



LOCAL INTEGRITY SYSTEM ASSESSMENT

BRČKO DISTRICT OF BIH



THIS PROJECT IS SUPPORTED
BY EUROPEAN UNION

LOCAL INTEGRITY SYSTEM ASSESSMENT BRČKO DISTRICT OF BIH



THIS PROJECT IS SUPPORTED
BY EUROPEAN UNION



© Transparency International Bosnia and Herzegovina

BANJA LUKA

Gajeva 2

78000 Banja Luka

SARAJEVO

Mehmed-bega Kapetanovića Ljubušaka 4

71000 Sarajevo

www.ti-bih.org

TRANSPARENCY INTERNATIONAL IS THE GLOBAL CIVIL SOCIETY ORGANISATION LEADING THE FIGHT AGAINST CORRUPTION. THROUGH MORE THAN 100 CHAPTERS WORLDWIDE AND AN INTERNATIONAL SECRETARIAT IN BERLIN, WE RAISE AWARENESS OF THE DAMAGING EFFECTS OF CORRUPTION AND WORK WITH PARTNERS IN GOVERNMENT, BUSINESS AND CIVIL SOCIETY TO DEVELOP AND IMPLEMENT EFFECTIVE MEASURES TO TACKLE IT.

TABLE OF CONTENTS

9	I INTRODUCTION
11	II ABOUT THE LOCAL INTEGRITY SYSTEM ASSESSMENT
17	III EXECUTIVE SUMMARY
25	IV SITUATIONAL ANALYSIS
33	V LOCAL INTEGRITY SYSTEM
	CORE LOCAL GOVERNMENT ACTORS
34	1. ASSEMBLY OF THE BRČKO DISTRICT OF BIH
39	2. LOCAL EXECUTIVE (GOVERNMENT OF THE BRČKO DISTRICT BIH)
46	3. LOCAL BUREAUCRACY (PUBLIC ADMINISTRATION OF THE BRČKO DISTRICT OF BIH)
53	4. LOCAL POLITICAL PARTIES
56	5. COURTS OF THE BRČKO DISTRICT OF BIH
61	6. POLICE OF THE BRČKO DISTRICT OF BIH
	OVERSIGHT AND ACCOUNTABILITY FUNCTIONS
65	7. COMPLAINTS HANDLING
66	8. AUDITING
68	9. INVESTIGATION AND EXPOSURE OF CORRUPTION
70	10. AWARENESS RAISING AND PUBLIC EDUCATION
71	11. SOCIAL ACCOUNTABILITY
75	VI CONCLUSION AND RECOMMENDATIONS
81	VII BIBLIOGRAPHY

I INTRODUCTION

This Local Integrity System (LIS) Assessment is one of 5 pilots undertaken by Transparency International (TI) National Chapters from Africa, Latin America, Europe and the Middle East to test the relevance and applicability of the LIS Assessment approach in different national and local contexts. The pilots took place between September and December 2013.

This integrity assessment relates to the Brčko District of Bosnia and Herzegovina as one of the local government units in which Transparency International is undertaking local integrity system assessments as part of a project that aims to promote anti-corruption policies both at the state and local levels. One component

of the project is to perform detailed integrity system assessments in the selected local government units in order to assess the existence and effectiveness of mechanisms for promoting transparency, accountability and integrity, formulate recommendations to improve these mechanisms, and help strengthen the capacity of local governments to put in place integrity plans as one of the most important measures under the Action Plan to Fight Corruption.

II ABOUT THE LOCAL INTEGRITY SYSTEM ASSESSMENT

Since the early 1980s there has been an increasing trend towards the transfer of powers from the central level of government to local governments in the form of decentralisation. As a result, local governments have greater decision making, implementation and oversight powers. Whether decentralisation results in greater corruption in comparison to centralised governance arrangements is still a matter of debate. However, the reality is that corruption is a problem at all levels of government. Both elected and appointed officials have to deal with separating public duties from private interests. At the local level this is exacerbated by the fact that many officials have greater vested interests

based on family, friendships and business ties that can influence decision-making. In addition, remuneration at the local government level is, in many cases, low in comparison to the national level and the institutions that are designed to hold public officials to account at the local level are not always adequate to perform their duties and to uphold public sector integrity.

A functioning local integrity system can play an important role in minimising the opportunities for corruption at the local level. A typical local integrity system incorporates a set of core actors that can be found in most local government configurations, namely: the

local council (assembly), a mayor or alderman (executive), the local bureaucracy, local political parties, local courts (judiciary), and the police. It also encompasses a set of oversight and accountability functions which need to be performed in order to ensure that the local integrity system is effective. These functions include complaints handling, local government auditing, central government oversight, investigation and exposure of corruption, awareness-raising and public education, and social accountability.

Based on Transparency International's (TI) National Integrity Systems (NIS) approach, the Local Integrity System (LIS) Assessment combines the gathering of valid and reliable evidence on the performance of the local governance framework, actors and anti-corruption institutions with a consultative approach, engaging key stakeholders in the research, advocacy and planning elements of the project.

Given the diversity of local governance settings across the world, the LIS Assessment framework places a strong emphasis on flexibility and adaptability to different local governance structures and contexts. In many localities, for example, there is limited separation of powers between the different branches of local government and different levels of autonomy from higher levels of government. As a result, the roles and responsibilities of the core actors, as well as responsibility for performing oversight and accountability functions, may vary considerably from place to place. Therefore the LIS assessment framework can be adapted to accommodate these local variations.

OBJECTIVES

The key objectives of the LIS Assessment are to:

- (i) assess the existence and effectiveness of procedures and mechanisms to promote transparency, accountability and integrity in order to fight corruption at the local level,
- (ii) provide recommendations on areas for reform, and
- (iii) provide the foundations for a follow-up action plan for strengthening local integrity in collaboration with key local stakeholders.

METHODOLOGY

The LIS Assessment may be conducted in one or more Local Government Units in a given country. In each of the Local Government Units under analysis, an assessment of 2 components is performed, namely: (1) a set of Core Local Government Actors; and (2) a set of Oversight and Accountability Functions.

1. CORE LOCAL GOVERNMENT ACTORS

The LIS assessment focuses on 6 "Core Local Government Actors" which are present in most local government set-ups. For each of the Actors, the assessment covers three dimensions:

- its overall capacity to function,
- its role in contributing to the overall integrity of the local governance system,
- its own internal governance in terms of integrity, transparency and accountability.

ACTOR	CAPACITY	ROLE IN THE LIS	INTERNAL GOVERNANCE		
			TRANSPARENCY	ACCOUNTABILITY	INTEGRITY
LOCAL ASSEMBLY					
LOCAL EXECUTIVE					
LOCAL BUREAUCRACY					
LOCAL POLITICAL PARTIES					
LOCAL POLICE					
LOCAL COURTS					

2. OVERSIGHT AND ACCOUNTABILITY FUNCTIONS

In addition to the Core Actors, and because Local Government set-ups vary considerably from place to place, the assessment also covers 6 key Oversight and Accountability Functions, which may be carried out by local and/or regional/national actors depending on context. For each of these functions, the assessment covers two dimensions:

- the capacity for that function to be performed (whether by local actors or at the national level),
- the effectiveness of that function (i.e. how effectively it is actually performed in practice)

FUNCTION	CAPACITY	EFFECTIVENESS
COMPLAINTS HANDLING		
AUDITING		
CENTRALISED OVERSIGHT OF LOCAL GOVERNMENT		
INVESTIGATION AND EXPOSURE OF CORRUPTION		
AWARENESS-RAISING AND PUBLIC EDUCATION		
SOCIAL ACCOUNTABILITY		

For both Actors and Functions, each dimension comprises a number of indicators which are each evaluated qualitatively and assessed using a simple traffic light system (Green – Strong; Orange – Average; Red – Weak). Indicators cover elements of both the legal framework (Law) and actual implementation on the ground (Practice).

The following example is one of the indicators used to assess the Local Executive:

ACTOR	Local Executive
DIMENSION	Transparency
INDICATOR NUMBER	2.6
INDICATOR NAME	Budget Transparency
INDICATOR QUESTIONS	<p>To what extent does the local government present a clear and accessible budget?</p> <p>Is there a legal framework or other provisions that require the Local Government to make a transparent budget that can easily be understood by citizens and councillors? Are there clear guidelines and/or formats on how to present budget data? To what extent is the budget accessible to citizens and councillors and easy to understand in practice?</p>
STRONG	<p>The local government is required to present transparent annual budgets and these are easily accessible and easy to understand in practice.</p>
AVERAGE	<p>The local government is required to present transparent annual budgets but the budget is difficult to access in practice and/or difficult to understand.</p>
WEAK	<p>There is no such requirement and the budget is not accessible or only accessible to councillors.</p>

According to the LIS assessment methodology there are 56 indicators in total. Two of the indicators are not applicable to the Brčko District of Bosnia and Herzegovina, given the fact that this local government unit is a unique administrative local government unit under the sovereignty of Bosnia and Herzegovina. The District derives its powers of local self-government by virtue of each Entity having delegated all of its powers of governance as previously exercised by the two Entities and the three municipal governments within the pre-war Municipality of Brčko to the District Government, as defined in Article 1(5) of the Statute of the Brčko District of Bosnia and Herzegovina.¹ The two indicators in question are those related to the capacity and responsibility of the central government to oversee the work of the local government.

In order to assess each indicator, data is collected through a range of different methods, with an emphasis on a desk review of existing legislation, policy papers, Transparency International's reports – Brčko District Integrity System Study, existing analyses of institutional performance of the actors, and key informant interviews.

Once all the indicators have been assessed and values (strong, average, weak) assigned, the results are aggregated and the final assessment is presented in the form of the LIS Scorecard.

CONSULTATIVE APPROACH AND VALIDATION OF FINDINGS

The assessment process in the Brčko District of Bosnia and Herzegovina had a strong consultative component, seeking to involve the proactive key local actors in the public administration of the Brčko District, opposition, civil sector, media and business community. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

However, some local actors did not have much understanding of the structure of local integrity study. Therefore, given the importance of the study, authors had to take an alternative approach which involved a desk review of the available documents, regulations and information obtained during key informant interviews.

This approach enabled the researcher to confirm or refute the hypotheses formulated at the start of the study, which were based on the opinions and empirical statements by various authors in existing publications.

As part of the research interviews were conducted with persons that could provide key information about the working practices of core actors and performance of the oversight and accountability functions, i.e. the extent to which regulations are actually applied in practice.

¹ Available for download from the following link: <http://www.skupstinabd.ba/statut/b/Statut%20Brcko%20distrikta%20BiH%20-%20precisceni%20tekst%202-10%20B.pdf>

III EXECUTIVE SUMMARY

LIS CONTEXT

Before explaining the context and organisation of local self-government in the Brčko District of Bosnia and Herzegovina, it is necessary to give a historical overview of the method and structure of its formation. As is already well-known, the overall picture of local self-government in Bosnia and Herzegovina (BiH) is very complex, with a number of unique features that are not found in most other countries in the world, most notably those that are directly related to the European Charter of Local Self-Government, which was ratified by the Government of BiH in October 1994 (e.g. the existence of two parallel local self-government systems in one internationally recognised state – one in the Federation of BiH and the other in the Republika Srpska). In other words, in every normal state system, local self-government is the foundation stone on which the state is based as it implies the constitutional right of the population in local communities to decide independently on local affairs. However, when it comes to the political and constitutional concept of local self-government in BiH, it is very important to note that the Constitution of BiH does not contain a single reference to the legal concept of local self-government, unlike most countries of the European Union and the world. Local government bodies in BiH, with a very complex state structure and administrative organisation, are represented by the fourth (*cities as units of local self-government*) and the fifth tiers of government (*municipalities as units of local*

self-government). The first tier comprises the state of BiH with very limited responsibilities. The second tier comprises the BiH entities, the Federation of Bosnia and Herzegovina² and the Republika Srpska³, which are in some way “owners” of the right to local self-government given that the Constitution of BiH does not govern the right of citizens to local self-government. From the above constitutional provision it follows that the right to local self-government is mainly associated with the municipality, thus ensuring its self-governing status, but not with citizens and their right to local self-government and decision-making in the local community.⁴ Furthermore, in the larger BiH entity there is an extra mid-level of government that resembles the regional level, but its 10 cantons are far from what one would call Euroregions in the true sense of the word. Despite this, it is clear that the constitution-makers envisioned that the local self-government system in BiH should be based on the principles of the European Charter of Local Self-Government (ECLS), one of the conventions of the Council of Europe, signed on 15 October 1985 in Strasbourg. However, it must be noted that this idea in BiH, as the least developed country in the region whose ethno-political elites decided to realise their concepts of development through centralised governance and strengthening the role of the entity in Republika Srpska and cantons in the Federation of BiH, turned into a divergent concept backed by organised ethno-political

forces, some of which strive to organise the country as a single unitary state, and others striving to decentralise it even further. Hence, in the context of BiH decentralisation does not have an entirely positive connotation because in RS powers and responsibilities stop at the entity level, whereas in the Federation of BiH they are, for the most part, devolved to the Cantons. In neither entity has the decentralisation gone further down to the lowest level, i.e. the municipal level, since in the ethno-political elites' concept of governance there is no room for local self-government, at least not the kind of local self-government that the authors of the European Charter of Local Self-Government had in mind in 1985. Simply put, local governments units in BiH are given a very marginal role, and resources needed for their development are largely inadequate.

2 The Federation of BiH was created by the Washington Peace Agreement in 1994. It is a complex entity composed of ten cantons, whose constitutional nature is not entirely clear since the Constitution of FBiH defines them only as federal units with equal rights and responsibilities (Constitution of FBiH, Chapter I, Article 1, para. 1, and Article 2). The Constitution does not make an explicit provision as to which level is responsible for local self-government – federal or cantonal. It is therefore logical to conclude that “the legal regulation of local self-government is the responsibility exercised jointly by FBiH and its cantons (as the right “to create policies and enact laws”) as well as the responsibility exercised separately by the cantons (as a responsibility “not expressly granted to the Federation Government”). Since its establishment the Federation of BiH has adopted the legislation regulating local self-government on two occasions. Although the 1995 piece of legislation was called the Law on the Foundations of Local Self-Governance, and the 2006 piece was called the Law on the Principles of Local Self-Government, both laws contained much more than just the “foundations” and “principles” – in fact, they regulated this field so thoroughly that the cantonal laws had nothing left to “elaborate on”, but took most of their provisions verbatim.

3 In contrast to the Federation of BiH, which is a complex political and territorial unit, Republika Srpska is organised in a unitary fashion. The Constitution of RS, being the legal basis for the Law on Local Self-Governance of RS, contains an extremely pared down concept of local self-government that reduces municipal competences only to the most basic ones, mainly public utilities and service affairs. However, in order to avoid immobilising the state of local self-government by making its changes completely dependent on the changes to the constitution, the constitution-maker found a solution by including a broad provision stating that, apart from those that are explicitly enumerated, the municipality “shall also perform other duties as established by the constitution, the law and the statute of the municipality” (Article 105 of the RS Constitution).

4 Pojskić S., „*Pretpostavke za učešće građana u odlučivanju u lokalnoj samoupravi*” [Preconditions for Citizen Participation in Decision-making in Local Self-Government], časopis Lokalna samouprava broj 06/03.

LIS ASSESSMENT: ACTORS AND FUNCTIONS

LIS SCORECARD FOR THE CITY OF BIJELJINA

ACTOR	CAPACITY	ROLE IN THE LIS	INTERNAL GOVERNANCE
LOCAL ASSEMBLY	Yellow	Yellow	Yellow
LOCAL EXECUTIVE	Green	Yellow	Yellow
LOCAL BUREAUCRACY	Green	Yellow	Yellow
LOCAL POLITICAL PARTIES	Green	Red	Yellow
LOCAL COURTS	Green	Yellow	Green
LOCAL POLICE	Green	Green	Green

FUNCTION	CAPACITY	EFFECTIVENESS
COMPLAINTS HANDLING	Green	Yellow
AUDITING	Green	Red
CENTRALISED OVERSIGHT OF LOCAL GOVERNMENT	Not applicable to Brčko District	Not applicable to Brčko District
INVESTIGATION AND EXPOSURE OF CORRUPTION	Red	Yellow
AWARENESS-RAISING AND PUBLIC EDUCATION	Yellow	Red
SOCIAL ACCOUNTABILITY	Red	Red

KEY FINDINGS

The key findings for the Brčko District of BiH consist of the main strengths and weaknesses of, as well as the recommendations for, the local integrity system, as follows:

STRENGTHS OF THE LOCAL INTEGRITY SYSTEM IN THE BRČKO DISTRICT

- Adequate financial and human resources, as a prerequisite for enhancing the integrity system, transparency and the fight against corruption in the Brčko

District of BiH;

- Financial stability ensured through indirect taxes, as a prerequisite for long-term planning of the integrity system development and investment in human resources and institutional capacities of the Brčko District of BiH;
- The existence of local courts (i.e. the judiciary as a whole) and the police of the Brčko District, which facilitates communication between authorities, the judiciary and law enforcement agencies;
- The existence of general normative provisions on the basis of which it is possible to develop a system for

preventing corruption and increasing integrity, confidence in the work of the public administration of the Brčko District and the availability of resources that can be used for this purpose;

- The existence of the Office for Audit of the Financial Operations of the Brčko District Institutions, as a precondition for preventive action against financial irregularities in the operations of the public sector of the Brčko District;
- The possibility of international support to the Brčko District of BiH;
- The coherence of functions of the Brčko District of BiH and ease of the legislative procedure in the District Assembly (the possibility of making its own laws and other regulations), which can increase the level of integrity in the District;
- Experience of the Vermont Youth Centre in anti-corruption activities, as a precondition for good cooperation with CSOs on the issue of the integrity of the Brčko District of BiH.

WEAKNESSES OF THE LOCAL INTEGRITY SYSTEM IN THE BRČKO DISTRICT

- Very negative perception by the general public and businesses of the level of corruption in the public sector of the Brčko District of BiH, especially in the field of public procurement, which significantly compromises the integrity of public administration and erodes confidence in its work and, more generally, in the future development of the District;
- Some councillors lack knowledge of the very important issues necessary for the effective performance of their duties. Also, the aforementioned resources are underutilised (e.g. there are no notable examples of systematic education of councillors on important issues needed for the effective performance of their duties);
- Absence of a system to regularly monitor and evaluate the development of the Brčko District of BiH, especially in terms of social inclusion and development;

- Lack of systematic and efficient communication of citizens with all levels of government and the absence of programmes to increase public awareness of mechanisms for communication between elected councillors and citizens of the Brčko District of BiH;
- Absence of an independent body for prevention of corruption and coordination of the fight against corruption modelled upon the Independent Committee for Monitoring the Work of the Police Chief or the Agency/Office for Preventing and Combating Corruption in the Brčko District of BiH;
- Legal provisions that are supposed to have a preventive effect on corrupt practices are ill-defined and lack precision, and are consequently applied in an uncoordinated manner, thus failing to achieve their purpose;
- Very poor implementation of the recommendations and findings of the Brčko District Audit Office;
- CSOs are too weak and do not have the necessary support to significantly raise public awareness of corruption and trigger profound changes in the local government's working practices;
- Very low civic participation in decision-making processes that are important to the public and the citizenry of the Brčko District and the lack of a systematic approach to planning the development of the District, which leaves room for non-transparent planning of expenditures that might be at variance with the development needs and potentials of the Brčko District of BiH;
- Inadequate strategic approach to the planning and implementation of development activities as evidenced by the lack of strategic planning and links between strategic development goals and the District's annual plans and budgets, which creates a challenge in the systemic approach to development planning and progress monitoring;
- Inadequate and two-way communication between representatives of the government and the business sector, including civil society;
- Slow growth of the NGO sector caused by lack of financial resources for NGO projects and activities;

- Local political parties are extremely closed and mostly serve particular interests;
- Unclear procedures for lodging complaints about the work of public administration and civil servants employed in the public sector of the Brčko District of BiH, as well as limited access to and low level of public awareness of this mechanism.

RECOMMENDATIONS

1. Consider mechanisms to increase efficiency and accountability in the work of employees in public administration and public sector as a whole, particularly in terms of civil servants' accountability to citizens (*under the leadership of the Government of the Brčko District of BiH*);
2. Consider mechanisms to increase public availability of information about the use of funds earmarked for the education of employees in the public administration of the Brčko District of BiH (*under the leadership of the Government of the Brčko District of BiH*);
3. Consider reorganising the Commission for Monitoring the Implementation of the Law on Public-Private Partnership such to include representatives of such interest groups as NGOs, citizens or higher levels of government (*under the leadership of the Government of the Brčko District of BiH*);
4. Work towards enhancing communication between the executive, with the participation of representatives of the District Assembly, and representatives of the business sector and civil society, and ensuring that this tripartite structured communication is focused on improving the performance of all three sectors (*under the leadership of the Assembly and the Government of the Brčko District of BiH*);
5. Consider detailed formalisation of the implementation of recommendations of the Brčko District Audit Office, with consistent use of repressive proceedings in case of non-compliance, which would increase the accountability of individuals to citizens, i.e. accountability

- in use of public funds of the Brčko District of BiH (*under the leadership of the Government of the Brčko District of BiH under the supervision of the Office for Audit of the Financial Operations of the Brčko District Institutions*);
6. Consider establishing a mechanism to regularly inform the public about important issues in the lives of citizens through communication channels that have a wider coverage than those used today (*under the leadership of the Government of the Brčko District of BiH*);
 7. Consider providing co-financing from the budget of the Brčko District of BiH for innovative projects of civic participation in public administration processes and activities, such as citizens' panels (*under the leadership of the Assembly and the Government of the Brčko District of BiH*);
 8. Consider performing a detailed analysis of implementation of the Law on Freedom of Access to Information in all public sector institutions of the Brčko District, along with adoption of recommendations and individual public communication action plans of the Brčko District of BiH (*under the leadership of the Government of the Brčko District of BiH*);
 9. Consider separating the legal institutions of complaints and appeals in line with modern principles of increasing accountability, independence and transparency and work on raising public awareness of the opportunity to influence the work of individuals in administrative bodies, particularly those that citizens have a direct contact with, in accordance with the Law on Administrative Procedure (*under the leadership of the Government of the Brčko District of BiH*);
 10. Consider further elaborating and fine-tuning the accountability system for civil servants and employees in the public administration of the Brčko District of BiH while paying special attention to preventing the "revolving door" appointments from becoming a generally accepted norm of behaviour (*under the leadership of the Government of the Brčko District of BiH*);
 11. Consider establishing an Office for Quality of Public Administration to deal with issues of integrity,

transparency and accountability of public administration bodies and act preventively against corruption (*under the leadership of the Assembly and the Government of the Brčko District of BiH*);

12. Consider establishing communication mechanisms that would be aimed at increasing the trust of citizens and businesspeople in the public procurement system of the Brčko District of BiH (*under the leadership of the Government of the Brčko District of BiH*);

13. Consider introducing an informal training scheme for councillors on issues relevant to transparency, integrity, corruption, accountability and public perception (*under the leadership of the Assembly of the Brčko District of BiH*);

14. Consider adopting a participatory integrated development strategy according to the MiPRO methodology, which is used in most local government units, which should include action plans for integrity, fight against corruption and citizen participation in decision making (*under the leadership of the Assembly and the Government of the Brčko District of BiH*);

15. Consider developing and adopting a programme to increase public awareness of the mechanisms for communication between elected councillors and citizens of the Brčko District of BiH (*under the leadership of the Assembly of the Brčko District of BiH*);

16. Consider the possibility of establishing a function of strategic development planning and performance monitoring in order to increase efficiency of administrative bodies, institutions and public services through precise and measurable indicators, which would ultimately result in improved spending of public funds for development projects, in accordance with modern principles of strategic planning (*through the formation of the Agency for Integrated Development, the Division for Strategic Planning and Implementation of Projects which would operate under the Department for Economic Development, Sports and Culture or under the Mayor's Cabinet, or by using other approaches*);

17. Consider the establishment of an independent body

for prevention of corruption and coordination of the fight against corruption modelled upon the Independent Committee for Monitoring the Work of the Police Chief or the Agency/Office for Preventing and Combating Corruption in the Brčko District of BiH, which will have the powers, political support and normative power to cooperate with the Police and the Prosecutor's Office of the Brčko District of BiH in prevention and detection of corruption in the public and private sectors of the Brčko District of BiH (*under the leadership of the Assembly and the Government of the Brčko District of BiH with the participation of the Prosecutor's Office of the Brčko District of BiH, Judicial Commission and Police of the Brčko District*).

IV SITUATIONAL ANALYSIS

In contrast to the role and marginalisation of local government units in Bosnia and Herzegovina described above, the Brčko District of BiH has a completely different role in the country's legal and political system. According to the definition of its actual position in the country's constitutional and legal system, the Brčko District of BiH is a local government unit which is under the direct sovereignty of the state. It was established by the Final Award of the International Arbitration Commission on 9 March 1999 and covers the territory of the former municipality of Brčko, i.e. 493.3 km², which is 1% of the total territory of BiH. With a population of about 75,000 (at the time), it was one of the economic, cultural and political centres of north-eastern BiH.

Of course, it all started with the signing of the Dayton Peace Agreement (DPA) on 14 December 1995 and establishment of the internal structure of the state with

two entities – the Federation of BiH (hereinafter FBiH) and the Republika Srpska (hereinafter RS).

At the time, the status of the municipality of Brčko remained unresolved and Brčko was accorded a special status that, *inter alia*, allowed free passage between two parts of the Republika Srpska. In other words, the dispute over Brčko's status was so profound that it was the only issue which could not be negotiated during the Dayton peace talks. Therefore, in accordance with Annex II, Article V of the DPA, the participants in the negotiations agreed that the issue of Brčko would be resolved through binding international arbitration, whereupon the Arbitral Tribunal was established in mid-1996. American jurist Roberts Owen (*who acted as legal advisor in Richard Holbrooke's team in Dayton*) was appointed by the international community as presiding officer of the Arbitral Tribunal. In addition to

Roberts Owen, the Arbitral Tribunal consisted of two more arbitrators: professor Vitomir Popović, who was appointed by the Republika Srpska, and professor Čazim Sadiković, who was appointed by the Federation of Bosnia and Herzegovina. Under the terms of the Dayton Peace Agreement, the Arbitral Tribunal was required to issue its decision no later than one year from the entry into force of the Agreement, i.e. by 14 December 1996. However, under the given circumstances and political climate at the time, it was not possible to meet the deadline so the resolution of the Brčko status was postponed several times, and the tribunal meanwhile passed and adopted a number of transitional measures. However, though Annex II of the DPA stated that the area under arbitration was illustrated on an attached map, no map had in fact been drawn, and consequently the first task for the Arbitral Tribunal was to decide on its territorial remit. The Tribunal decided to arbitrate over the entire pre-war Brčko municipality, which was further stimulated by the broader geopolitical context of international intervention in BiH between 1996 and 1999. The pronouncements of the tribunal were directly influenced by the progress of DPA implementation in Brčko and to this end the negotiations seemed to focus on two main indicators: the return of displaced persons and the holding of democratic elections. The strategy selected for ensuring the implementation of the Dayton Peace Agreement was a radical scaling-down of international intervention in Brčko, which later proved to be impossible to realise within the envisaged timeframe. The cornerstone of this strategic approach was the formation of a new OHR office in Brčko, headed by a Deputy High Representative for Brčko, otherwise known as the ‘Brčko Supervisor’.

In order to facilitate the initiation of processes in the political, economic and legal realms in Brčko, the Supervisor had at his disposal a wide-ranging set of legal mechanisms (with full jurisdiction) “to supervise DPA implementation [and] strengthen local democratic

institutions”⁵. In March 1997, at a Peace Implementation Council (PIC) meeting in Vienna, High Representative Carl Bildt appointed US diplomat Robert Farrand as Brčko Supervisor for one year, with deputies from the Russian Federation and the UK.⁶ The first significant decision (declaration) by Ambassador Farrand was a ‘Procedure for Return to Brčko’, a document that established a new Returns Commission in Brčko. Furthermore, the mandate was reaffirmed and strengthened one year later, when the Arbitral Tribunal issued the Supplemental Award on 15 March 1998 putting the Republika Srpska on notice that it would need to show “significant new achievements in terms of returns of former Brčko residents”. Acknowledging that the Federation’s responsibilities for Dayton compliance in the Brčko area were of a lesser magnitude, given the then placement of the Inter-Entity Boundary Line (IEBL), the Tribunal nevertheless also warned the Federation authorities that they would need to comply with their obligation “to allow former Federation residents to return to their homes, particularly in Sarajevo”.

After a period of “supervising” in Brčko, the Final Arbitration Award⁷ was issued unifying the three post-war municipalities into a neutral and multi-ethnic community called “The Brčko District of Bosnia and

⁵ According to the 2007 Roma Declaration.

⁶ Ambassador Robert W. Farrand was appointed the first Supervisor of Brčko at the Brčko Implementation Conference in Vienna on 7 March 1997 and arrived in Brčko on 11 April 1997. He was succeeded by Ambassador Gary L. Matthews on 2 June 2000, Ambassador Henry L. Clarke on 19 April 2001 and Susan R. Johnson in January 2004. The last head of the Brčko Final Award Office and Brčko Supervisor was Ambassador Dr Raffi Gregorian who assumed the position on 16 September 2006.

⁷ It is important to note that the final decision of the Arbitral Tribunal for Brčko along with its Annex, which was adopted on 5 March 1999, is an integral part of the Dayton Peace Agreement, initialled on 21 November 1995 in Dayton and signed on 14 December 1995 in Paris, and a binding document on both entities and BiH, as well as on Brčko District.

Herzegovina". At the heart of the award was the "creation of a single administration unit, to which each entity delegated all of its powers of governance"⁸. This decision meant that Brčko was part of the state of BiH, part of both its Entities, and territorially independent, while the state-level institutions would protect the interests of the District itself. In other words, this arrangement meant that the Entities would both 'gain' territory even as they 'lost' administrative authority.⁹ The turning point came on 5 March 1999, when, after the parties and the international witnesses testified for ten days in Vienna, the Arbitral Tribunal issued the Final Decision, which was subsequently supplemented by an Annex issued on 18 August 1999. The constitutional status of Brčko was finally resolved by the decision of 5 March 1999. On 8 March 2000 the Supervisor issued a decision, no more than a few sentences in length, proclaiming the creation of the Brčko District of BiH. On the same day the first Brčko Supervisor Robert Farrand appointed the first multi-ethnic government.¹⁰ The said decision, guided by the main objective of creating "a multi-ethnic democratic government", was clearly less related to the 'bureaucratic' model of democracy (*typically based on rules and laws*). Rather, its intention was to create an 'independent democracy' based on normative aspects of equality (*in this case, equality of ethnic groups – but not constituent groups, in contrast to the BiH Constitution*).¹¹ Consequently, 'democratisation' in these early stages after 2000 was oriented towards protecting minority rights rather than establishing majority rule. Furthermore, one of the first tasks for the Brčko Supervisor was to establish a single 'architecture' of government in the Brčko District so, to that end, he dissolved the wartime municipal assemblies of Brčko-Grad, Ravne-Brčko and Brčko-Rahić and reformed them into a District Government and Assembly.

The Supervisor oversaw the implementation of the DPA in the Brčko area and had the authority to promulgate binding regulations and orders which prevailed against

any conflicting law. The Supervisor for the Brčko District of BiH was given a specific mandate, the main objectives of which were:

- to facilitate the phased and orderly return of refugees and displaced persons to their original homes and assist in the provision of housing to accommodate old and new residents;
- to enhance democratic government and a multiethnic administration in Brčko;
- to ensure freedom of movement and the establishment of normal democratic policing functions;
- to work with international customs monitors towards the establishment of efficient customs procedures and controls; and
- to promote economic revitalisation.

The basic concept was to create a single, unitary multi-ethnic democratic government to exercise, throughout the pre-war Brčko Municipality, those powers previously exercised by the two entities and the three municipal governments. According to that concept, the District institutions consisted essentially of:

- (a) the Brčko District Assembly, a legislative body whose membership is selected through democratic elections;¹²
- (b) the Brčko District Government of, as the executive (subsequently defined as the public administration of

⁸ Office of the High Representative in BiH, "Bosnia and Herzegovina: essential texts", Sarajevo: OHR, p. 284, 2000.

⁹ According to the International Crisis Group in "Bosnia's Brčko: Getting in, getting on and getting out", Sarajevo/Brussels, International Crisis Group, p. 7, 2003

¹⁰ For more on the final award visit http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=42567 and <http://www.skupstinabd.ba/fajlovi/Aneks.pdf>

¹¹ More on that in Bell, J. E., & Staeheli, L. A., "Discourses of diffusion and democratization", *Political Geography*, UK, 20(2), pp. 175-195, 2001

the Brčko District of BiH);¹³
 (c) the judiciary of the Brčko District;¹⁴ and
 (d) a unified police force operating under a single command structure with one uniform and badge, with complete independence from the police establishments of the two entities.¹⁵

The Assembly of the Brčko District of BiH is the legislative body of authority in the District and determines general policy for the District, in accordance with Article 22 of the Statute of the Brčko District of BiH. The Assembly is composed of thirty-one councillors, out of which two councillors represent national minorities in the District. Councillors are elected in general, free, fair, and direct elections by secret ballot in accordance with the laws of BiH and the District. The public administration of the District consists of the Office of the Mayor, District Government departments, the Finance Directorate of the Brčko District of BiH, the Office for Public Property, the Office of the Coordinator of the Brčko District in the Council of Ministers of BiH, and other administrative authorities when provided so in the law. The judiciary of

the Brčko District consists of the Judicial Commission of the Brčko District of BiH, the Prosecutor's Office of the Brčko District of BiH, the Appellate Court of the Brčko District of BiH, the Basic Court of the Brčko District of BiH, the Legal Aid Agency of the Brčko District of BiH and the Public Attorney's Office of the Brčko District of BiH (from the viewpoint of a broader understanding of the concept of the judiciary, which can be implicitly inferred from the provisions of the Law on the Judicial Commission of the Brčko District of BiH and the Law on Civil Servants and Employees in the Judiciary of the Brčko District of BiH).

The Supervisor and his Office operated at the centre of Brčko's political and administrative life for more than 15 years, supporting refugee return and economic recovery and helping to establish multi-ethnic institutions and an integrated education system, among other achievements.¹⁶ One of the most outstanding results of this Office is the fact that, through its advocacy and implementation of the Brčko Final Award, it brought Brčko to a point where the Parliamentary Assembly of Bosnia

¹² In accordance with the responsibilities and powers of the District, the Assembly has established general policies in the following areas: the position of the District in the light of the Final Award, economy, agriculture, forestry and water management, budget, public administration, organisation of public enterprises and funds, legislative activity, fight against corruption and crime, public property, infrastructure, urban development and housing, education, health care, social protection, policing, public security, justice and legal aid service, auditing, environmental protection, sports and culture, veteran-related issues, local communities, cooperation with religious communities, cooperation with joint institutions and the entities of BiH, cooperation with the EU and other international institutions and organisations, media and information, human rights, labour and employment, tourism, youth and non-governmental organisations, consumer protection.

¹³ The public administration of the District consists of the District Government departments, the Office of the Mayor, the Finance Directorate, the Office for Public Property, the Office of the Coordinator for Brčko District in the Council of Ministers of BiH, and other administrative authorities when provided so in the law.

¹⁴ The judiciary of the Brčko District of BiH is made up of the following institutions: Judicial Commission of the Brčko District of BiH, Basic Court of the Brčko District of BiH, Appellate Court of the Brčko District of BiH, Prosecutor's Office of the Brčko District of BiH and the Agency for Legal Aid of the Brčko District of BiH. In the narrow sense of the word, the judicial authority in the Brčko District of BiH is exercised by the Basic Court of the Brčko District of BiH and Appellate Court of the Brčko District of BiH. The Law on the High Judicial and Prosecutorial Council of BiH establishes the conditions and mandate for the holding of judicial and prosecutorial office, the appointment of judges and prosecutors, the disciplinary accountability of judges and prosecutors, the temporary suspension from office of judges and prosecutors, the incompatibility of judicial and prosecutorial service with other functions, the termination of mandates of judges, immunity in the exercise of functions, and setting criteria for the performance evaluations of judges and prosecutors. The existence of the Judicial Commission of the Brčko District, as an integral part of the judiciary, is defined by the Statute of the Brčko District of BiH (Article 71, paragraph 1). Article 14 of the Law on the Judicial Commission provides that the Judicial Commission performs the following tasks: ensuring

and Herzegovina, at the 49th session of the House of Representatives held on 25 March 2009 and at the 27th session of the House of Peoples held on 26 March 2009, adopted Amendment I to the Constitution of Bosnia and Herzegovina, adding a new Article VI.4., which reads: *“The Brčko District of Bosnia and Herzegovina, which exists under the sovereignty of Bosnia and Herzegovina and is subject to the responsibilities of the institutions of Bosnia and Herzegovina as those responsibilities derive from this Constitution, whose territory is jointly owned by (a condominium of) the Entities, is a unit of local self-government with its own institutions, laws and regulations, and with powers and status definitively prescribed by the awards of the Arbitral Tribunal for the Dispute over the Inter-Entity Boundary in the Brčko Area. The relationship between the Brčko District of Bosnia and Herzegovina and the institutions of Bosnia and Herzegovina and the Entities may be further regulated by law adopted by the Parliamentary Assembly of Bosnia and Herzegovina”*. Through this constitutional amendment the international community achieved its goal of resolving the status of Brčko through constitu-

the independence of the Basic and Appellate Courts, the District Prosecutor’s Office, the Legal Aid Agency and the Public Attorney’s Office; providing professional training for judges, prosecutors, public attorney, attorneys of the Legal Aid Agency and administrative staff in the judiciary and the Prosecutor’s Office of the District; preparing and implementing the codes of ethics for the employees of the District judiciary (not including the judges of the Basic and Appellate Courts), employees of the District Prosecutor’s Office (not including the prosecutors), the Public Attorney’s Office and Legal Aid Agency, including the initiation of disciplinary proceedings for violations of the codes; appointing and dismissing the Public Attorney and his/her deputies; appointing and dismissing the director of the Legal Aid Agency and attorneys of the Agency; appointing and dismissing administrative staff and trainees in the Basic and Appellate Courts, District Prosecutor’s Office, Legal Aid Agency and Public Attorney’s Office; drafting and submitting to the Assembly legislation relating to the organisation and operation of the Basic and Appellate Courts, District Prosecutor’s Office, Public Attorney’s Office and Legal Aid Agency, as well as the regulation of the practice of lawyers and notaries in the District; appointing and regulating the practice of notaries in the

tional procedures.

As a result of all this, over a period of years, and following extensive consultation within the International Community and with the citizens of Brčko and their representatives, the High Representative closed the office in Brčko on 31 August 2012, and the Supervisor suspended his functions from the same date. However, safeguards have remained in force and the Brčko Tribunal’s jurisdiction will continue to exist until the Supervisor, with the approval of the High Representative, notifies the Tribunal that the conditions for its closure have been met. Bosnia and Herzegovina’s highest judicial body – the Constitutional Court – is fully empowered under the country’s constitution to rule on disputes relating to the status and powers of the Brčko District. The High Representative’s mandate under the DPA and relevant resolutions of the UN Security Council remains unchanged, and the Supervisor retains all the authority prescribed under the Final Award and could decide to resume the exercise of his authorities in the District if conditions warrant.

District; preparing and proposing to the Assembly that part of the District budget that provides for the operating expenses of the Basic and Appellate Courts, District Prosecutor’s Office, Public Attorney’s Office and Legal Aid Agency as well as of the Judicial Commission; establishing cooperation with the ministries of justice and other relevant institutions in BiH; electing the member of the High Judicial and Prosecutorial Council of BiH; determining the required number of attorneys in the Legal Aid Agency; adopting and approving the rules governing the work of the Basic and Appellate Courts, District Prosecutor’s Office, Public Attorney’s Office and Legal Aid Agency and expert service of the Judicial Commission; issuing rules for expert witnesses and court-appointed interpreters, appointing and dismissing the commander of the Judicial Police and determining the number of judicial police officers; advertising public competitions and selecting civil servants and employees in the Basic and Appellate Courts, District Prosecutor’s Office, Legal Aid Agency and Public Attorney’s Office as well as expert service of the Judicial Commission; at least twice a year discussing the report on the work of the Basic and Appellate Courts, District Prosecutor’s Office, Public Attorney Office and Legal Aid Agency and Judicial Commission, and submitting them in

However, when the development of the District is viewed from a historical perspective, it is obvious that even today, two years after the closure of the OHR's Office, Brčko still faces many profound challenges. On the other hand, various aspects of the District's social, political, and economic development could potentially serve as a model in some ways for other parts of Bosnia and Herzegovina.

the form of information to the Assembly unless otherwise regulated by special laws; coordinating projects launched by the High Judicial and Prosecutorial Council of BiH, which concern the improvement of courts and the Prosecutor's Office and efficiency of case management; improving the work of the Public Attorney's Office. Legal Aid Agency and expert service of the Judicial Commission; and performing other duties stipulated by the Constitution of BiH, the District Statute and laws. The Judicial Commission consists of 8 members: President of the Constitutional Court of BiH or a judge of that court designated by him/her as his/her deputy; President of the Appellate Court of BD BiH; President of the Basic Court of BD; Chief Prosecutor of the District; Director of the Legal Aid Agency, Public Attorney of the Brčko District of BiH and two citizens of the District. On the other hand, the Prosecutor's Office of the Brčko District, as an integral part of the judiciary, has all the responsibilities defined by the Statute of the Brčko District of BiH, the Law on Prosecutor's Office of the Brčko District of BiH and the Law on Criminal Procedure of the Brčko District of BiH. Simply put, the District Prosecutor's Office shall prosecute perpetrators of criminal offences and perform other functions impartially in accordance with the Constitution and laws of Bosnia and Herzegovina and the Statute and laws of the District.

15 Police of the Brčko District is composed of the Uniform Police Unit, Criminal Investigation Unit (under which there is a Department for Combating Economic Crime and Corruption), Traffic Police Unit, Professional Standards Unit, Support Unit and Administrative Unit.

16 A historical overview of the political and administrative development of Brčko is given on the following webpage http://www.brckosupervizija.ba/web/?page_id=39&lang=bs

V LOCAL INTEGRITY SYSTEM

The scoring guideline from the LIS Assessment Toolkit that best represents the actual situation in the municipality is always provided in italics at the beginning of each indicator.

Note, however, that these are just broad parameters around which we base our assessment. In many cases only some of the elements covered in the cited sentences actually apply. The “Comments” section of each indicator provides the necessary clarifications.

CORE LOCAL GOVERNMENT ACTORS

1. ASSEMBLY OF THE BRČKO DISTRICT OF BIH

CAPACITY
ROLE
GOVERNANCE

CAPACITY

1.1. ADEQUATE RESOURCES



To what extent does the local assembly have adequate resources to carry out its duties in practice?

“The local assembly has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.”

Comment:

The Assembly of the Brčko District of BiH is the legislative body of authority in the District (*as opposed to representative bodies in local government units of in BiH entities, which cannot pass laws*) and is responsible for determining general policy in the District, in accordance with Article 22 of the Statute of the Brčko District of

BiH. In its General Policy 2013–2016, which was adopted on 5 June 2013, the Assembly decided, *inter alia*, “to take all measures and actions aimed at combating corruption and bribery, i.e. institute a zero-tolerance policy for crime, corruption, bribery, and all other forms of illegal activities”. In view of the aforementioned and given the role of this level of government, it can be said that the Assembly and its expert service theoretically have adequate resources to effectively carry out their duties in practice. Councillors’ clubs and individual councillors are allowed unrestricted use of the information system, archives and other documentation of the Assembly, and are entitled to use the phone, the Internet, official cars, insurance services, internal kitchen, etc. as provided by the Assembly through its expert service¹⁷. However, experience has shown that some councillors lack knowledge of the very important issues necessary for the effective performance of their duties as well as that the aforementioned resources are underutilised (e.g. there are no notable examples of systematic education of councillors on important issues needed for the effective performance of their duties). Furthermore, the Assembly’s role in overseeing implementation of the General Policy is very limited due to the lack of operationalisation of this document and other programmatic documents into concrete plans with clear division of responsibilities. The role of the assembly committees in overseeing the implementation of the set of policies and programmes with active participation of economic and social partners should be strengthened.

¹⁷ Role of the expert service is defined in Article 35 of the Rules of Procedure of the Brčko District Assembly, which *inter alia* provides that the expert service provides expert assistance, administrative and logistical support, security, research service for Councillors’ work, and other tasks ensuring the functioning of the Assembly..

1.2. LOCAL ELECTIONS



To what extent are local elections timely, free, fair and representative?

“Local elections are largely timely free, fair and representative.”

Comment:

Elections in the Brčko District of BiH are conducted in the same manner as in all other units of local self-government in BiH. However, Brčko District has its own Election Law¹⁸ regulating the election of councillors to the Assembly of the Brčko District, and for all matters that are not regulated by the Election Law of the Brčko District provisions of the Election Law of Bosnia and Herzegovina shall directly apply. Councillors in the District Assembly are elected on the basis of universal, equal and direct suffrage by secret ballot. In other words, this means that any citizen who meets the general requirements that are common to all other local government units and has at least one hundred (100) signatures of voters registered for the District elections may be elected as a councillor in the Assembly of the Brčko District. The competent authorities responsible for the conduct of elections are the District Election Commission and Polling Station Committees, which serves to ensure that local elections are timely, free and fair in practice, that they are conducted in a regular and lawful manner, without major difficulties, appeals and challenging of election results, under international

supervision, and that there are enough candidates representing a wide range of interests in the District.

1.3. INDEPENDENCE



To what extent is the local assembly independent from the executive?

“There is some overlap of roles between the local assembly and the executive.”

Comment:

The Statute of the Brčko District of BiH and other general acts that regulate relations, roles and responsibilities in the government of the Brčko District of BiH are clear. However, sometimes there are conflicts or confusion about the performance of local affairs due to the fact that the division of some roles between the higher levels of government and bodies of the Brčko District remains ill-defined even today, 15 years after the establishment of the District (e.g. in the area of the fight against corruption). Furthermore, the Assembly has a role in overseeing the executive. To this end it is necessary to develop oversight instruments by strengthening the role of the assembly committees. The main oversight instruments should be the medium-term and annual plans implemented by the executive, which need to be prepared in a timely manner and include clear and measurable performance indicators.

¹⁸ <http://www.skupstinabd.ba/zakoni/153/b/lzborni%20zakon%20Brcko%20distrikta%20BiH-Sl.glasnik%20DBBiH,%2017-08%20B.pdf>

ROLE

1.4. OVERSIGHT OF THE LOCAL EXECUTIVE



To what extent are local councillors able to exercise and enforce their decisions and oversight role?

“Local councillors have the mandate to oversee the work of the executive and are somewhat effective at providing this oversight. They are partially able to enforce their decisions.”

Comment:

The Assembly of the Brčko District of BiH has a statutory role to oversee the work of the District Government and the entire administration of the District, particularly with regard to the management of revenues and expenditures, through the legislative process of adopting the budget of the Brčko District. On the other hand, the work of the executive branch is regulated by the 2007 Law on Public Administration of the Brčko District of BiH (with subsequent amendments), which governs the basics of public administration in relation to the establishment, organisation, position, role, powers and duties of the Public Administration of the District, as well as other issues of importance to the organisation and functioning of public administration. In this sense, the Mayor as the head of the executive branch has very substantial powers (modelled on the principle of ‘checks and balances’), together with the heads of departments, the director of the District Finance Directorate, the director of the Office for Public Property, and the Office of the Coordinator of the Brčko District in the Council of Ministers of BiH. However, the Mayor’s broad powers do not derive entirely from the democratic legit-

imacy of the function because the Mayor is elected from among the councillors, and not directly in democratic elections (as is the case in all municipalities in BiH), and all important documents and public policies, most notably the budget, are adopted by the Assembly. It must be emphasised, though, that this mayoral election is justified for other reasons, as confirmed through his/her role as the head of the Brčko District Government. One of the challenges is unclear division of responsibilities of individual administrative bodies in certain sectors, or even the lack of a competent administrative authority for individual sectors that are within the exclusive jurisdiction of the District. Furthermore, as regards the implementation of councillors’ decisions in practice, some councillors (usually those belonging to the opposition bench – as in any other community, regardless of who is the opposition) often cannot effectively implement the proposals of specific provisions related to the activities and decisions of the executive.

1.5. REPRESENTATION



To what extent do local councillors represent the interests and priorities of their constituency in practice?

“Local councillors are considered to represent the interests and priorities of their constituency to some extent.”

Comment:

Although it is formally and legally ensured that members of the Brčko District Assembly have the legitimacy and legality to represent the citizens of the Brčko District, experience has shown that there is a general lack of direct and systematic communication between

citizens and representatives of legislative bodies. In practice this communication usually happens outside the institutional channels and frameworks. As a consequence, the councillors cannot be considered to fully represent the interests and priorities of all citizens. In other words, there is no effective engagement between elected councillors and citizens of the Brčko District of BiH. This can be changed by improving communication between councillors and citizens through involvement of social partners and civil society in the work of the assembly committees, and by organising regular sessions with citizens to discuss relevant development policies of the District.

GOVERNANCE

1.6. TRANSPARENCY OF THE LOCAL ASSEMBLY



To what extent can citizens access relevant information on the local assembly and councillors?

“Citizens can access some relevant information on the local assembly and councillors and/or information is difficult to access.”

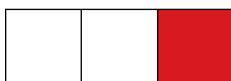
Comment:

Transparency of the Brčko District Assembly is guaranteed primarily by the Statute of the Brčko District of BiH which provides that *“District officials shall ensure public access to the District’s activities, public documents, decisions and official meetings by providing information in a timely, accurate and thorough manner”* (Article 17 of the Statute), and paragraph 2 of the same article, which states that *“the public shall have the right to examine all documents produced by public institutions of the*

District, its officials, employees or contractors, without cost or requirement that the request be justified”, and Article 18 of the Statute, which states that “all District institutions shall respond in a timely manner to any natural or legal person’s request for information or assistance, and shall take appropriate action in response to any such request in a timely manner and as stipulated by law”. However, the public is not familiar with a large amount of information related to councillors in the Brčko District Assembly, as, for example, regulated by Article 21 of the Statute of the Brčko District of BiH which states that *“the Councillors of the District Assembly, the Mayor, the Deputy Mayor, the Heads of the District Government Departments, the Government Chief Coordinator, the Mayor’s advisers, the Chief and Deputy Chief of Police, the Head of the District Finance Directorate, the Heads of the Treasury and the Tax Administration within the Finance Directorate, the Auditor General and Deputies Auditor General of the Audit Office, Judges of either District Court, Prosecutors and Public Attorneys of the District, the Coordinator and Assistant Coordinators of the Office of the Coordinator of the Brčko District in the Council of Ministers of Bosnia and Herzegovina, and members of the Judicial Commission shall each submit to the District Assembly an Annual Financial Disclosure Statement on their total income, sources, assets, and liabilities as well as the ones of their close family members to the first degree and the manner in which they acquired possession of them”.* These are considered public documents and the District Assembly should make them publicly available, which has proved an unpopular practice as there are no known examples of public disclosure of this information about the councillors. The obligation to publish information about the Assembly’s meetings is complied with in practice and the majority of important information (agenda and materials for meetings, laws enacted, acts and some other decisions) can be found on the official website of the Brčko District of BiH. However, it is not always easy to access other information (such

as information about the work of the committees, especially those that are directly related to the life of the Brčko District citizens, e.g. work of the Budget Committee), get information/documents in advance, etc., which would allow a comprehensive overview of the Assembly's work and its decision-making. Section 8 of the Rules of Procedure of the Assembly stipulates that the *“the work of the Assembly and its Committees shall be open to the public and may be broadcast live via media or reported on through the press”* (as is the case in practice), but citizens cannot attend meetings of the Assembly.

1.7. ACCOUNTABILITY OF LOCAL COUNCILLORS



To what extent are local councillors answerable for their actions in practice?

“Local councillors are not answerable for their actions in practice.”

Comment:

The answerability of councillors for their actions comes down to mere political answerability, which can only realistically be measured by the degree of citizens' (dis)satisfaction as can only be demonstrated in a democratic way, through local elections. In other words, there is no regular and institutionalised mechanism to involve the public in consultations on important issues on the agenda, nor are there formal or practical mechanisms whereby citizens can complain about the work and actions of local councillors. However, it should be clarified that this comment does not apply to criminal or civil liability (in terms of liability for the actions taken, opinions expressed and votes cast in the performance

of councillors' duties) but to direct answerability to the citizens of the Brčko District of BiH.

1.8. INTEGRITY OF LOCAL COUNCILLORS



To what extent is the integrity of local councillors ensured?

“Only some of the rules on conflict of interest, gifts & hospitality, asset disclosures and whistleblower protection are in place with piecemeal enforcement and/or there has been at least one recent example of conflict of interest in the local assembly.”

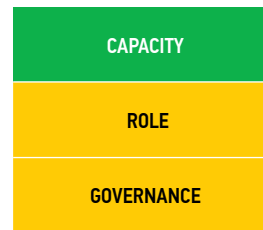
Comment:

In 2002, immediately after the conflict of interest law was passed at the state level, the Brčko District Assembly adopted the Law on Conflict of Interest in the Institutions of the Brčko District of BiH (“Official Gazette of the Brčko District of BiH”, no. 2/03). In late October 2008, a new Law on Conflict of Interest in the Institutions of the Brčko District of BiH was enacted by the Supervisory Order (“Official Gazette of the Brčko District of BiH”, nos. 43/08 and 47/08), repealing the previous law. The law stipulates that the “elected officials” means councillors of the Brčko District Assembly. The law further provides that, in the course of holding public office and six months after they leave office, elected officials cannot serve as members of steering board, supervisory board, members of the assembly, members of the administration or management or an authorised person in a public company, and members of steering board, members of the supervising board and directors of the District institutions. Furthermore, councillors in the District Assembly cannot serve in private companies

that do business with the District, provided that the value of the contract or business with the District exceeds BAM 5,000 per year, and cannot enter into contracts on rendering personal services (consultancy contracts, service contracts, etc.) with any public company in the District and any private company doing business with the District, when the value of the contract or business with the District exceeds BAM 5,000 per year. Also, councillors cannot accept gifts in the amount exceeding BAM 200.00, or if they accept a gift they cannot keep it and must report it to the Central Election Commission (CEC BiH). According to available data, there are no registered and reported gifts received by public officials of the District, nor has the CEC BiH initiated proceedings for any undeclared gifts in the District. Furthermore, the Rules of Procedure of the District Assembly contain certain provisions relating to the integrity of councillors such as those on the incompatibility of office and the ban on voting in case of conflict of interest. According to these provisions, councillors cannot hold any other public office in the District or in any other political unit in the territory of Bosnia and Herzegovina and cannot be directors or members of the board of directors of any enterprise owned in part or in whole by the District or financed to any degree from the District budget. Also, the Law on Conflict of Interest in the Institutions of the Brčko District of BiH provides a very detailed definition of conflict of interest, gifts and hospitality, asset disclosures and whistleblower protection. However, what happens in practice sometimes does not correspond to these statutory provisions as there is anecdotal evidence that a few elected officials (including councillors) have put their private interest above that of the public, using public office for personal gain of persons connected to them, or anecdotal evidence that councillors have a relationship of dependence with persons that could influence objectivity in exercise of their duty. In conclusion, provisions that are supposed to have a preventive effect on corrupt practices in the work of councillors do exist, but are lacking in clarity and

precision, and are consequently applied inconsistently and in an uncoordinated manner, thus failing to achieve their purpose. Proceedings initiated so far for violations of these laws are conducted far from the public eye. At the time of writing this report, these proceedings have not seen a conclusion in court, and whether they will produce any tangible results remains to be seen.

2. LOCAL EXECUTIVE CAPACITY



2.1. CLEAR FUNCTIONS



To what extent does the Local Government have a clear and realistic strategy/action plan and a coherent set of functions?

"The local government's strategy and functions are rather vague, ambiguous or too wide and sometimes unrealistic."

Comment:

The Brčko District Development Strategy 2008-2017 was developed and adopted by the Assembly of the

Brčko District, but it is not a coherent, harmonised and realistic document as it does not contain a comprehensive situational analysis and detailed strategic and operational objectives and projects. Citizen participation in the development and implementation of the Strategy has been negligible. Furthermore, the Strategy is not implemented in practice, no action plans for its implementation are being developed and there is no harmonised monitoring and evaluation system. The development of the District rests on a number of factors, the most prominent of which are short-term political goals, while long-term planning remains virtually non-existent in practice. The Brčko District has clearly defined functions, which, compared to all other local communities, should be an advantage; however, this advantage is only used to a limited extent, even though the Brčko District is always held up as a shining example of a sub-national level that fulfils its obligations in the European integration process. The model of utilisation of the part of funds apportioned to the Brčko District in accordance with the applicable procedures is quite efficient, as evidenced by the oft-cited examples of the EU support such as the co-financing for the construction of the Police headquarters to the tune of EUR 3.5 million, technical support for the bypass road project to the tune of EUR 0.5 million, and inclusion of project proposals by the Brčko District in sectoral and action documents that are the basis for the use of the annual EU assistance programmes. In IPA programming the Brčko District has an equal status as other sub-national levels of government. On a less positive note, though, capital investment plans are ill-defined and often prepared on an ad hoc annual basis without proactive civic participation, as is the case in many BiH local government units. Finally, it is important to note that the Brčko District of BiH differs from other administrative-territorial units in two other important aspects. First, the District does not have the Ministry of Finance and Budget (or treasury operations); instead, this set of functions is assigned to the Finance Directorate of

the Brčko District of BiH (however, it remains unclear how the Directorate carries out its tasks better than would be performed by a dedicated Department in the executive branch). The second aspect is the existence of the position of a Chief Coordinator of the Brčko District Government, which is not in line with the Blueprint of Development of Central Bodies of Governments in BiH (i.e. the framework set up by PAR and in accordance with EU requirements). Furthermore, the Government of the Brčko District of BiH has recently adopted the Decision on the Methodology for Project Identification, Selection and Monitoring, enabling the identification of priority project ideas relevant to the development of the District. This has made it possible to plan public investment through the adoption of the Public Investment Programme with identified projects to be funded from various sources including the budget, EU funds and other donors and international financial institutions. However, there remains a need to establish the function for strategic planning and monitoring of the realisation of strategic objectives based on which to improve the planning of public investments.

2.2. PREDICTABLE RESOURCES



To what extent does the Local Government have access to the resources it requires to carry out its functions and deliver its vision?

“The Local Government has access to all the resources it requires to carry out its functions and deliver its strategy effectively.”

Comment:

The Brčko District of BiH has very clear legal provi-

sions in place providing for the financing of the local self-government through direct and indirect taxes. In other words, the Brčko District can predict the amount of resources from the state level much easier than other local government units, because revenues from indirect taxes are distributed in accordance with the Law on Payments into the Single Account and Distribution of Revenues and coefficients established by the Management Board of the Indirect Taxation Authority. According to these, the District's allocated share of the revenues is 3.55%. With this in mind, we can freely say that the Brčko District has the resources to cover the operating and development costs, as well as the costs of all its mandated functions. However, although this does not affect the final assessment, it is very important to note (as above) that the District does not have a clear strategic vision of "where it wants to be in 20 years' time". This, coupled with the "ethnic key" principle which has to be followed in the implementation of absolutely any initiative, results in very low levels of capital investments, while, on the other hand, funds are idling underutilised in banks in the Brčko District. A particular challenge is posed by the already mentioned absence of adequate planning caused by the lack of linkages between the strategic and operational plans and the budget.

ROLE

2.3. MANAGEMENT OF THE LOCAL BUREAUCRACY



To what extent does the local executive effectively perform its role in terms of providing effective oversight of, and support to, the local bureaucracy?

"The executive is somewhat active, but rather unsuc-

cessful in developing a local public sector which is governed by high levels of transparency, accountability, integrity and inclusiveness."

Comment:

The local executive, i.e. Government of the Brčko District of BiH, does not have proper mechanisms to effectively supervise and manage the work of the local public sector as a whole. This is due to the fact that the Brčko District executive has no jurisdiction over public companies as the oversight of the operation of each public company is expressly placed under the mandate of the managing boards. The managing boards are answerable to the District Assembly for the work of each public company, as prescribed by applicable law. Thus, public companies are independent of the District Government and the public administration, and the relevant District laws provide that each public company has executive authorities sufficient to achieve its functions and purposes and provide public services delegated to it.

On the other hand, when we talk about the level of transparency, accountability, integrity and involvement of employees in the local bureaucracy, we can say that the Brčko District of BiH has a well developed human resource management (HRM) system, which should aim at maximising efficiency in the performance of the duties of employees in the local bureaucracy, as well as increasing transparency and integrity in their work. However, experience has shown that many of the activities boil down to mere formal compliance with established procedures. A lot has yet to be done to modernise the HRM system and enhance the efficiency and accountability of the public sector, particularly in terms of its answerability to citizens rather than various interest groups or individuals. One example of non-transparent handling of public funds was documented in the report of the Office for audit of the Public

Administration and Institutions of the Brčko District of BiH, which noted that in 2012 “*expenditures for professional specialisation and training in the amount of KM 40,076.82 were approved even though there was no express need for such specialists as per the organisational plan of the public administration bodies in terms of Article 63 of the Law on Civil Service. The adopted strategy and organisational plan do not provide for acquired vocation of selected users as constituting the course of development of human resources, or being a necessary condition for the performance of tasks*”¹⁹.

2.4. OVERSIGHT OF PRIVATE PROVIDERS OF PUBLIC GOODS



To what extent does the local executive effectively perform its role in terms of holding private service providers of public goods accountable for the service delivery they are contracted for?

“The local executive is somewhat effective in holding private service providers to account.”

Comment:

The Brčko District has a Law on Public-Private Partnership, which provides a formal and legal basis for the introduction of private providers of public services at the local level. The Law provides that procedures

for the selection of private partners are conducted in accordance with the principles of equal treatment, transparency, proportionality, mutual recognition, protection of public interest, protection of individual rights, freedom of competition and environmental protection. Formal oversight of the operation of private providers of public services is exercised by the Commission for Public-Private Partnership appointed by the Government upon the Mayor’s proposal, while making sure that it includes representatives of those administrative bodies which, due to their competence, may contribute to the successful provision of services. However, the public is not fully included in holding private service providers to account for the delivery of services, or, in other words, the procedure for verifying the delivery of public services is not fully transparent. One of the specific examples of inefficiency in this regard was documented in the public report of the Office for Audit of the Public Administration and Institutions of the Brčko District of BiH, which noted the following about the Department of Administrative Affairs of the District Government: “*When signing a contract for provision of cleaning services, the Department did not comply with the provisions of the Law on Conflict of Interest in Institutions of the Brčko District of BiH insofar as it relates to the incompatibility of engagement in a private company with executive office, nor was the contract signed prior to the start of services*”.

2.5. REGULATION OF LOCAL BUSINESS



To what extent does the local government effectively perform its role in terms of regulating local businesses in an even-handed and effective manner?

“Business regulations are not always consistently

¹⁹ Office for Audit of the Public Administration and Institutions of the Brčko District of BiH, “Public Report for Year 2012”, p.12, Brčko District BiH, 2013 http://revizija-bd.ba/cms/index.php?option=com_joomla&view=documents&path=Javni_lzvjestaji%2F2012-javni_izvjestaj_revizije_finansijskog_poslovanja_institucija_Brcko_distrikta_BiH-ba.pdf&Itemid=16&lang=ba

enforced and/or there are occasional instances of unfair treatment by local government inspectors of local businesses.”

Comment:

When it comes to regulation of local businesses, one can generally say that the oversight is transparent and effective in most cases. In other words, in most of the observed examples and based on feedback obtained from private companies, oversight of local businesses is carried out in a fair and transparent manner. However, there is an indicative number of complaints about the work of supervisory authorities (inspections) to the effect that the enforcement of regulations and the work of inspectors are not always consistent. The largest number of complaints concern the work of the Inspectorate, but other shortcomings were also noted, such as the fact that the control of fulfilment of conditions for grant relaxations for private companies is not performed, and reports about results of control are not submitted to the Mayor, on a regular basis, i.e. every six months as envisaged by the Law on Stimulating the Economic Development in the Brčko District of BiH. Furthermore, there is anecdotal evidence that in certain privatisation processes there were no consolidated balance sheets of companies that were bought through the Privatisation Office of the Brčko District of BiH, which afterwards “accumulated” debts and went into bankruptcy. If the privatisation of these companies had been conducted with due professional care and in a transparent way, these consequences would have been prevented. It is also worth noting that, in order to promote the private sector, it is necessary to remove, or at least alleviate, the legal and administrative barriers (e.g. registration and closing of a business) and introduce new technologies that will enhance communication between the private sector and public administration, and enable faster resolution of companies’ requests enterprises by the public administration, which

has already been implemented in a number of local government units.

GOVERNANCE

2.6. BUDGET TRANSPARENCY



To what extent does the local government present a clear and accessible budget?

“The local government is required to present transparent annual budgets but the budget is difficult to access in practice and/or difficult to understand.”

Comment:

To begin with, it is important to emphasise that the Government, as the local executive in the Brčko District, is not authorised to present either the draft budget or the budget proposal to the public. The 2008 Law on Budget of the Brčko District of BiH provides that the Finance Directorate draws up the draft budget and submits it to the District Government by 15 September of the current year, based on preliminary guidelines which are provided by the Directorate by no later than 1 July of the current year for the following year. The Government approves the draft budget by no later than 1 October of the current year for the following year and forwards it to the Brčko District Assembly for consideration and adoption in a legislative procedure that includes public hearings. Prior to adoption of the budget, the Assembly’s Budget Committee and other committees must review and consider the budget draft. Between its submission to the Assembly and the decision on its adoption, the budget proposal is available to the public and is delivered to local civic associations. However, these public hearings

are held mainly as a matter of form and cannot effect any substantial changes to the proposed budget. So, it can be said that the local administration (in the broadest sense of the word) is guided by the budget regulations that ensure budget transparency and availability. Documents related to the draft budget of the Brčko District of BiH are made available online within the statutory timeframe and are shared with certain interest groups, but the general impression remains that neither the general public nor the opposition can easily influence the planned expenditure of public funds. The aforementioned recommendation regarding the development of the function for strategic planning and preparation of annual plans is also applicable here, and these plans should be the basis for creating budgets with the ultimate goal of providing a systematic approach to the planning of public investments. Therefore, some objections can be raised as to the amounts of funds used for specific purposes and the percentage of funds allocated for the purpose of meeting short-term objectives of certain interest groups or individuals. It is important to emphasise that the estimates of economic development, social sector development, macroeconomic indicators and forecasts of revenue and expenditure for the year covered by the Budget Framework Paper are used as a basis when drafting the District's budget. However, the validity of these estimates and forecasts is highly dubious given that there is no strategic plan related to economic development (i.e. it exists, but is not fully enforced in practice). The same is also true of the development of the social sector, which should be part of an integrated approach to development planning in the Brčko District of BiH. In summary, it can be said that all the procedures related to the adoption of the budget are formally and legally complied with, but the budget does not respond to the real needs of all citizens in the Brčko District of BiH, which certainly does not constitute a positive and transparent process in the true sense of these words.

2.7. ACCOUNTABILITY OF THE LOCAL EXECUTIVE



To what extent is the local executive answerable for its actions?

"The local executive is partially answerable for their actions in practice."

Comment:

Control of the members of the executive includes the control of officials (personal control) as well as the control of laws they enact. There is also management control, which is exercised through the Appellate Commission (manifested through legal provisions within the framework of administrative proceedings and administrative dispute), and specific controls (e.g. Ombudsman). However, there are several mechanisms in place relating to the participation of citizens in Government's decision-making, but these are not under obligation to give reasons for their decisions. So, these mechanisms are not fully effective, particularly when it comes to such vitally important issues as improving living conditions for the citizens of the Brčko District (e.g. capital investments, strategic planning, etc.). In practice it is very uncommon for Brčko citizens to engage in consultation or some other form of public participation in decision-making processes common in modern local governments. Furthermore, although the Law on Public Administration (Article 51) provides that citizens may lodge complaints about the work of public administration bodies, it does not specify precisely which bodies this includes. As a general rule, when the governing coalition is stable, Government's accountability boils down merely to political support or lack thereof in relation to the District Assembly as the formal mechanisms

remain underdeveloped and underutilised.

2.8. INTEGRITY OF THE LOCAL EXECUTIVE



To what extent is the integrity of the local executive ensured?

“Only some of the rules on conflict of interest, gifts & hospitality, asset disclosures, ‘revolving door’²⁰ appointments and whistleblower protection are in place with piecemeal enforcement and/or there has been at least one recent example of conflict of interest or the revolving door phenomenon.”

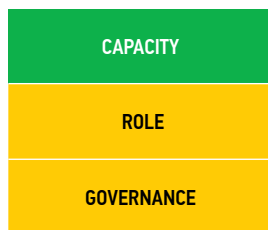
Comment:

As already mentioned, the Law on Conflict of Interest in Institutions of the Brčko District of BiH provides detailed definitions of conflict of interest, gifts and services, asset disclosure and whistleblower protection; however, there are some views and signs indicating that the actual situation is sometimes at variance with the said Law. Therefore, regulations aimed at ensuring the integrity of the Brčko District Government are lacking in detail and do not fully achieve their purpose in terms of preventing conflict of interest and the “revolving door” phenomenon. Citizens do have the right to sue the District Government or initiate a procedure for establishing whether corruption has occurred or not, but there have been no noteworthy examples of that in practice. Although, under the Criminal Code of the Brčko District, the perpetrator who has given a bribe upon the request of an official or responsible person in the District may be released from punishment if he/she reports the act prior to the discovery of such act, or prior to his/her knowing that the act has been discovered, the benefits

resulting from such an offence as well as the penalties threatened for participation in such an offence encourage citizens to report such illegal activities. Specifically, the giving of a bribe is punishable by six months’ to five years’ imprisonment. Although those who report having given a bribe may be released from punishment, this does not mean that they actually would. It is therefore not surprising that there are very few complaints about corruption lodged by citizens. Finally, the actual implementation of action plans for the execution of the anti-corruption strategy (which are actually prepared according to a regular schedule) is very poor, which is not surprising considering the fact that this strategy is not accompanied by other documents and there are no adequate experts for its implementation.

²⁰ “Revolving door” is a term that denotes a conflict of interest situation in which officials from various public administration bodies, as well as political officials in general, move to directorial, managerial or consultancy positions in private companies and vice versa. This term is generally used in theory to denote situations when “politicians move into the private sector”. The unwritten rule in transparent socio-political communities is that politicians may move into the private sector only after the legally defined period of two years, as is the case in Japan.

3. LOCAL BUREAUCRACY



CAPACITY

3.1. ADEQUATE RESOURCES



To what extent does the local bureaucracy have adequate financial, infrastructural and human resources to effectively carry out its duties?

“The public sector has an adequate financial, infrastructural and human resource base to effectively carry out its duties.”

Comment:

Local bureaucracy of the Brčko District of BiH is the most desirable, and perhaps the only local administration in the country offering very favourable and adequate remuneration for work in public administration bodies. Compared to other public administration bodies in BiH, the average salary of employees in the local bureaucracy of the Brčko District is significantly higher. For example, the gross salary in the public administration sector of the Brčko District of BiH is KM 1,910²¹, while the average gross salary in the public

administration sector in entities is around KM 1,610.²² Even greater difference in favour of the Brčko District of BiH is found in the education and public health sectors where differences in gross salaries are in excess of KM 400. Hence, we can say that the Brčko District has an absolutely adequate financial resource base to effectively carry out its duties. The same conclusion can be drawn with regard to infrastructural and human resources in the District’s local bureaucracy, although when it comes to provision of certain public services there are examples of good practice in other local communities which could benefit Brčko citizens if replicated in the District. However, the local bureaucracy in the District has some distinctive features. In addition to dealing with matters that typically belong to the purview of local self-government, the District bureaucracy performs legislative and executive tasks in sectors and areas falling within the District’s jurisdiction. Given that the sectors falling within the District’s jurisdiction are under obligation to create policies and implement regulations, the District bureaucracy is expected to carry out tasks that are not entirely typical for local government units. It is precisely this that poses a challenge in providing adequate resources to the local bureaucracy for performing tasks that are outside the domain of local self-government. For example, the Brčko District of BiH, as one of the levels of government in the country, has been actively involved in matters relating to EU integration; however, the District bureaucracy has only a few people with appropriate skills and competencies employed in positions related to these matters. When these capacities are compared with those in the two en-

²¹ According to a publication by the Agency for Statistics of BiH, available for download from http://www.bhas.ba/publikacijebd/BRC_2014_003_OPS%20.pdf

²² According to a publication by the Agency for Statistics of BiH, available for download from http://www.bhas.ba/saopstenja/2014/BPL_2014Q2_001_01_BH.pdf

tities, the obvious conclusion is that there is a considerable need to further develop the District's institutional and human resources in areas such as EU integration, access to funds, etc.

3.2. INDEPENDENCE



To what extent is the local bureaucracy free from external interference?

“Whilst rules on merit-based recruitment exist, there are a few examples of nepotism/favouritism and/or interference from local political actors although this is not widespread or severe.”

Comment:

Recruitment in public administration bodies of the Brčko District is regulated by the Law on Civil Service in Administrative Bodies of the Brčko District of BiH, an entire chapter of which is devoted to HRM. Among other things, this chapter states that the managers of the administrative bodies in the District are responsible for recruitment planning and professional development of public servants and employees in the administration. The plan of human resources needs in administrative bodies is drawn up by 30 September of the current year for the following year, based on the organisational plan and in accordance with the general HR principles, and is submitted to the competent HR authority, i.e. Human Resources Division of the Department for Professional and Administrative Affairs of the Brčko District of BiH. Based on the plan, the competent HR authority, in cooperation with the competent budget authority, proposes to the Mayor a detailed request for salaries to be included in the proposed budget for the next

fiscal year. Based on the funds approved in the budget for the salaries of public servants and employees, the Mayor makes a decision on the implementation of the plan for recruitment of public servants and employees. In other words, recruitment in administrative bodies of the Brčko District of BiH is, in theory, based on open competition and professional merit and reflects the structure of the population (although the second element remains fairly dubious in practice). As a rule, it is only in the event that more than one person receives the same aggregate score in the selection procedure that there is a requirement to make a ranking list that reflects the structure of the population (in terms of ethnicity, gender, age, professional and other background), and these cases should not be misused if they could lead to selection of a less qualified candidate. However, there has been speculation in the public that it is precisely this element that in many cases leads to irregularities in the recruitment process and leaves scope for interference by politically influential figures in the final outcome. In terms of professional career advancement, civil servants are promoted by being moved up within a pay grade if their performance has been appraised as “fully meeting expectations” in the last four years or as “exceeding expectations” in the last two years. The procedure for advancement within the organisational hierarchy is not elaborated in detail in the secondary legislation. To conclude, despite the fact that the Brčko District has fairly good rules and regulations on merit-based recruitment and promotion of public servants, which are formally complied with, there are a significant number of complaints regarding the way in which these recruitment procedures are conducted (e.g. complaints about favouritism shown towards certain candidates). Such complaints, however, are rarely resolved in favour of those who lodged them.

ROLE

3.3. ENSURING TRANSPARENCY AND INTEGRITY IN LOCAL PUBLIC PROCUREMENT



To what extent is there an effective framework in place to safeguard transparency and integrity in local public procurement procedures?

“Whilst procurement systems exist at the local level, these contain certain loopholes which are vulnerable to corruption and bidding processes are not always timely and/or transparent.”

Comment:

Public procurement in the Brčko District is generally based on the principles and rules defined in the Public Procurement Law of BiH, the Guidelines on the Application of the Public Procurement Law and other by-laws related to public procurement. In general, the public procurement system is formally very transparent, including the fact that the Brčko District has established a centralised public procurement system, where procurement is conducted by the Department for Professional and Administrative Affairs, Public Procurement Division, i.e. Public Procurement Commission, in accordance with the Guidelines on the Application of the Public Procurement Law in the Brčko District. However, in practice the situation is quite different from what is envisaged in public procurement regulations. In fact, most of the speculation regarding the lack of transparency, corruption and low integrity concerns precisely public procurement in the District. There is a suspicion that in recent years there have been numerous violations of the Public Procurement Law,

the formal evidence of which exists with the Procurement Review Body (PRB) of the Public Procurement Agency of BiH, as a second-instance body in public procurement procedures. The PRB data show that in 2012 only as many as 38 appeals were upheld, which puts the Brčko District at the very top in terms of the number of final rulings issued in public procurement appeals procedures. Furthermore, the supreme audit institutions at all levels point to violations of laws and bylaws in the implementation of public procurement, including in the Brčko District. Reports of the Office for Audit of the Public Administration and Institutions of the Brčko District of BiH show certain irregularities that cast doubt on the integrity of the procedures implemented, while the professional and general public and the business community remain extremely suspicious of the regularity of public procurement. The Office cited examples from 2012 as follows:

- “A substantial number of budget users failed to consistently implement the provisions of the Public Procurement Law in the execution of procurement procedures before the completion of the procurement process. In addition, we found evidence of the inconsistent application of the Instruction on the Procurement of Goods, Services and Contract Awarding in the Brčko District of BiH when documenting the type, scope and quality of supplied materials and services and the actions undertaken with the aim of carrying out market research in procurement by direct agreement”;
- “In 2012 [...] did not carry out the planned activities on the implementation of the Action Plan for the Implementation of the Strategy for Combating Corruption (2009–2014) in the Brčko District of BiH, while expenditures for “Services of implementing the concept for the realisation of a part of activities from the anti-corruption action plans” in the amount of KM 136,890.00 were realised without consistent application of the Instruction on the Procurement of Goods”;

- “When procuring vehicle maintenance services, the Department failed to include, in addition to the price of standard hours, the cost of materials needed for maintenance as criteria for the evaluation of bids, as is required by the Public Procurement Law”;
- “[...] was not made in accordance with the Public Procurement Law of BiH insofar as it relates to timely initiation and completion of the procurement procedure, contracting volume and value of the services offered, and documentation of the services performed”.

Furthermore, although Article 8 of the Instruction on the Procurement of Goods, Services and Works defines the appointment, duties and responsibilities of the Public Procurement Commission and the Secretary of the Commission, not a single paragraph of the said article defines the legal liability of the Commission. Hence, in practice there are no examples of responsible persons ever being held to account (in terms of disciplinary or criminal liability or answerability to the public) for numerous irregularities in the public procurement system. However, the legal framework governing public procurement which was in force until recently was a major source of dissatisfaction for both sides, each having its own reasons. The new law, which is harmonised with European standards in this area, should come into force in October 2014, and should prevent numerous irregularities that were observed in practice. That said, the public procurement system which was in force until recently, if applied properly, provided a fairly

²³ Office for Audit of the Public Administration and Institutions of the Brčko District of BiH, “Public Report for Year 2012”, p. 10, Brčko District of BiH, 2013 (available for download from the following page http://revizija-bd.ba/cms/index.php?option=com_joomdoc&view=documents&path=Javni_Izvestaji%2F2012-javni_izvestaj_revizije_finansijskog_poslovanja_institucija_Brcko_distrikta_BiH.ba.pdf&Itemid=16&lang=ba)

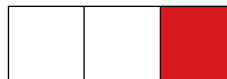
²⁴ Ibid.

²⁵ Ibid., p. 16.

²⁶ Ibid., p. 22.

good framework for efficient and effective spending of public funds.

3.4. PROMOTING SOCIAL ACCOUNTABILITY AND PARTICIPATION



To what extent does the local bureaucracy promote social accountability mechanisms that provide local citizens with opportunity to interact with and make demands on local governments?

“The local bureaucracy is completely inactive in promoting social accountability initiatives and the participation of school boards, school committees, health management boards etc. in decision-making processes.”

Comment:

There are a significant number of mechanisms (particularly those used in modern local self-governments) that should provide the local bureaucracy with information on the involvement of citizens and interest groups in the making of various decisions (such as decisions related to education, relationship with citizens, strategic planning, development of urban planning documentation, etc.). However, the public administration of the Brčko District of BiH does not actively use these mechanisms and there are no notable examples of promotion of social responsibility mechanisms in their work. Furthermore, there are no notable examples of citizen involvement through, for example, systematic communication via the Internet, systematic talks between citizens and representatives of public administration, referenda, citizens’ meetings, panels and other forms of collective civic consultation, so the most important decisions are typically made without the participation of

those who are affected by those decisions.

3.5. TAX COLLECTION



To what extent is local revenue collection fair and transparent?

“Local revenue collection methods are not entirely clear, overly complicated and/or leave some space for extortion and/or personal benefits in practice.”

Comment:

The legal framework for the collection of local revenues (*this is primarily meant to denote direct tax and non-tax revenues at the local level*) is defined at the level of the Brčko District and is largely transparent and fair, but not fully accessible to the public. However, some local revenues have often been the subject of concern, the collection of some of the revenues is somewhat complicated and debatable, and there have also been cases of misapplication of regulations by the public administration in collection of some direct taxes, which was proved in second-instance proceedings. For example, the Office for Audit of the Public Administration confirmed in 2012 that: *“the Tax Administration of the Finance Directorate misapplied the substantive law when determining the tax liability on real estate and, as per the judgment of the Appellate Court of the Brčko District of BiH, had to pay KM 167,954.40 for default interest and costs of the administrative dispute.”*

3.6. PROTECTING LAND AND PROPERTY RIGHTS



To what extent are land and property rights protected by the local government?

“Local land, property and urban planning regulations exist but do not cover all relevant issues the ability of citizens to contest decisions by the local government is limited in practice.”

Comment:

The regulations governing property issues, urban planning and construction permits (including urban permit) are generally clear and streamlined. They provide for legal mechanisms (public hearings, presentation of data, complaints, regular and extraordinary legal remedies) whereby citizens can (both in theory and in practice) influence decision-making on the use of building land. Also, the District has adopted the Expropriation Law to regulate situations when expropriation is necessary for the purpose of constructing structures or carrying out construction works in the public interest²⁷ of the Brčko District of BiH, and when it is deemed that the usage of the real estate for which the expropriation will be suggested will bring bigger benefits than was the case with the earlier usage of the real estate. If citizens are dissatisfied and want to contest land use

²⁷ The decision establishing that structures or construction works are in the District's public interest is issued by the District Assembly upon the proposal of the expropriation beneficiary, after obtaining the excerpt from the urban plan along with the expert opinion of the relevant Department or allotment plan or excerpt from the regulation plan or excerpt from the urban development project or excerpt from the urban lines, in accordance with the spatial plan.

decisions by the authorities (whether legislative or executive), they have access to appropriate legal mechanisms. While all of the above is very transparent in theory, in practice there has been a lot of debate about non-transparent land allocation and extortion (even corruption) in these processes. It is worth noting that during the District's development phase the international community responded on numerous occasions via its Brčko Supervisor to issues related to property, spatial planning and construction permits (including urban permits). Further problem in this area is posed by the lack of political will. There were cases when the District Assembly could not adopt implementing regulations only because, for example, there was no agreement about the construction of certain religious buildings in certain parts of the District. Although the subject of the political agreement is not of consequence for this study, the main point here is that the citizens of Brčko should not suffer legal consequences because political parties cannot come to agreement on land allocation or the right to build certain structures.

GOVERNANCE

3.7. ADMINISTRATIVE TRANSPARENCY



To what extent is there transparency in financial, human resource and information management of the local public sector?

“Provisions are in place but these do not cover all aspects related to the transparency of the public sector and this information is difficult to access in practice.”

Comment:

Regulations governing asset disclosures for senior officials are incomplete. Also, this information is impossible to access in practice. Although certain regulations provide for the public accessibility of this information, there are no examples of its disclosure in practice, which prevents the public from learning of potential conflicts of interest, as required by the Rules on the Work of Public Servants and Government Employees as well as the Code of Ethics of Civil and Public Servants and Employees in the Institutions and Administrative Bodies of the Brčko District of BiH. Also, information and documents about public procurement procedures and recruitments are mostly available online, but only to a partial extent, while information on the assets owned by the District is difficult to access in practice. Furthermore, it is particularly difficult to access information regarding transparency in financial, human resource and information management in newly-created public enterprises or companies that perform activities of public interest.

3.8. ACCOUNTABILITY OF LOCAL PUBLIC SERVANTS



To what extent are local public servants answerable for their actions in practice?

“There are some provisions to ensure that local public servants have to report and be answerable for their actions but these are not comprehensive and/or are implemented in a piecemeal way.”

Comment:

Code of conduct for public servants and government

employees are regulated by the Law on Civil Service in the Administrative Bodies of the Brčko District of BiH, Rules on the Work of Public Servants and Government Employees, and the Code of Ethics of Civil and Public Servants and Employees in the Institutions and Administrative Bodies of the Brčko District of BiH. The same law regulates the issue of conflict of interest, and, as a rule, public servant or government employee is considered to be in a conflict of interest if he/she: works under the supervision of a close relative, is self-employed, is a member of political party organs, carries out activities outside working hours without the approval of the head of the public administration body, performs additional activities for a fee without the approval of the head of the public administration body, is nominated and appointed to public office contrary to the procedure prescribed by law, and is engaged in activities related to proposing policies, making decisions and entering into contracts in which the public servant or government employee has property, financial or other interests. Regulations governing the disciplinary liability and procedure following citizens' complaints are implemented in a piecemeal way and audit findings do not result in sanctions against servants who are responsible for the irregularities, as has been noted already in previous sections of this report. In practice, citizens are not informed of mechanisms for holding public servants to account, which means that the well-defined rules cannot be implemented with the full participation of the public in those cases that are aimed at preventing the irresponsible behaviour of public servants and government employees. Also, internal procedures rarely result in public servants being held to account. For all these reasons, the entire system of accountability of public servants and employees in the public administration of the Brčko District of BiH seems to be inefficient and lacking in substance. However, there have been several examples of disciplinary sanctions, although citizen are often not aware of these. Therefore, it is necessary to publicly highlight the examples where civil servants or

government employees were held to account in connection with the performance of their duties, in order to maximise confidence in the public administration and enhance its integrity.

3.9. INTEGRITY OF LOCAL PUBLIC SERVANTS



To what extent is the integrity of local public servants ensured?

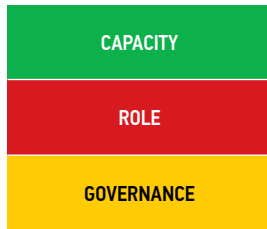
“Only some of the rules on conflict of interest, gifts & hospitality, whistleblower protection, unauthorised use of official property/facilities and employment of family members are in place with piecemeal enforcement and/or levels of corruption are low but not insignificant in the local public sector.”

Comment:

Other than the usual rules relating to conflict of interest, code of conduct and disciplinary liability of civil servants, there are very few clear and comprehensive internal regulations governing relations within the public administration of the Brčko District of BiH, which would aim to have a more decisive preventive and proactive approach to opaqueness, corruption and opportunities for conflicts of interest. Thus, there are instances of violations of conflict of interest provisions under the Rules on the Work of Public Servants and Government Employees, in particular with regard to membership in political parties (public servants and government employees are allowed to join political parties) or engagement in activities related to proposing policies, making decisions and entering into contracts in which the public servant or government employee has property, financial or other interests. Furthermore, it is

not uncommon during recruitment in public administration bodies for the selection panel to ask questions related to the integrity of public servants (e.g. question regarding the “superior’s order to the employee to do something that is clearly contrary to the law”), which automatically implies that such things happen in practice, and candidates are given a clear signal from the very outset that they will probably come across such examples in their future work as public servants or government employees.

4. LOCAL POLITICAL PARTIES



CAPACITY

4.1. ADEQUATE RESOURCES



To what extent do the financial resources available to local political parties allow for effective political competition?

“Resources for local political parties and access to the media are largely adequate but somewhat biased towards certain parties compromising political competition.”

Comment:

Financing of political parties is regulated by the Law on Political Party Financing of BiH (2012), but the Brčko District of BiH adopted its own Law on Financing of Political Parties from the Budget of the Brčko District of BiH in 2004. According to this Law, political parties that are certified by the Election Commission of BiH for participation in the elections for the Assembly of the Brčko District of BiH are entitled to financing from the budget of the Brčko District. The law provides that the funding for the election campaign of political parties is provided in the year in which regular elections are held for the Assembly of the Brčko District in the amount of 0.03% of revenue in the budget of the Brčko District or KM 60,000, whichever amount is lower, and funding for the regular operation of political parties is provided on an annual basis in the amount of 0.1% of revenue in the budget of the Brčko District or KM 200,000, whichever amount is lower. The funds allocated for the regular operation of political parties are distributed in the manner that 30% of the total funds (KM 60,000) is equally distributed to all political parties represented in the Assembly of the Brčko District, 50% of the total funds (KM 100,000) is distributed proportionately to the number of seats held by each political party at the time of allocation, and 20% of the total funds are distributed to the opposition parties in the Assembly of the Brčko District proportionately to the number of seats they hold (in this sense, the opposition parties are parties that participate in the Assembly of the Brčko District, but do not provide support to the Government of the Brčko District and whose representatives are not executive officeholders in the Brčko District). Thus, the governing coalition and stronger political parties receive greater support in terms of funding and continue to grow even stronger (regulatory bias). This distribution of power is mirrored in election campaigns, where the propaganda of the strongest parties and their presence in the media is much more visible than that of the other parties that

receive less financial resources, compromising political competition at the local level. Also, the reduced level of integrity and transparency of the legislative and executive authorities may increase the possibility of political parties turning to private sources of funding, which in turn threatens and undermines the competitive political scene in general.

4.2. INDEPENDENCE



To what extent are local political parties free from unwarranted external interference in their activities?

“Local political parties operate freely and are subject only to reasonable oversight linked to clear and legitimate public interests. Local branches of national parties are able to exercise a fair degree of discretion.”

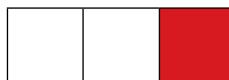
Comment:

Provided that this fits with the general policy of each party, local branches of political parties are able to exercise discretion in decision-making about local matters. This is particularly true of the Brčko District of BiH given that the issues that are the subject of political discourse outside the Brčko District are sometimes not directly related to the already established political, administrative and bureaucratic trends in the District. Also, most parties operate freely without any unwarranted external interference, though in practice it appears that the smaller the political party at the national level (i.e. the level of the state and its entities), the greater the discretion in intra-party decision making. Conversely, more stable political parties rely largely on a narrow circle of individuals in which underrepresented individuals rarely have the chance to come to the fore in the

intra-party decision making.

ROLE

4.3. INTEREST AGGREGATION AND REPRESENTATION



To what extent do local political parties aggregate and represent a broad range of social interests at the local level?

“In general, political parties are based on clientelism and narrow interests and many relevant social interests do not find a voice in the local political scene.”

Comment:

Very complicated political situation in Bosnia and Herzegovina is in most cases mirrored in the Brčko District. However, there are examples when the governing coalition at higher levels of government differs markedly from that in the Brčko District. However, such a coalition generally receives less support from the coalitions at the state level, the consequences of which are often suffered by citizens of the Brčko District. In the past there was an example of the “concentration government” (without opposition), which proved to be an attempt to oblige the international community and accommodate the common interest, which, bearing in mind that citizens do not represent a corrective factor, appears somewhat contradictory because when there is no opposition, there is no effective control mechanism. Furthermore, constant political struggle between major political actors at the state or entity level often causes complications in the Brčko district too. It is not uncommon for individuals in government to shift political allegiance, which only goes to prove that there

is no proper representation of a broad range of social interests. Also, the lack of awareness among citizens that representatives in the Brčko District government are also their representatives (which is partially caused by ethnic divisions or discriminations) causes the local political parties to be mainly based on clientelism and narrow interests so many relevant social interests do not find a voice in the local political scene. Such a political environment at the local level essentially leads to parties being self-sufficient and turned to themselves, while any serious, thorough and programmatic work towards the general interest of the citizens in the District continues to be sorely lacking. To put it simply, if the president of local community is represented in the Brčko District government, there is a great possibility that the interests of that local community will be realised regardless of what the reality requires, all at the expense of citizens who do not have their representatives in government. This results in an uneven development of local communities in the Brčko District and inadequate representation of all social interests. Finally, it is worth noting that there have been virtually no new faces in the government for the last 15 years. The local political scene has been largely dominated by the same group of individuals, who after elections only change the position they occupy within the power separation system in the Brčko District (*which is not necessarily a negative phenomenon in itself, but it may indicate narrow clientelism*).

GOVERNANCE

4.4. TRANSPARENCY OF LOCAL POLITICAL PARTIES/ CANDIDATES



To what extent is there transparency in the opera-

tions of local political parties?

“While a number of laws/provisions exist, they do not cover all aspects related to the financial information of local political parties and/or accessing this information is usually a difficult, cumbersome and/or lengthy process in practice.”

Comment:

Regulations on political party financing apply to all political parties in the country and consequently to their local branches. The current political party financing system in the Brčko District is not transparent enough and does not allow the public an easy access to relevant information about the sources of funding for political parties, particularly about private sources. The Central Election Commission imposed sanctions for non-compliance with regulations on political party financing, but this has not borne fruit in terms of increased transparency of political party funding.

4.5. ACCOUNTABILITY OF LOCAL POLITICAL PARTIES



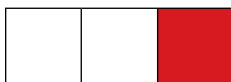
To what extent is there effective oversight of local political parties?

“Whilst an independent agency (e.g. electoral management body) is mandated to oversee and supervise the finances and activities of local political parties this does not happen consistently. There are some regulations governing the financing of local political parties but these are not always enforced in practice.”

Comment:

The Central Election Commission is mandated to oversee and supervise the finances and activities of local political parties, undertake investigations and take appropriate measures, but it does not provide the detailed information as required by law, so it is sometimes impossible to access relevant information about parties and their sources of funding. The process is further compounded by the fact that certain political parties do not submit their reports in a consistent manner, as prescribed by laws and regulations related to the financing of political parties, which means that these are not fully implemented in practice.

4.6. NOMINATION AND SELECTION OF LOCAL CANDIDATES



To what extent are local candidates selected in a fair and transparent manner?

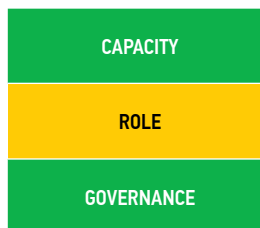
“There are no written procedures and criteria for the nomination and selection of candidates for local elections and selection and nomination of candidates is entirely undemocratic and opaque or done on the basis of clientelism.”

Comment:

Nomination of candidates for local elections within political parties is done exclusively in accordance with unwritten rules and at the discretion of party leaders, who take responsibility for their choice and eventual failure in local elections. While there are examples of democratic approach within certain local parties, the number is very negligible. So, even though the ques-

tions of internal organisation, rights, obligations and responsibilities of members and bodies of political parties are defined in the statutes, in practice the degree of internal democracy varies widely from party to party. In fact, most parties are only professedly democratic, while in reality decisions on key issues, strategy or solutions are made by one man or a narrow circle of people around the party leader, and party bodies serve only to give a semblance of democracy. Membership is, therefore, often interest-oriented and the main motive for joining a political party is not to make a difference, but to gain personal benefits or obtain employment, which is achieved through affiliation with the ruling party/parties. Also, the issue of nomination of “unethical” candidates is not adequately addressed and there is not enough awareness among citizens to refrain from voting for candidates who were involved in corruption scandals in the previous mandate or against whom investigation is conducted after reports of corruption, as should be preventively regulated in parties’ internal rules and codes of conduct for their members and elected officials.

5. COURTS OF THE BRČKO DISTRICT OF BIH



CAPACITY

5.1. ADEQUATE RESOURCES



To what extent do local courts have adequate financial, infrastructural and human resources to effectively carry out their duties?

“Local courts have adequate levels of resources to operate effectively in practice.”

Comment:

Local courts and the Prosecutor's Office of the Brčko District of BiH provide adequate salaries and incentives for judicial office holders to remain in post. While there are some delays and backlogs in dealing with cases, these do not seem to be caused by a lack of human resources but, rather, by other objective reasons. Judicial staff receive regular training and education on issues of integrity, as provided for in the relevant plans. As regards financial resources, the Brčko District of BiH is required to provide the necessary financial and other support to ensure the smooth and proper functioning of courts in accordance with the Law on Courts. Also, for the purpose of ensuring and maintaining the independence of the District's judiciary, the Judicial Commission prepares its annual budget proposals in a manner and format required by the Brčko District Finance Directorate and submits them according to the established budget calendar. It is important to emphasise here that the Mayor or the Directorate may not change the budget proposal submitted by the Judicial Commission. However, there are doubts that the District Assembly, which adopts the Law on Budget Execution, has the potential to influence, to a certain degree, the policy-making in

these institutions. Whether true or not, at least this is how the public perceives it.

5.2. INDEPENDENCE



To what extent are local judges free from undue interference?

“There are transparent and objective selection procedures for local judges and no recent examples of political interference in the selection of judges. There are regulations for allocating cases on an objective basis and protecting local judges from undue influence which are effective in practice. Judges are not subject to intimidation and harassment in practice.”

Comment:

The Judicial Commission of the Brčko District of BiH was established with the aim of ensuring independence and impartiality of the judicial and prosecutorial office holders and ensuring professionalism and efficiency of the Basic and Appellate Courts of the Brčko District of BiH. The Law on the Judicial Commission of the Brčko District of BiH defines the judicial principles, the procedure for appointment and dismissal of the court president, judges, chief prosecutor and deputy chief prosecutor, the standards for determining the incompatibility of the judicial and prosecutorial office with other functions, the procedure for determining liability for disciplinary offences, removal or dismissal from office and other issues related to the Commission's work (it is important to emphasise that the chief prosecutor, deputy chief prosecutor and prosecutors are selected and appointed or dismissed by the High Judicial and Prosecutorial Council of BiH (HJPC)). The competences

and authority of the HJPC are defined in Article 17 of the Law on the High Judicial and Prosecutorial Council of BiH. These include, *inter alia*, the appointment of all judges and prosecutors, including presidents of courts and chief prosecutors, as well as initiating and conducting disciplinary proceedings against judges and prosecutors, including provisions on incompatibilities of functions and conflicts of interest.

This ensures a transparent and objective procedure based on professional criteria for the selection and dismissal of judges at the local level. Also, the Commission is in particular responsible for ensuring the highest standards of professionalism in the appointment and dismissal of judges and prosecutors in the courts and the Prosecutor's Office of the Brčko District of BiH, thus preserving and safeguarding the independence of the courts and the Prosecutor's Office of the Brčko District of BiH. In practice there have been no reports of intimidation and harassment against judges, which in no way means that these do not happen in exceptional situations. The relevant laws and regulations have positively regulated the issue of case transfers for objective reasons.

Article 2 of the Law on the Judicial Commission provides that "*nobody has the right to give instructions or orders to or influence the Judicial Commission in carrying out its functions*"; however, the actual practice stands at odds with this provision. Namely, members of the Commission from among the citizens of the Brčko District of BiH are proposed by the District Assembly's Committee for Selection and Appointment, in which sit representatives of political parties who thus have the ability to directly influence the work of all members of the Judicial Commission, regardless of the fact that they are representatives of citizens. This raises serious doubts as to the nature of such selection procedures given the provision contained in Article 7, paragraph 3 of the Law which states: "*Members of the Commission*

may not be members of political parties, participate in the activities of political parties or endorse candidates or platforms of political parties". The Law on the Prosecutor's Office of the Brčko District of BiH stipulates that the chief prosecutor, deputy chief prosecutor and prosecutors have to submit to the District Assembly their annual financial disclosure statements on their total incomes, sources, assets and liabilities as well as on incomes, sources, assets and liabilities of the close family members up to the first degree and the manner in which they acquired possession of them, which, if true, should in no way be the case.

ROLE

5.3. FIGHTING CORRUPTION



To what extent are local courts active in fighting corruption?

"Local courts have full jurisdiction to take on corruption-related cases but do not do so in practice."

Comment:

Annex VI to the Supervisory Order of 26 June 2007, enacting various laws and amendments to laws of the Brčko District pursuant to the Supervisory Order of 2 February 2007 amending the Statute of the Brčko District, enacted *inter alia* the Law on the Prosecutor's Office of the Brčko District of BiH regulating the issues of general jurisdiction and authorisations of the Prosecutor's Office, duties and responsibilities of prosecutors and staff, internal organisation and operations, transparency of work, financing and other issues of importance for the functioning of the District Prosecu-

tor's Office. Prosecution has full territorial jurisdiction to undertake stipulated measures and activities related to detecting and prosecuting perpetrators of criminal offences and economic crime, including corruption (conducting investigations, issuing and representing indictments, pursuing legal remedies and performing other duties authorised by law) which is treated as a criminal offence under the Criminal Code of the Brčko District of BiH. The District Prosecutor's Office does not have a special unit or department to deal exclusively with corruption offences, but these tasks are performed by the Department for Economic, Financial and Organised Crime of the District Prosecutor's Office, whose official name is only formally missing a term that would define its fight against corruption. On the other hand, the District's Criminal Investigation Police Unit has a Division for the Fight against Economic Crime and Corruption. The Prosecutor's Office and the police are functionally related, especially since the adoption of the Criminal Procedure Code of the Brčko District in 2003 and the introduction of the adversarial system of criminal law and the transfer of responsibility for investigations from the jurisdiction of the court to the exclusive jurisdiction of the Prosecutor's Office. The Prosecutor's Office has an obligation to conduct investigations, and in investigations the police are under an obligation to act upon the orders of the Prosecutor. The Prosecutor's Office and the Police of the Brčko District have the power to conduct an investigation when there are grounds for suspicion that a criminal offence under the Criminal Code of the Brčko District has been committed. A better picture of the prosecution of corruption offences can be obtained from the reports of the Prosecutor's Office as they contain data on verdicts passed by the District courts when acting upon indictments brought by the Prosecutor's Office, while the reports of the police mainly contain data on the number of reports submitted to the Prosecutor's Office, which do not necessarily result in indictments or final guilty verdicts. A search of the CMS database (Case Management System) of the

District's Basic Court, performed by an authorised officer for the purposes of this study, showed that in 2013 a total of 11 corruption-related cases were prosecuted with final verdicts. This is a significant increase over the preceding two years, when only five guilty verdicts were passed for abuse of office/authority, embezzlement and misfeasance.²⁸ Despite the marked increase in the number of cases of corruption prosecuted by the District's judicial authorities, the assessment for this indicator remains average only because of the huge gap between the public perception of corruption versus the number of cases prosecuted in the last few years and their outcomes. Also, the burden of proof for corruption cases is on the Prosecutor's Office; however, not all relevant factors in the prosecution of corruption can be said to be completely proactive in this regard, which inevitably results in public dissatisfaction.

5.4. TRANSPARENCY OF LOCAL COURTS



To what extent is there transparency in the operations of local courts?

"Local courts are required to provide timely information to the public and do so in practice. Public hearings/proceedings are required by law and take place in practice."

²⁸ Operational definition of corruption used in this study includes the corruptive criminal offences defined in chapter "Criminal Offences of Bribery and Offences against Official and Other Responsibility" of the Criminal Code of the Brčko District of BiH.

Comment:

In accordance with the applicable legal provisions, local judiciary is required to provide timely information on appointments and removal of judges, judgements, judicial statistics, court hearings etc. to the public. Most of this information can be found on the websites of the Basic Court of the Brčko District of BiH (www.osbd.ba) and the Appellate Court of the Brčko District of BiH (www.asbd.ba), the Judicial Commission of the Brčko District of BiH (www.pkbd.ba) and the Prosecutor's Office of the Brčko District of BiH (www.jtbd.ba). In handling requests for information, the courts and the Prosecutor's Office are required to comply with the Law on Free Access to Information in BiH. Requests for access to information are submitted to the Judicial Commission of the Brčko District of BiH. The request form, submission procedure and other issues relating to the handling of requests are explained in detail in the Guide for Access to Information which, along with an indexed register of all information in the control of the District's judicial authorities, was defined by the Judicial Commission of the Brčko District of BiH. The law further stipulates that public authorities have an obligation to allow, to the fullest extent possible, access to information which, being a public resource, is in their control. Since parts of the most frequently requested information (indictments and other individual acts) contain personal data whose unauthorised disclosure may violate the right to privacy of the accused, the principle of legality and the presumption of innocence, Articles 8 and 10 of the Law on Free Access to Information in BiH and Articles 54 and 28 of the Law on the Protection of Personal Data provide for exemptions from free access to this category of data. For this reason such personal data are always anonymised in the information that is submitted as per request for access to information. As required by the Rules on Court Operations, the Basic Court of the Brčko District of BiH has installed a box whereby any complaints, suggestions and compliments

are submitted directly to the President of the Court.

ACCOUNTABILITY

5.5. ACCOUNTABILITY OF LOCAL COURTS



To what extent are local courts answerable for their actions in practice?

"Local judges are required to give reasons for their decisions and there is an effective and timely appeals mechanism against judicial decisions. There is an independent and effective body investigating complaints and/or accusations of corruption against local judges."

Comment:

Judges of both courts in the Brčko District of BiH are required to give reasons for their decisions and there is an effective and timely appeals mechanism against judicial decisions (judgements) in practice. The District's judicial system has the right and duty to report, on its own initiative or upon request, to the District Assembly on its work as well as the application of criminal legislation in the Brčko District, the crime situation and crime trends, and the handling of cases. The District Assembly takes note of presented reports and may issue general suggestions and recommendations for improvement of work, for example, of the District Prosecutor's Office. Judges may not be members of political parties or endorse political candidates or political party platforms, or in any way be involved in any political activity. As stated earlier, oversight of judges and prosecutors and the Legal Aid Agency in the Brčko District is exercised by the Judicial Commission, which is authorised to investigate complaints and/or accusa-

tions of corruption against local judges. This process is specifically defined in the Law on the High Judicial and Prosecutorial Council of BiH, which, *inter alia*, provides that: “Judges, prosecutors, reserve judges or lay judges, including presidents of courts, chief prosecutors and their deputies, shall be liable for statutory disciplinary offences committed intentionally or negligently”... and that: “The Council shall exercise its powers in disciplinary proceedings through its disciplinary bodies”.

5.6. INTEGRITY OF LOCAL JUDGES



To what extent is the integrity of local judges ensured?

“All of the rules and codes for the integrity of local judges are in place and effectively enforced and there have been no recent examples of conflicts of interest in the local courts.”

Comment:

The Law on the High Judicial and Prosecutorial Council of BiH adopted by the Parliamentary Assembly of BiH, which entered into force on 1 June 2004, established the High Judicial and Prosecutorial Council of BiH as a state body. Protection of the public and the judicial system from judges and prosecutors who fail to comply with their professional and ethical responsibilities is one of the important functions of the Council; more precisely, the Law lays down clear and transparent criteria to be used by the Disciplinary Counsel in disciplinary proceedings against judges and prosecutors. The Council’s jurisdiction for determining disciplinary liability and imposing disciplinary measures includes all prosecutors, judges, presidents of courts, lay judges

and reserve judges in all prosecutors’ offices and courts in the country, including the Brčko District. The Office of the Disciplinary Counsel (ODC) exercises its jurisdiction through the Council’s disciplinary activities or, more broadly, through the protection of the public and the judicial system, and reports directly to the Council. ODC is required by law to receive, investigate and file disciplinary charges following complaints against judges and prosecutors of the Brčko District. Further rules relating to the integrity of judges (as well as public servants in the judicial system of the Brčko District) are elaborated in the Code of Ethics for Judges and Prosecutors (which, *inter alia*, makes reference to ethical principles, professionalism and responsibility to work), in the Rules on Disciplinary and Material Liability of Public Servants and Employees in the Judicial System of the Brčko District, the Rules on Recruitment in the Judicial System of the Brčko District, and the Rules of Operation of the Judicial System of the Brčko District. These rules are directly related to the integrity of judges in the Brčko District and, according to information obtained from interviews with key informants, they are enforced in practice. There have been no recent examples of conflicts of interest in the local courts.

6. POLICE OF THE BRČKO DISTRICT OF BIH

CAPACITY
ROLE
GOVERNANCE

CAPACITY

6.1. ADEQUATE RESOURCES



To what extent do police at the local level have adequate levels of financial, infrastructural and human resources to operate effectively in practice?

“Police at the local level have an adequate resource base to effectively carry out their duties.”

Comment:

When it comes to the level of available resources, the Brčko District Police absolutely fall within the internationally recognised standards. The Brčko District Police have 251 police officers and 43 civil servants and staff (a total of 294 employees). Special attention is paid to introduction of technical and technological innovations in equipment (such as the AFIS system, equipment for recording calls to the emergency phone number 122, GPS positioning equipment for radio devices, audio-vidéo surveillance in official vehicles, DMS, etc.). Police salaries are competitive in comparison with other parts of the country, which is a prerequisite for the proper conduct of mandated duties and responsibilities.

6.2. INDEPENDENCE



To what extent are police at the local level free from undue external interference?

“Whilst rules on merit-based recruitment exist, there are a few examples of nepotism/favouritism and/or interference from local political actors although this is not widespread or severe.”

Comment:

Theoretically and formally, the Brčko District Police operate exclusively on the basis of professional criteria and do not represent, protect or undermine the interests of any political party, registered organisation or association of any constituent or other people in BiH. The organisational model of the Brčko District Police is unique in that the Police are run by the Chief of Police, who reports directly (i.e. without the mediation of a political authority in the form of a Ministry of Interior) to the District Assembly and the Mayor. Selection and evaluation of the performance of the District Chief of Police is the formal responsibility of the Independent Committee, a permanent body of the District Assembly which proposes to the Mayor candidates for Chief of Police and Deputy Chief of Police or their dismissal. The Independent Committee is appointed by the District Assembly upon the proposal of the Selection and Appointment Committee and Credentials and Immunities Committee of the District Assembly. It consists of seven members, of whom two are appointed from among the members of the District’s Judicial Commission and five are distinguished experts from the fields of law, criminology or police work. The work of the Independent Committee is financed from the budget of the District Assembly. However, in view of the above, and given the fact that the Chief of Police reports to the District Assembly as well as given how the budget of the police is adopted and how laws dealing with social and legal matters are passed in the District, the Brčko District Police cannot be considered completely free from political interference.

ROLE

6.3. INVESTIGATION OF CORRUPTION



To what extent are police at the local level active in investigating corruption?

“Police at the local level have full powers to detect and investigate corruption cases and do so proactively in practice.”

Comment:

Corruption offences under the Criminal Code of the Brčko District of BiH are investigated by organisational units of the Criminal Investigation Unit or its specialised body (Division for the Fight against Economic Crime and Corruption). The local police deals with two types of corruption: “external” (under the direction and supervision of the Prosecutor’s Office of the Brčko District of BiH) and “internal” (within the Brčko District Police through the Professional Standards Unit), thus ensuring maximum proactivity in combating corruption. The Police have adequate powers (arrest warrants, access to personal information, etc.) and there are numerous practical examples of investigation of corruption within and outside the police. The police are under obligation, *inter alia*, to report to the police authorities and law enforcement agencies in BiH about the information obtained in the performance of their duties relating to criminal offences and misdemeanours falling within the remit of police authorities and law enforcement agencies in BiH. Also, it is important to emphasise that the Brčko District Police have conducted a significant number of internal disciplinary proceedings, indicating that this authority has realised that the key to local integrity

is the integrity and ethics of employees and that these elements are the basis of all actions and implementation of any regulations, including those relating to the prevention of corruption.

6.4. TRANSPARENCY OF POLICE AT THE LOCAL LEVEL



To what extent is there transparency in the operations of police at the local level?

“While a number of laws/provisions exist, they do not cover all aspects related to the transparency of police at the local level and/or provisions are not always enforced.”

Comment:

Transparency is regulated by the Law on the Police of the Brčko District of BiH, which provides that the police are required to regularly inform the public about their activities and issues of general importance, of importance to companies and other legal persons and measures they intend to apply in addressing these issues. Also, with a view to ensuring the transparency of the work of the Police and in the interest of public safety, the Chief of Police provides natural and legal persons with all information necessary for their protection. Final reports on crime and police activities are regularly published and are publicly available on the website of the Brčko District Police. The Brčko District Police has a spokesperson who has the obligation to *“inform the public through print and electronic media on all the successes and events that are important for the overall security in the area of Brčko District”*. In addition, all citizens have the right to access information in the control of the police, according to the conditions and

procedures prescribed under the Law on Free Access to Information of BiH and the Access to Information Guide and Index. The strategy of the Brčko District Police is currently defined in the document entitled “Strategic Plan of the Brčko District Police of BiH for the period 2013-2018”. The Plan clearly identifies the goals of the Police and defines responsibility for its implementation which is operationalised through an Annual Work Programme (for each year of the duration of the Strategic Plan). Development Strategy of the Brčko District Police is available on the Police’s website. However, it is very difficult for the public and citizens (especially those who are not experts in internal affairs) to access relevant information on the functions and activities of police at the local level (powers, strategies, case files, decisions, assets of senior police officers, etc.).

ACCOUNTABILITY

6.5.ACCOUNTABILITY OF POLICE AT THE LOCAL LEVEL



To what extent are police at the local level answerable for their actions in practice?

“Existing provisions are effective in ensuring that police at the local level have to report and be answerable for their actions and the services of the police at the local level are equally accessible to all citizens in practice.”

Comment:

Before providing a direct answer to the above indicator, it is important to point out that the employees of the Police include police officers, civil servants and staff. The rights and duties of police officers are defined in

the Law on Police Officers, while those of civil servants and staff are defined in the Law on Civil Service in Administrative Bodies of the Brčko District of BiH. So, all provisions relating to civil servants are also applied to staff of this administrative body. Also, it is important to emphasise that all natural and legal persons may submit petitions, complaints and suggestions concerning the work of the Police to the Professional Standards Unit, the Office for Citizens’ Complaints of the District Government and the Assembly’s Committee for Public Safety and Oversight of the Police. The police has to consider the submissions and provide written response within the statutory time period, while the Office for Citizens’ Complaints of the District Government monitors the actions taken upon citizens’ complaints concerning the work of the police. Therefore, the Brčko District Police are answerable for their actions through four levels of accountability, namely: internal control (through the Professional Standards Unit and Internal Control), judicial control (through the appeals process), parliamentary control (through the Brčko District Assembly, i.e. Independent Board), and the so-called “civilian oversight” by the media and NGOs. Generally, experience so far has shown that the Police are answerable for their actions to a considerable degree and citizens have equal access to their services in practice.

6.6.INTEGRITY OF POLICE AT THE LOCAL LEVEL



To what extent is the integrity of police at the local level ensured?

“There are comprehensive provisions in place and a comprehensive approach to ensuring the integrity of members of the police at the local level.”

Comment:

There are provisions in place ensuring the integrity of the Brčko District Police (such as the Code of Ethics for Police Officers, Civil Servants and Staff of the Brčko District Police, codes of conduct, rules on conflict of interest and gifts and hospitality, post employment restrictions, training on issues of conflict of interest). What is also important to note under this indicator is that the Police have identified certain departures from integrity principles and indications suggesting a lack of integrity and ethics among employees who committed offences such as: misconduct related to corrupt behaviours and breach of ethics, excessive use of force (irrespective of the outcome of investigation), and other instances of malpractice which are not characterised as criminal offences, dereliction of duty, violation of confidentiality, etc. All this impelled the police to actively develop programmes and activities aimed at strengthening the integrity of employees. Existing rules are effectively enforced in practice and there are proactive inquiries into alleged misbehaviour and occasional examples of disciplinary sanctions for misbehaviour.

OVERSIGHT AND ACCOUNTABILITY FUNCTIONS

7. COMPLAINTS HANDLING

CAPACITY
EFFECTIVENESS

CAPACITY

7.1. ACCESS TO A COMPLAINTS MECHANISM

--	--	--

Is there an independent procedure (e.g. through an ombudsman or similar function) to deal with complaints of perceived unjust treatment by the Local Government?

“There is a local independent complaints procedure specifically designed to deal with complaints of perceived unjust treatment by the Local Government.”

Comment:

Within the public administration there are internal regulations prescribing a procedure specifically designed to deal with citizens' complaints, the responsibility for which rests with a special Office for Public Appeals and Complaints operating under the Office of the Mayor of the Brčko District of BiH. The Rules of Procedure of the Office for Public Appeals and Complaints of the Brčko District (2009) defines the procedure for handling public complaints about the work of public administration authorities, including all kinds of actions and measures taken in connection with the submitted complaints, as well as the powers and obligations that the competent authority has in this regard. For the purposes of these Rules, appeal is defined as a written submission or a statement given for the record indicating the unlawful conduct of public administration which is harmful to the general interests or individual rights of the citizens of the Brčko District of BiH, and complaint is defined as a written submission or a statement given for the record which indicates the individual unlawful, negligent or rude behaviour by managers of public administration,

civil and public servants or staff employed in public administration. Of course, citizens of the Brčko District of BiH can also approach the Institution of the Human Rights Ombudsman of BiH²⁹, which also has the Office for the Brčko District of BiH, in case of complaints relating to poor functioning or violations of human rights committed by any public administration bodies of the Brčko District.

EFFECTIVENESS

7.2. INVESTIGATION OF COMPLAINTS



How effective is the complaints procedure in practice?

“The complaints procedure is somewhat complicated, complaints are processed with some delays or rulings are not always fair or effectively enforced.”

Comment:

While citizens and interest groups may lodge complaints about the Government of the Brčko District, in practice there are no examples of complaints resulting in any noticeable change. The complaints procedure is relatively slow. The paucity of complaints lodged and even fewer complaints that are positively resolved testi-

fy to citizens' distrust in this justice seeking mechanism as well as the insufficient quality and thoroughness of checks and procedures in addressing these complaints (*and negligible degree of utilisation of avenues for complaining about the silence of administration*). Another problem is posed by the fact that the Brčko District is the only local government in the country that “combines”, in the form of the above-mentioned Office, the legal institution of appeal (*even though appeal is a legal remedy in administrative procedures*) and the institution of complaint which, in the modern understanding of this mechanism, should not only be designed to redress the grievances of disgruntled citizens, interest group or organisations, but also be a mechanism guided by the degree of the party's satisfaction with the current status of his/her case with a view to increasing proactive user-orientation in the organisation of services and work of the Government, which ultimately promotes innovative, efficient and transparent local government.

8. AUDITING



CAPACITY

8.1. PROVISIONS FOR LOCAL GOVERNMENT AUDITS



To what extent are there regular audits of the local government and comprehensive sanctioning provisions?

²⁹ Institution of the Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the Constitution of Bosnia and Herzegovina and the international treaties appended thereto.

“There are clear rules for local government audits and these are conducted annually by objective and qualified auditors and with the result publicly displayed and/or available for the public.”

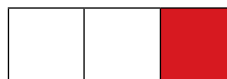
Comment:

The Office for Audit of the Public Administration and Institutions of the Brčko District of BiH, as one of the basic accountability mechanisms, was established in 2007. Its activity is performed in accordance with the Law on Audit of Public Administration and Institutions in the Brčko District of BiH, the Law on Budget of the Brčko District of BiH, the International Standards of Supreme Audit Institutions – ISSAI, and the Code of Professional Ethics of Auditors. In the exercise of its duties and powers under the Law, the Audit Office is independent and not subject to the direction or control of any other person or institution other than defined in this Law. Accordingly, for the purpose of establishing and maintaining the independence of the Brčko District Audit Office, the Audit Office submits its annual budgets in a manner and format required by the Directorate according to the established budget calendar. The Mayor or the Directorate cannot make changes to the budget submitted by the Audit Office. The Office is non-political and cannot support or be associated with any political party. The Audit Office performs annual audits of the public administration of the Brčko District of BiH, judicial institutions, public funds, institutes and other institutions that are financed from the budget of the Brčko District of BiH, public enterprises, enterprises in which the District has a share-holding of 50% plus 1 share or more, institutions or activities that receive budget funds or donations provided by other levels of government in the country or abroad either as a loan or a grant for the Brčko District of BiH. The Office prepares an annual audit plan and submits it to the District Assembly by 31 December of the current year. During the year the Office draws up audit reports and submits them to the audited

institutions, Assembly, Government and the Prosecutor's Office of the Brčko District of BiH. This provides preconditions to at least partially ensure transparency in the spending of public funds. Almost all the reports produced in the period 2006–2013 are available on the Audit Office's website.³⁰

EFFECTIVENESS

8.2. EFFECTIVENESS OF LOCAL GOVERNMENT AUDITS



How effective are local government audits?

“The outcomes and recommendations of the audits are rarely/never acted upon by the local government and sanctions rarely/never enforced.”

Comment:

Public reports of the Audit Office contain findings and recommendations of audits conducted in departments and institutions, as well as findings and opinions on the financial statements of the budgets of the Brčko District of BiH, public enterprises, agencies and funds. However, as the Office states: *“In 2012 the following opinions were issued: 3 unqualified opinions, 2 unqualified opinions with an emphasis of matter, 18 qualified opinions, and 3 adverse opinions. Increase in the number of adverse opinions, as well as the scope and type of qualifications issued in qualified opinions, indicate*

³⁰ http://revizijabd.ba/cms/index.php?option=com_joomdoc&view=documents&path=Izvjestaji%2Fba&Itemid=16&lang=ba

that, compared to the previous year, with the exception of elimination of formal deficiencies, no significant improvements have been made in the existing practices or the awareness of the need to strengthen public accountability of persons in institutions/departments that manage public resources". This statement completely justifies the assessment given for this indicator, primarily because of the increase in the number of adverse opinions, but also due to the fact that only 60% of recommendations issued in 2011 were implemented in the previous year, which is far from satisfactory. While audited institutions have an obligation to draw up and implement action plans for implementation of audit recommendations, a significant number of these plans include only the irregularities identified in the qualification of the opinion while leaving out those identified in other findings and recommendations presented in the report, which is why a lot of irregularities remain unnoticed and are repeated in the future. Furthermore, preference is given to elimination of formal deficiencies in procedures and their adjustment to practice, without making efforts to improve the practice itself, so audits often find important gaps that are repeated from previous periods. Also, lack of sanctions against responsible persons further undermines the already compromised system of transparent and accountable spending of public money.

8.3. OVERSIGHT OF LOCAL GOVERNMENT AUDITING



To what extent is there effective oversight of local government auditing?

"The central government has little or no authority or access to investigate financial mismanagement of the local government and does not use these powers

proactively. The central government does not regularly examine the effectiveness of internal auditing within the local government and provides only minimal technical support."

Comment:

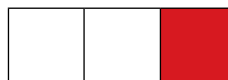
Given the administrative setup of the Brčko District of BiH, the central government does not have the authority to oversee local government auditing. Oversight of local government auditing, i.e. professional appraisal of the Brčko District Audit Office, is exercised by an external quality controller selected in accordance with the Public Procurement Law of BiH, who is hired at the initiative of the District Assembly for a period of no longer than three years (selection is done by 31 March of the current year and the professional appraisal report is submitted to the Assembly by no later than 30 September of the current year).

9. INVESTIGATION AND EXPOSURE OF CORRUPTION



CAPACITY

9.1. CAPACITY FOR INVESTIGATION AND EXPOSURE OF CORRUPTION



To what extent is there capacity for independent

investigation and exposure of corruption at the local level?

“There is no media interest in corruption issues in the local area and no anti-corruption body with any powers to investigate corruption at the local level.”

Comment:

Other than the Brčko District Police and Prosecutor's Office, which investigate and prosecute criminal offences with elements of corruption as part of their regular activities, there is no other structured body that has an interest, serious political support, power or authority to seriously tackle the issue of corruption at the local level. The District Assembly has a Committee for the Fight against Corruption, but its responsibilities are not clearly defined and its work is often hampered by District Councillors leaving the Committee. The Committee's work has not resulted in any visible achievements in practice. Also, the State Agency for Prevention of Corruption and Coordination of the Fight against Corruption, which is an independent and autonomous administrative organisation reporting to the Parliamentary Assembly of BiH, has not delivered any noteworthy results at the level of the Brčko District of BiH, even though it has jurisdiction to investigate corruption at this level of government. Finally, given that the majority of media outlets in Brčko District are privately owned, with limited resources and narrow geographic coverage, the opportunities for research and investigative journalism on a variety of issues including corruption remain very limited, resulting in heavy reliance on the news and information provided by agencies.

EFFECTIVENESS

9.2. EFFECTIVENESS OF INVESTIGATION AND EXPOSURE OF CORRUPTION



To what extent are cases of corruption in the local government actually investigated and exposed in practice?

“There is some investigation and exposure of corruption the local government but with limited prosecutions as a result.”

Comment:

One of the most active CSOs in the Brčko District when it comes to the fight against corruption is the Youth Centre “Vermont”, which has in recent years implemented a number of anti-corruption projects, and its annual work plans always include activities related to the fight against corruption. Cooperation with other CSOs and donors such as ACCOUNT and implementation of the “Stop Corruption” project³¹ has resulted in the development of a consistent system for reporting corruption online (<http://vermontbrcko.com/>) and via a dedicated hotline and e-mail address. This has resulted in a significant number of reports of corruption, which are upon receipt forwarded to a large number of addresses in order to maximise the possibility of prosecuting these cases. However, given the length of the investigation process and court proceedings, prosecution remains limited, but the significant increase in the number of investigations being opened is certainly encouraging. As already indicated, 11 corruption-related cases were prosecuted with final verdicts in 2013, which is a significant increase over the preceding two years, when

only five guilty verdicts were passed for abuse of office/ authority, embezzlement and misfeasance.

10. ANTI-CORRUPTION AWARENESS-RAISING AND ADVOCACY



CAPACITY

10.1. CAPACITY FOR AWARENESS-RAISING AND ADVOCACY ON ANTI-CORRUPTION



To what extent is there capacity for educational activities, public information and advocacy on anti-corruption issues at the local level?

“There are some examples of educational activities, public information and advocacy on anti-corruption issues at the local level although no specific campaigns/ programmes have been implemented over the past two years.”

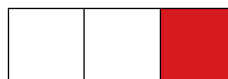
³¹ The project’s specific objective is to raise public awareness in the Brčko District of BiH of issues pertaining to corruption in the District, develop recommendations for combating corruption in health and education, and establish adequate mechanisms to reduce corruption.

Comment:

In the absence of a separate body to deal with this issue in a structured manner, non-governmental organisations (as noted above) have taken some of the anti-corruption activities upon themselves. The Police also engage in preventive actions, to the extent possible within their modest means, such as educational and community-based activities, public information and advocacy on anti-corruption issues at the local level, but primarily those aimed at addressing their own needs (e.g. *the Police planned funding for a corruption prevention project to be implemented in 2014*). Even so, the approach to this issue remains piecemeal, although it is worth noting that the District Assembly has set up a special committee for the fight against corruption, and that there is coordination at the level of the Government regarding the implementation of anti-corruption measures under the action plan. However, this is not enough to be qualified as a systematic approach to anti-corruption issues.

EFFECTIVENESS

10.2. EFFECTIVENESS OF AWARENESS-RAISING AND ADVOCACY ON ANTI-CORRUPTION



To what extent are educational activities, public information and advocacy on anti-corruption issues at the local level successful in combating corruption?

“There is no media interest in corruption issues in the local area and no anti-corruption body with any powers to investigate corruption at the local level.”

Comment:

Given that there are no developed institutional, media and civil structures or a significant organised activity in the fight against corruption, there can be no significant support or results in the fight against corruption. If we add to this the findings of the audit of public administration conducted by the Audit Office stating that: *“In 2012 the Government of the Brčko District of BiH did not carry out the planned activities on the implementation of the Action Plan for the Implementation of the Strategy for Combating Corruption (2009–2014) in the Brčko District of BiH, while expenditures for “Services of implementing the concept for the realisation of a part of activities from the anti-corruption action plans” in the amount of KM 136,890.00 were realised without consistent application of the Instruction on the Procurement of Goods”... and that “the services of implementing the concept for the realisation of a part of activities from the anti-corruption action plans in the amount of KM 136,890.00 were paid without a written report of the provided service in terms of quality, quantity and period of execution. No new independent body for prevention of corruption and coordination of the fight against corruption has been established within the public administration system nor has the implementation of other activities begun, which is contrary to the deadlines stipulated by the Action Plan for the Implementation of the Strategy for Combating Corruption”, one gets a pretty clear picture of how effective awareness-raising and advocacy on anti-corruption is in practice.*

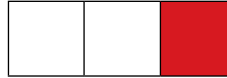
11. SOCIAL ACCOUNTABILITY

CAPACITY

EFFECTIVENESS

CAPACITY

11.1. CAPACITY FOR SOCIAL ACCOUNTABILITY



To what extent are non-governmental actors active in promoting social accountability to hold the local government to account?

“Non-governmental actors are inactive in promoting social accountability initiatives to hold the local government to account.”

Comment:

Very few NGOs have well-developed infrastructure and resources, i.e. capacity to call on local authorities to consistently implement the measures outlined in their policies, or to review the work and accountability of local authorities. Such activities, even when they exist, are short-lived, do not get structured support from the government (other than lip service), and are dependent on the availability of donor funds. Existing NGOs (*including local communities and hundreds of inactive “NGOs”*) are not active in promoting social accountability initiatives to hold the local authorities to account. Also, the “state-sponsored” NGOs do not seem to be enthusiastic about taking their place in the promotion of good governance or increasing the integrity and transparency of local public administration, which would lead to an increase in the quality of life in the District. To this we must add the fact that local NGOs are (co)financed from the budget of the Brčko District, so it is no wonder that there are very few such projects in practice. On the other hand, the interest of international organisations in financing such projects has waned, which is no surprise considering all their previous involvement in the

democratisation of the Brčko District.

EFFECTIVENESS

11.2. EFFECTIVENESS OF SOCIAL ACCOUNTABILITY



To what extent have social accountability initiatives by non-governmental actors been successful in holding the local government to account?

“Social accountability initiatives are absent or have been unsuccessful in holding the local government to account with no behaviour/policy change as a result.”

Comment:

The few non-governmental initiatives aimed at holding the local government to account and calling for consistency in the implementation of public policies have not resulted in significant behaviour change in terms of enhanced integrity in the conduct of local affairs. How effective social accountability is can be seen from the commentary of one NGO, whose representative said that: *“No social accountability initiative has ever been launched by public administration ... unless we start it, it will never happen”* – which only goes to indicate how effective the local government is when it comes to social accountability.³²

³² Interview with a member of and NGO from the Brčko District, 3 July 2014 (*The representative of the NGO wanted to remain anonymous. His/her identity is known to the author of this report.*)

VI CONCLUSION AND RECOMMENDATIONS

Looking at the final results of the Brčko District LIS Assessment, it can be concluded that the capacity of all core local government actors is satisfactory and represents a solid basis for successful actions towards improving integrity in their work. However, although the average assessment for the indicators is satisfactory, there are a number of actors who do not have sufficient capacity (institutional, human resources or know-how) to fully tackle the challenges brought about by the ongoing reforms of public administration.

When we look at the role of the core actors in the local integrity system, it is obvious that political parties are an extremely important integrity pillar in the Brčko District as they delegate the holders of two key pillars of power – legislative and executive, and have a very powerful influence on all other aspects of social life in the District. However, political parties are generally not the creators of moral and legal measures that will

lead to increased social accountability in the Brčko District. Instead of being pragmatic and functional in their operation, most parties operate on the principle of politicisation of their accountability. Furthermore, given that only political parties can nominate their members to the Brčko District Government, advisory functions and managing boards of public enterprises, and that they conduct many processes outside the established institutional channels and at their own discretion, it is essential to improve transparency in the operations and financing of political parties and ensure that the selection of candidates for local elections is based on clear criteria and established procedures, which would result in the selection of best candidates who would be able to fully meet the needs of citizens in the District. Furthermore, there is a degree of inconsistency between the regulations and their actual enforcement regarding the role of actors, especially when it comes to oversight by the District Assembly. The problems take the form of

excessive politicisation of elected representatives' relations towards the Mayor and the District Government and the constant conflicts between the parliamentary majority and opposition.

Only the police and judiciary of the Brčko District of BiH can be said with certainty to have solved, both normatively and practically, the issues related to local integrity and transparency. Governance mechanisms of all other authorities, however, remain of average quality. The most important institutions that have mandates to deal with corruption in government and public administration are: the Office for Public Appeals and Complaints operating under the Mayor's Office, the Ethics Officer, the Office for Audit of Public Administration and Institutions of the Brčko District of BiH, the Police, the Prosecutor's Office and the courts. On the other hand, it is necessary to drastically increase public involvement in the work of the legislative and executive authorities in the Brčko District of BiH, bearing in mind that local governments, including the Brčko District, are currently undergoing a period of dynamic development, so any solutions that today may appear good and innovative may as soon as tomorrow need to be reviewed in the light of changes in society and changes in the needs and expectations of citizens. All levels of government in the Brčko District have adequate resources to carry out their duties, but it is imperative to enhance the role of councillors and government representatives as well as employees in the public administration in order to improve their direct communication with citizens with the aim of better understanding the specific problems they face.

In accordance with the above, the basic assumption regarding citizens' right to participate in governance at the local level is that this is not a right given to citizens by their local or state governments, or a right that arises from international instruments, but the original citizens' right and a basic principle of democratic rule. So, by electing their representatives to the executive

(Mayor) and representative bodies (Assembly), citizens do not transfer in full on to them their sovereign right to manage their local community. Active citizen participation is indeed essential for the development and strengthening of democracy at all levels of government, but the local government should not take this as the only reason for ensuring increased participation of citizens in decision-making. It is an important mechanism for enhancing the management capacity in local government and, if understood broadly enough, it can lead to real and lasting partnerships between the three sectors in the local community (public, private and civil society sectors). This partnership can produce many, perhaps unexpected benefit for all parties, including the discovery of new sources of finance for public projects and improving general ability to solve problems in the Brčko District.

As regards the capacity and effectiveness of functions in the integrity system, special attention should be paid to the effectiveness of the mechanisms for lodging complaints about the work of public administration bodies and their employees in order to increase public awareness of the difference between an appeal, which is a legal remedy, and a complaint, which is a grievance lodged in a written form in order to complain about the work of public administration. On the other hand, when it comes to investigation and exposure of corruption as the most important elements of integrity of any political-territorial community, it should be noted that (*despite the alarming data presented in audit reports*) the fight against corruption is not adequately represented in the daily work of the administrative bodies in the Brčko District. Only a few cases of corruption have been prosecuted so far involving a police officer and a few public servants. A comprehensive and functional internal control system is a fundamental prerequisite for the proper and efficient operations, compliance with established policies, protection of assets, prevention of errors, as well as accurate and complete financial records and timely and reliable financial information.

Audits have found that the prescribed managerial, administrative-control and accounting-control procedures as well as risk assessment procedures and the exercise of oversight by management are not sufficiently precise and clear. In this regard, it is necessary, upon the completion of legal proceedings that are the result of misapplication of substantive law, to examine the causes of these errors and then take necessary measures to ensure that these are not repeated in the future.

As a summary of this section, given below is a list of main strengths and weaknesses of local integrity system in the Brčko District:

STRENGTHS OF THE LOCAL INTEGRITY SYSTEM IN THE BRČKO DISTRICT

- Adequate financial and human resources, as a prerequisite for enhancing the integrity system, transparency and the fight against corruption in the Brčko District of BiH;
- Financial stability ensured through indirect taxes, as a prerequisite for long-term planning of the integrity system development and investment in human resources and institutional capacities of the Brčko District of BiH;
- The existence of local courts (i.e. the judiciary as a whole) and the police of the Brčko District, which facilitates communication between authorities, the judiciary and law enforcement agencies;
- The existence of general normative provisions on the basis of which it is possible to develop a system for preventing corruption and increasing integrity, confidence in the work of the public administration of the Brčko District and the availability of resources that can be used for this purpose;
- The existence of the Office for Audit of the Financial Operations of the Brčko District Institutions, as a precondition for preventive action against financial irregularities in the operations of the public sector of the Brčko District;

- The possibility of international support to the Brčko District of BiH;
- The coherence of functions of the Brčko District of BiH and ease of the legislative procedure in the District Assembly (the possibility of making its own laws and other regulations), which can increase the level of integrity in the District;
- Experience of the Vermont Youth Centre in anti-corruption activities, as a precondition for good cooperation with CSOs on the issue of the integrity of the Brčko District of BiH.

WEAKNESSES OF THE LOCAL INTEGRITY SYSTEM IN THE BRČKO DISTRICT

- Very negative perception by the general public and businesses of the level of corruption in the public sector of the Brčko District of BiH, especially in the field of public procurement, which significantly compromises the integrity of public administration and erodes confidence in its work and, more generally, in the future development of the District;
- Some councillors lack knowledge of the very important issues necessary for the effective performance of their duties. Also, the aforementioned resources are underutilised (e.g. there are no notable examples of systematic education of councillors on important issues needed for the effective performance of their duties);
- Absence of a system to regularly monitor and evaluate the development of the Brčko District of BiH, especially in terms of social inclusion and development;
- Lack of systematic and efficient communication of citizens with all levels of government and the absence of programmes to increase public awareness of mechanisms for communication between elected councillors and citizens of the Brčko District of BiH;
- Absence of an independent body for prevention of corruption and coordination of the fight against corruption modelled upon the Independent Committee for Monitoring the Work of the Police Chief or the Agency/

Office for Preventing and Combating Corruption in the Brčko District of BiH;

- Legal provisions that are supposed to have a preventive effect on corrupt practices are ill-defined and lack precision, and are consequently applied in an uncoordinated manner, thus failing to achieve their purpose;
- Very poor implementation of the recommendations and findings of the Brčko District Audit Office;
- CSOs are too weak and do not have the necessary support to significantly raise public awareness of corruption and trigger profound changes in the local government's working practices;
- Very low civic participation in decision-making processes that are important to the public and the citizenry of the Brčko District and the lack of a systematic approach to planning the development of the District, which leaves room for non-transparent planning of expenditures that might be at variance with the development needs and potentials of the Brčko District of BiH;
- Inadequate strategic approach to the planning and implementation of development activities as evidenced by the lack of strategic planning and links between strategic development goals and the District's annual plans and budgets, which creates a challenge in the systemic approach to development planning and progress monitoring;
- Inadequate and two-way communication between representatives of the government and the business sector, including civil society;
- Slow growth of the NGO sector caused by lack of financial resources for NGO projects and activities;
- Local political parties are extremely closed and mostly serve particular interests;
- Unclear procedures for lodging complaints about the work of public administration and civil servants employed in the public sector of the Brčko District of BiH, as well as limited access to and low level of public awareness of this mechanism.

RECOMMENDATION

1. Consider mechanisms to increase efficiency and accountability in the work of employees in public administration and public sector as a whole, particularly in terms of civil servants' accountability to citizens;
2. Consider mechanisms to increase public availability of information about the use of funds earmarked for the education of employees in the public administration of the Brčko District of BiH;
3. Consider reorganising the Commission for Monitoring the Implementation of the Law on Public-Private Partnership such to include representatives of such interest groups as NGOs, citizens or higher levels of government;
4. Work towards enhancing communication between the executive, with the participation of representatives of the District Assembly, and representatives of the business sector and civil society, and ensuring that this tripartite structured communication is focused on improving the performance of all three sectors;
5. Consider detailed formalisation of the implementation of recommendations of the Brčko District Audit Office, with consistent use of repressive proceedings in case of non-compliance, which would increase the accountability of individuals to citizens, i.e. accountability in use of public funds of the Brčko District of BiH;
6. Consider establishing a mechanism to regularly inform the public about important issues in the lives of citizens through communication channels that have a wider coverage than those used today;
7. Consider providing co-financing from the budget of the Brčko District of BiH for innovative projects of civic participation in public administration processes and activities, such as citizens' panels;
8. Consider performing a detailed analysis of implementation of the Law on Freedom of Access to Information in all public sector institutions of the Brčko District, along with adoption of recommendations and individual public communication action plans of the

Brčko District of BiH;

9. Consider separating the legal institutions of complaints and appeals in line with modern principles of increasing accountability, independence and transparency and work on raising public awareness of the opportunity to influence the work of individuals in administrative bodies, particularly those that citizens have a direct contact with, in accordance with the Law on Administrative Procedure;
10. Consider further elaborating and fine-tuning the accountability system for civil servants and employees in the public administration of the Brčko District of BiH while paying special attention to preventing the “revolving door” appointments from becoming a generally accepted norm of behaviour;
11. Consider establishing an Office for Quality of Public Administration to deal with issues of integrity, transparency and accountability of public administration bodies and act preventively against corruption;
12. Consider establishing communication mechanisms that would be aimed at increasing the trust of citizens and businesspeople in the public procurement system of the Brčko District of BiH;
13. Consider introducing an informal training scheme for councillors on issues relevant to transparency, integrity, corruption, accountability and public perception;
14. Consider adopting a participatory integrated development strategy according to the MiPRO methodology, which is used in most local government units, which should include action plans for integrity, fight against corruption and citizen participation in decision making;
15. Consider developing and adopting a programme to increase public awareness of the mechanisms for communication between elected councillors and citizens of the Brčko District of BiH;
16. Consider the possibility of establishing a function of strategic development planning and performance monitoring in order to increase efficiency of administrative bodies, institutions and public services through precise and measurable indicators, which would ultimately

result in improved spending of public funds for development projects, in accordance with modern principles of strategic planning (*through the formation of the Agency for Integrated Development, the Division for Strategic Planning and Implementation of Projects which would operate under the Department for Economic Development, Sports and Culture or under the Mayor’s Cabinet, or by using other approaches*);

17. Consider the establishment of an independent body for prevention of corruption and coordination of the fight against corruption modelled upon the Independent Committee for Monitoring the Work of the Police Chief or the Agency/Office for Preventing and Combating Corruption in the Brčko District of BiH, which will have the powers, political support and normative power to cooperate with the Police and the Prosecutor’s Office of the Brčko District of BiH in prevention and detection of corruption in the public and private sectors of the Brčko District of BiH.

All of the above represent brief conclusions and recommendations arising from a baseline study of the local integrity system and public perceptions in the Brčko District. The citizens of the Brčko District expect the fight against widespread corruption in the country, and particularly in the Brčko District of BiH, to undergo a judicial renaissance, which will serve to strengthen all prevention programmes and activities carried out in the sectors that are believed to be beleaguered by corruption. In conclusion, despite the fact that the normative framework in the District is better than in the entities and other local governments, which facilitates prevention and suppression of corruption and helps increase transparency, integrity and accountability of local government, better coordination between District’s institutions, as well as active engagement with citizens, remain a serious challenge in the future.

VII BIBLIOGRAPHY

1. Analytics – Centre for Social Research, *Assessment of Budget Transparency in the Municipalities in Bosnia and Herzegovina*, report no. 1/2011
2. Bogoljub Milosavljević, *Strengthening Citizen Participation at the Local Level in Republika Srpska: Analysis of the legal framework with recommendations*, (published by the Associations of Municipalities and Cities of Republika Srpska)
3. Budget of the City of Bijeljina for Year 2014
4. Centres for Civic Initiatives, *Accountable Councillor – Project Report*
5. EDA Banja Luka, (May 2006), *Situation Analysis of Local Self-Government in BiH*
6. EDA (2007), *Block by Block – It's Good to Build Well (models of organisation of local self-governance)*
7. EDA (2008), *Corrections of Remodeling – It Is Good to Build Well (Analysis of development options in local self-governance in BiH)*
8. Political Party Financing in BiH – Report by Transparency International Bosnia and Herzegovina
9. *Report on the Audit of the Consolidated Financial Statements for Budget Users of the City of Bijeljina for the Period 1 January – 31 December 2012*
10. Miroslava Grujić-Kalkan, *Financing the Development of Local Communities in Republika Srpska*, (Financing – Scientific magazine for economy – 04/12)
11. Ranking list of RS municipalities by level of development
12. Statute of the City of Bijeljina
13. Strategy for the Development of Local Self-Government in Republika Srpska for the period 2009–2015
14. Strategy for the Training of Employees in Local Government Units in RS (2011–2015)
15. Development Strategy of the City of Bijeljina 2014–2023
16. World Bank – Sustainable Development Department, *From Stability to Performance – Local Governance and Service Delivery in Bosnia and Herzegovina*, January 2009

17. Transparency International Bosnia and Herzegovina, *National Integrity System Study – Bosnia and Herzegovina 2013*

18. Law on the Budget System of RS

19. Law on Construction Land of RS

20. Law on the Status of Officials of Local Government Units

21. Law on Spatial Planning and Construction

22. Law on the Local Self-Governance of RS

23. Zdravko Zlokapa, Local Government in a Complicated state: *Local Self-Governance in Bosnia and Herzegovina* (in "Models of Organisation of Local Self-Government – Slovenia, Croatia, Bosnia and Herzegovina, Macedonia and Serbia", PALGO centar, Belgrade, 2008)

