

GOOD GOVERNANCE AGENDA 2025

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OBJECTIVE

Good Governance Agenda 2025 aims to offer innovative policy approach to the systemic governance challenges in Bosnia and Herzegovina caused dominantly by capturing the state by ethno-nationalist elites. Over the prolonged period situation with rule of law and governance in the country has been deteriorating and endangering citizens basic human rights.

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The starting point of this approach is a thesis that transitions from state captured regimes to regimes based on rule of law are political and not only technical-legal processes. In that regard, this approach is focused less on technical/legal reform and more on shifting fundamental relations of accountability by promoting 'deep democratization' or stronger, more functional administration through rationalization and e-governance.

CONTEXT

BiH is classified as a country with the hybrid regime (one lying in the middle of the continuum between consolidated democracy and full-fledged autocracy, also known as competitive authoritarianism) which is characterized by regular electoral irregularities, systemic violation of human rights, lack of judicial independence, high level of corruption, pressure on the media and almost non-existing rule of law.

Relevant studies of corruption indicate the absence of progress and even deterioration in the overall fight against corruption in BiH over a prolonged period, namely since 2006. This period of deterioration has coincided with the change in the international community's approach and role in the country. After a period of robust international intervention, the international presence has changed considerably since 2006. The direct intervention has given way to a conditionality-based approach.

Overall, it could be argued that BiH, with direct support from international actors, made considerable progress in establishing and strengthening the rule of law, especially in the first phase of the reform prior to 2006. Due to the changes in the approach and role of international actors, with increasing reliance on the conditionality approach that is an inherent feature of the EU integration process, the reforms started losing momentum. The power vacuum left after the international actors had pulled out of the operational management of the reform was filled by local political actors whose primary interest is to maintain the status quo.

It is well established that the key problem is presence of state capture, a type of systematic corruption whereby narrow interest groups – ethno-political elite, took control of the institutions and processes that make public policy, excluding other parts of the public whose interests those institutions are supposed to serve.

The devastating consequences of corruption can be detected in almost all aspects of social and economic development. The complexity of the corruption problem lies in the fact that without progress on its elimination it is not possible to make powerful strides in the implementation of any reform process.

A context-sensitive diagnosis of the country's broader political economy context suggests that transition of the country has been stuck in what is known as a "partial reform equilibrium" in which various distortions in the functioning of the market economy were built into the very nature of the state, providing highly concentrated advantages to particular individuals and firms with close connections to state power while imposing high costs on the rest of the population in the form of inconsistent or incomplete market reforms.

Key mechanism of capturing the state is political clientelism as predominant linkage between ethno-political parties and voters (patronage - quid pro quo - material resources: public contracts, public jobs for political support).

- Public sector employment: According to estimations based on TI BiH analysis around 90% of public jobs distributed through patronage networks.
- Public procurement: According to SAI BiH Performance Audit 2018..."85% of public procurement contracts are not managed according to the provisions of the Law on Public Procurement..."
- Judiciary: Impunity for political corruption is the important indicator of political control over judiciary.

THEORY OF CHANGE

In situations where country is in the state of capture, it is extremely difficult to build sufficient political momentum for action and convince key actors that the need for intervention is urgent or even necessary.

Moreover, where the balance of power is already skewed, achieving political change as first step would require finding adequate entry point.

In the context of total capture of the state, potential entry point could be reframing of anti-corruption reforms with the focus on efficiency and functionality. Such approach is less confrontational for those working in close proximity to captors.

This policy perspective is summed up by the admonition: 'You don't fight corruption by fighting corruption'. This indirect approach gained prominence over the last decades with the main argument that dominant anti-corruption paradigm - the „principal-agent“ approach, focuses too narrowly on reverse-engineering anti-corruption measures from those found in low-corruption countries, an approach that assumes that direct anti-corruption reforms are the main cause of transitions to integrity. Proponents of an indirect approach argue that this is a fundamental flaw, as we know from empirical research that the causes of change are not specific reforms, such as national anti-corruption strategies or new regulations, that aim to change individual incentives for potentially corrupt actors.

Rather, it is deeper changes to governance or society that often allow for broad and collective progress. Those countries that have sustainably transitioned to a less-corrupt equilibrium have done so mostly without recourse to specific anti-corruption policies and institutions.

In other words, indirect approach focuses on structural problems and deeply rooted causes rather than on symptoms. In the context of BiH, that would mean in the first-place focus on drying up resources and reducing opportunities for corruption through optimization of the public sector. Effective and sustainable policies for good governance need to diminish the political and material resources of corruption and build normative constraints in the form of domestic collective action.

As previously stated, transitions from state captured regime to regimes based on rule of law is inherently political process par excellence and not only technical-legal processes. Therefore, it is about generating and articulating political will for reforms and not only strengthening capacities of the institutions and adopting new laws.

In that regard leveraging and articulating the public's deep mistrust in the government through citizens' active involvement in decision making should be prioritized – election integrity reform, democratization of political parties and introduction of mandatory voting. Generating a genuine and articulated “internal demand” for reforms is key to achieving sustainable progress.

KEY MEASURES

PROBLEM	INTERVENTION	LOGIC OF INTERVENTION
Hypertrophied and inefficient public sector organized as patronage network - power base of captors (ethno-political elites),	First step: Systemic Functional review of the public sector	Drying up resources for corruption
Systemic illegal extraction of public resources through public contracting;	Centralization and digitalization of public procurement	Reducing opportunities for corruption
Political parties as parallel structure of governance - patronage networks - mafia alike	Democratization of political parties	Leveraging and articulating the public's deep mistrust in the government through citizens' active involvement in decision making
Clientelism/distribution of public sector jobs as key mechanisms of generating voter support	Introduction of mandatory voting Election integrity reform and prevention of abuse of office for pressuring voters	Reducing opportunities for corruption

Captured judiciary and total impunity for corruption	Vetting of judiciary	Reducing opportunities for corruption
Symbiosis of Political parties and SOEs	First step: Due diligence and introduction of ownership policies	Reducing opportunities for corruption

ANNEX – Description of key measures

I. Functional review of public sector

Many years of chaotic organizational changes resulted in a system that now requires major review. This review should result in consolidation of existing institutions, reducing their total number and reallocation of functions/competencies between them. Such a review requires central steering at the level of each government. Functional review should be focused on the following objectives:

1. identifying expenditure reductions.
2. reducing the size and scope of Government through rationalizing institutional structures; and through identifying functions and services which may be commercialized, spun off, decentralized to lower tiers of Government, or simply eliminated.
3. securing increased efficiency in institutions' performance.
4. securing increased effectiveness in institutions' performance through strengthening the focus of individual civil servants on the achievement of key Government goals and objectives (as set out in the Government's work program); and strengthening the responsibility and accountability framework in which civil servants operate.

II. Centralization of public procurement

Centralization of public procurement means that public procurement procedures are concentrated in a centralized procurement unit to procurement goods and services requested from various government entities.

Maximizing the centralization of public procurement via a dedicated authority and the use of appropriate efficiency tools can be of great value. This lifts the burden of public procurement from entities that are not specialized and achieves greater value for money through economies of scale generated by the aggregation of demand.

Across the OECD, many countries have recognized the benefits of centralization of public procurement and are increasing efforts to streamline their procurement systems by aggregating needs. The benefits of centralization are primarily linked to savings. Specifically, these savings occur from better prices through economies of scale, as well as lower transaction costs. Indeed, by aggregating the demand of multiple contracting authorities, greater spending power is achieved while reducing opportunities for corruption. Limiting the number of authorities conducting procurement transactions also rationalizes expenditure. At the same time, concentrating the public procurement function into one organization

generates improved capacity and specialized expertise, increases transparency, reduces opportunities for corruption and allows for robust monitoring, leading to even better results and savings.

Centralization needs to be adapted to the local context to work effectively, depending on administrative and territorial organization and the institutional and administrative culture.

III. Integrity of Elections, Democratization of political parties and Mandatory voting

In order to enable equal and free participation by all citizens, as well as make their participation meaningful, the election system in BiH requires deep reform focused on securing the integrity of the process through all its phases (including pre-election activities, voting, vote counting, verification and implementation of results), independence and objectiveness of election administration, but most importantly recognize and prevent abuse of power and office for the purpose of pressuring the voters and vote-buying, in order to decrease the influence of patronage networks on the electorate.

The introduction of basic intraparty democracy standards is the next step in breaking ossified structures and clientelism in political parties which operate with the sole interest of dividing resources among their membership. To change the current political logic and dynamics, it is necessary to introduce basic intraparty democracy standards such as - "one member—one vote" principle in the election of party leadership and selection of candidates to electoral lists. The way in which political parties currently operate, where leaders elect delegates at the party congress and these in turn vote for them so that they can later be included in the electoral list or be given a sinecure in a public institution or enterprise, only perpetuates the clientelism and the fundamentally undemocratic practices of political parties and, by extension, the entire political system. Therefore, the introduction of a legal obligation for political parties to introduce intraparty democracy would be an important step forward.

The second direction of change—introducing compulsory voting— would be twice as important. This step would undoubtedly lead to increased citizen participation in decision-making. Furthermore, it would contribute to greater accountability of political parties to voters. Instead of using anachronistic methods of wooing voters who rely on benefits from the public administration (through a job in the public sector or other sinecures), this change would mean that political parties would have to appeal to a far broader range of potential voters as well as offer much better political programs if they want to win their support. Studies done in countries where such a system is in place have reported undoubted positive democratization trends. Although the system currently exists in only 22 countries, debates about its introduction are increasingly gaining traction.

IV. Vetting of Judiciary

Potential solutions to the problem of captivity of the judiciary must consider the depth and scale of this problem, as well as its devastating consequences. In this sense, a comprehensive and detailed procedure of vetting all judicial office holders in the country is a necessary step in the process of judicial reform. Such a reform effort would involve the introduction of temporary and specialized bodies, composed of independent legal experts, with the participation of international experts. Through several instances, in

addition to the right to appeal to judges and prosecutors, they should check all judges and prosecutors as follows:

1. verification of competencies.
2. checking personal backgrounds and links to organized crime / corruption and
3. assets verification.

In considering similar models in other countries, the Venice Commission (VC) justified such a radical approach by being critical of the situation in these countries, having in mind the degree and manifestations of corruption.

The VC did not find vetting procedures incompatible with the European Convention, constitutional guarantees of judicial independence, or undesirable from the point of view of good practice. Therefore, the critical state of the judiciary, and the failures of reform efforts so far, require such a reform measure, which will lead to the creation of preconditions for the establishment of the judiciary that will operate on the principles of responsibility, independence and transparency.

V. State Owned Enterprises Reform

SOE governance in BiH falls short of World Bank and OECD guidelines and ranks low compared to other Eastern European countries. Poor governance, cronyism and clientelism, as well as political party influences, leave devastating consequences to the performance of SOEs. Significant number of SOEs are faced with poor performance and debts, excess of employees, inefficiency, and general lack of sustainability. Therefore, the intervention should focus on thorough assessments and introduction of ownership policies as well as due diligence, as a foundation for a coherent policy aimed at restructuring and de-politicization of SOEs.

Considering the footprint of SOEs in the overall economy, as well as insufficient governance and transparency mechanisms, the measures should include:

1. Introduction and development of ownership policies in which governments set out mandates and objectives, applicable frameworks and important matters and principles relating to the governance of the state-owned enterprises. The rationale for SOE ownership should be based on clearly defined policy objectives.
2. Undertaking due diligence assessments for all SOEs of strategic importance and identifying steps for restructuring in order to increase their efficiency and mitigate their losses and debt.
3. Implementing the measures to ensure de-politicization of SOEs, which includes integrity and transparency mechanisms in the process of appointments of supervisory boards and management, prevention of conflict of interest and strengthening independence and oversight.
4. Identifying vulnerable and ineffective SOEs to be privatized through transparent procedures, which requires improvements to the legal framework regulating

privatization and introducing independent oversight of the privatization, as well as over the distribution of the funds acquired through privatization.