brigadier General Vincenzo Coppola, head of the European Union Police Mission, in an interview for the Dnevni Avaz, daily newspaper, June 1, 2008, <http://www.eupm.org/Details.aspx?!ID=813&TabID=3>

European Commission: Bosnia and Herzegovina 2007 Progress Report, Nov. 6, 2007, <http://www.dei.gov.ba/en/?ID=386>

Power and Change Analysis: Bosnia and Herzegovina 2008, ECORYS

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?“Transparency International Bosnia and Herzegovina, 2007, Sarajevo

“Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina,” Transparency International Bosnia and Herzegovina, 2007

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

Director of State Investigate Agency (SIPA) should be a Serb," Nezavisne Novine, daily newspaper, Oct. 17, 2007

"SIPA has had no director since February, but the commission for appointments cannot name a new director until the end of year," Slobodna Bosna, weekly newspaper, Nov. 17, 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

European Commission Bosnia and Herzegovina 2007 Progress Report, Nov. 6, 2007

<http://www.dei.gov.ba/en/?ID=386>

Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina," Transparency International Bosnia and Herzegovina, 2007

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

BiH Political Leaders Didn't Want Any Meaningful Reforms, Brigadier General Vincenzo Coppola, head of the European Union Police Mission, in an interview for SAN, daily newspaper, June 11, 2008, <http://www.eupm.org/Details.aspx?ID=830&TabID=3>

SIPA and Border Police Salaries Should Be increased," Brigadier General Vincenzo Coppola, Dnevni Avaz, newspaper, May 28, 2008, <http://www.eupm.org/Details.aspx?ID=809&TabID=3>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | **50** | 25 | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?"Transparency International Bosnia and

“Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina,” Transparency International Bosnia and Herzegovina, 2007

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | **25** | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?”Transparency International Bosnia and Herzegovina, 2007, Sarajevo

“Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina,” Transparency International Bosnia and Herzegovina, 2007

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

Comments:

Even though cases are widely publicized in the media, law enforcement agencies and prosecutors generally ignore corruption cases, especially those in which high-ranking officials are suspected to be involved. In addition, significant political influence is exerted on the judiciary or law enforcement agencies, and coordination and cooperation between the judiciary and law enforcement agencies remain weak.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?"Transparency International Bosnia and Herzegovina, 2007, Sarajevo

"Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007," Transparency International Bosnia and Herzegovina

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

13

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

Bosnia and Herzegovina at the Crossroads: EU Accession or a Failed State?"Transparency International Bosnia and Herzegovina, 2007, Sarajevo

"Open Society Fund Bosnia and Herzegovina: Improving National Integrity System Bosnia and Herzegovina 2007," Transparency International Bosnia and Herzegovina

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

Murder with political message," Slobodna bosna, weekly newspaper, Dec. 6, 2007

"Bomb attack on witness," Dani, weekly newspaper, May 9, 2008

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Law on the Prosecutors Office BiH, Official Gazette Nos. 24/02, 42/03

Amendment, Official Gazette Nos. 03/03, 37/03, 42/03, 09/04, 35/04, 61/04

Law on the State Investigation and Protection Agency, Official Gazette No. 27/04

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

52
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

58

77a. In law, there is a general right of appeal.

YES | NO

References:

Criminal Procedure Code, Official Gazette Nos. 36/03, 26/04

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

Comments:

The slow processing of cases due to backlog, poor management skills and the scarcity of modern equipment and premises create obstacles to establishing an effective judiciary. The deployment of computer applications to improve case management was completed in six courts. However, there is not yet a systematic action plan to reduce the growing backlog of pending cases. At the end of 2006, there were almost two million pending cases (although half of these concerned utility issues). Further efforts are needed to introduce alternative out-of-court resolution measures, such as mediation and arbitration. The backlog of cases in the Constitutional Court also remains high (more than 3,000 cases at the end of 2006). Due to the lack of a Supreme Court in Bosnia and Herzegovina, the Constitutional Court is increasingly acting as an appellate court." European Commission

References:

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, Feb. 11, 2008, <http://www.bh-hchr.org/index2.htm>

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHAR2007.pdf>

European Commission Bosnia and Herzegovina 2007 Progress Report

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHAR2007.pdf>

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, Feb. 11, 2008, <http://www.bh-hchr.org/index2.htm>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

75

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHAR2007.pdf>

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, Feb. 11, 2008, <http://www.bh-hchr.org/index2.htm>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

25

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Enforcement of judicial decisions takes years in many cases. Implementation mechanisms are still very weak.

References:

Advocacy and Legal Advice Centre Report, Transparency International Bosnia and Herzegovina, 2007

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, Feb. 11, 2008, <http://www.bh-hchr.org/index2.htm>

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Law on High Judicial and Prosecutorial Council (HJPC) of BiH, Official Gazette BiH Nos. 25/04, 93/05

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Informal influence of party leadership undermines the independence of the judiciary and Parliament. And a Council of Europe Monitoring Report notes that the executive interferes in the judiciary through the problematic use of pardons. Furthermore, the new government has undermined the independence of the judiciary by creating a prosecutors office.

References:

Bertelsmann Transformation Index (BTI) 2008: Bosnia and Herzegovina, <http://www.bertelsmann-transformation-index.de/>

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, Feb. 11, 2008, <http://www.bh-hchr.org/index2.htm>

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Book of rules for the operation of the court

Judicial Reform Index for Bosnia and Herzegovina, American Bar Association, Volume II, Sarajevo, 2006

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Law on High Judicial and Prosecutorial Council (HJPC), Official Gazette of BiH Nos. 25/04 93/05

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gjzvjestaj/pdf/VSTVBiHAR2007.pdf>

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gjzvjestaj/pdf/VSTVBiHAR2007.pdf>

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

71

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHAR2007.pdf>

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, Feb. 11, 2008, <http://www.bh-hchr.org/index2.htm>

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHAR2007.pdf>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that

confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Criminal Procedure Code, Official Gazette Nos. 36/03, 26/04

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Annual Report of the High Judicial and Prosecutorial Council 2007, <http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHAR2007.pdf>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

References:

Report on the Status of Human Rights in Bosnia and Herzegovina, The Helsinki Committee for Human Rights in Bosnia and Herzegovina, Feb. 11, 2008, <http://www.bh-hchr.org/index2.htm>

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gjzvjestaj/pdf/VSTVBiHAR2007.pdf>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

Comments:

Access to justice in civil and criminal trials remains a matter of concern, and equality before the law is not always guaranteed. In criminal trials, judges often do not fully inform defendants of their right to counsel at public expense. As a result, defendants do not request legal aid. Legal aid in civil cases is primarily provided on an ad hoc basis by privately funded nongovernmental organizations. Further efforts are needed to increase defense counsels' budget and to establish a nationwide legal aid scheme for criminal and civil trials. " From European Commission

References:

Doing Business 2008, http://www.doingbusiness.org/documents/FullReport/2008/DB08_Full_Report.pdf

European Commission Bosnia and Herzegovina 2007 Progress Report

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | **50** | 25 | 0

Comments:

Access to justice in civil and criminal trials remains a matter of concern, and equality before the law is not always guaranteed. In criminal trials, judges often do not fully inform defendants of their right to counsel at public expense. As a result, defendants do not request legal aid. Legal aid in civil cases is primarily provided on an ad hoc basis by privately funded nongovernmental organizations. Further efforts are needed to increase defense counsels budget and to establish a nationwide legal aid scheme for criminal and civil trials. " From European Commission

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2007, <http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHAR2007.pdf>

European Commission Bosnia and Herzegovina 2007 Progress Report

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In practice, agencies are entirely controlled by the ruling political parties or centers of power both within and outside the system. Although there are rules of procedure governing promotion and attainment of ranks in the agencies, leading positions are very rarely filled with the best, most experienced personnel but instead with individuals closely affiliated with the ruling parties. In several cases, politically active individuals who were not even employed in the agencies were appointed as heads of department.

References:

Political leaders still want control over police,” Brigadier General Vincenzo Coppola, head of the European Union Police Mission, in an interview for Dnevni Avaz, newspaper, June 1, 2008, <http://www.eupm.org/Details.aspx?ID=813&TabID=3>

European Commission Bosnia and Herzegovina 2007 Progress Report, Nov. 6, 2007, <http://www.dei.gov.ba/en/?ID=386>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Budget funds are usually spent on salaries. Significant international donor funds have been provided to the agencies since the end of war in BiH

References:

BiH Political Leaders Didn't Want Any Meaningful Reforms, Brigadier General Vincenzo Coppola, head of the European Union Police Mission, in an interview for SAN, daily newspaper, June 11, 2008, <http://www.eupm.org/Details.aspx?ID=830&TabID=3>

SIPA and Border Police Salaries Should Be increased,” Brigadier General Vincenzo Coppola, Dnevni Avaz, newspaper, May 28, 2008, <http://www.eupm.org/Details.aspx?ID=809&TabID=3>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

In practice, agencies are entirely controlled by the ruling political parties or centers of power both within and outside the system. Although there are rules of procedure governing promotion and attainment of ranks in the agencies, leading positions are very rarely filled with the best, most experienced personnel but instead with individuals closely affiliated with the ruling parties. In several cases, politically active individuals who were not even employed in the agencies were appointed as heads of department.

References:

Political leaders still want control over police," Brigadier General Vincenzo Coppola, head of the European Union Police Mission, in an interview for Dnevni Avaz, newspaper, June 1, 2008, <http://www.eupm.org/Details.aspx?ID=813&TabID=3>

European Commission: Bosnia and Herzegovina 2007 Progress Report, Nov. 6, 2007, <http://www.dei.gov.ba/en/?ID=386>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

67

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH No. 27/04

European Police Mission in Bosnia and Herzegovina, <http://www.eupm.org>

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no efficient reporting mechanism in place. The center received a huge number of citizens reports about the slow processing of complaints.

References:

Advocacy and Legal Advice Centre Report, Transparency International Bosnia and Herzegovina, 2007

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH No. 27/04

European Police Mission in Bosnia and Herzegovina, <http://www.eupm.org>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

Lower-level law enforcement officials are regularly subject to criminal investigation for official misconduct. But highly positioned officials, appointed directly by politicians, are very rarely subject to investigation.

References:

We are aware that corruption in police exists," Brigadier General Vincenzo Coppola, head of European Police Mission, Dnevni Avaz, newspaper, Dec. 11, 2007

General Coppola and Transparency International Discuss Strategies to Fight Corruption, European Union Police Mission, press release, Dec. 10, 2007

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH No. 27/04

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Lower-level law enforcement officials are regularly subject to criminal investigation for official misconduct. But highly positioned officials, appointed directly by politicians, are very rarely subject to investigation.

References:

We are aware that corruption in police exists," Brigadier General Vincenzo Coppola, head of European Police Mission, Dnevni Avaz, newspaper, Dec. 11, 2007

General Coppola and Transparency International Discuss Strategies to Fight Corruption, European Union Police Mission, press release, Dec. 10, 2007

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.