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**Organization:** Transparency International in Bosnia and Herzegovina

### **UPR pre-session oral statement**

#### **About the organization**

Transparency International (TI) is the only non-governmental international organisation exclusively devoted to anti-corruption combat. Today TI constitutes a global network with over 100 National Chapters and associate organisations worldwide. TI International Secretariat was established in 1993 in Berlin, Germany. What has evolved is an organisation comprising two arms: the National Chapters (NCs) and the Secretariat. The NCs tackle corruption phenomenon, with each Chapter adapting to the specific conditions of their country of location. The Secretariat supports the National Chapters in their efforts and facilitates exchange of information within the network and promotes joint values and principles. National Chapter of Transparency International Bosnia and Herzegovina (TI BiH) was established in December 2000; it received a full organisational accreditation in recognition of its successful work in 2002. TI BiH has actively engaged itself in implementation and monitoring of the key areas of government accountability, as well as monitoring the implementation of anti-corruption reforms in the following areas: conflict of interest of public officials, free access to information, political party funding, prosecution of corruption, whistleblower legislation, implementation of Anti-Corruption Strategies, etc.

#### **National consultations on the UPR**

TI BiH has not been involved in any form in the process of drafting the National Report.

#### **Statement outline**

This statement addresses two key issues related to anti-corruption efforts: judicial response to corruption with the emphasis on an evident lack of integrity and accountability in the judiciary, and whistleblowers legislation. In the first part of the statement, I will present key findings on the above-mentioned issues, ending with a few recommendations for each issue.

#### **Judicial response to corruption and lustration process**

Although it was strongly financially supported and prioritized by the international community, judicial reform in Bosnia and Herzegovina has not resulted in an independent and efficient judiciary capable of processing high-profile corruption cases. Despite the strengthening of technical and organizational capacities, strong political pressures and lack of integrity and accountability are still the most pressing issues. In the process of judicial reform international donors have provided funds for the implementation of reform activities. This is followed by continued implementation of technical assistance projects for the judiciary, which are funded by bilateral and multilateral international donors. However, a recent TI BiH Monitoring Report

on Corruption Prosecution in Courts and Prosecutor's Offices of BiH indicates concerning trends and poor results in the fight against corruption in 2017 and 2018. In first: the decrease in the number of reports and the number of investigations, as well as the number of charges brought, while the number of judgments delivered by courts in corruption criminal cases remained the same. Additionally, more than two-thirds of corruption cases were completed with suspended sentences which indicates that the penal policy towards corruption offenses is too mild, as the prison sentences are imposed quite rarely. On the other side, the public is facing a high number of corruption affairs within the judiciary. Serious allegations and complaints concerning the political influence, corruption and inappropriate behavior of the judicial function holders have led to a complete loss of faith into the judiciary. For several years now, the majority of corruption complaints submitted to TI BiH refers to the judiciary, along with the state administration and education. TI BiH, itself, has also submitted a significant number of complaints against judicial function holders for the violation of the Code of Ethics. Here it is important to note that some of the recommendations given by the recommending states concerning BiH refer to ensuring the independence of the judiciary and that the relationship between the executive and the judiciary is based on mutual trust.

### **Recommendation:**

TI BiH believes that the only solution for the judicial sector is lustration, i.e. detailed verification of the judicial function holders, and that only by undertaking radical and comprehensive reforms the political and illegal influences could be eliminated. Lustration advocated by TI BiH would imply changes to systemic laws, as well as different composition and role of regulatory bodies which would apply special procedures to secure detailed verification and assessment of not only competences of the current judges and prosecutors, but also their property data, including personal backgrounds and connections, in the context of potential connections to the organized crime and leading politicians. Lustration should be conducted by specialized independent bodies and legal experts who have not been performing judicial duties in recent years, and whose moral and professional qualities guarantee their impartiality. This mechanism is especially appropriate for transitional democracies, as a measure that promotes the integrity of key sectors such as police, judiciary or military.

### **Whistleblowers legislation**

Almost all anti-corruption policies, international conventions on corruption and scholars agreed on the importance of whistleblowing as it is one of the most effective mechanisms for preventing and fighting corruption, as whistleblowers' reports, coming from within the work environment, lead to revealing corruption phenomena when they arise. There are currently two laws on the protection of whistleblowers in Bosnia and Herzegovina: one at the national level and one in Republika Srpska. The first applies only to the employees of the institutions of Bosnia and Herzegovina; the second to all persons, both physical and legal, who report in good faith corruption in the public or private sector in Republika Srpska. Both laws assume that reporting should be made with good intentions, that is, in good faith, so as not to protect whistleblowers who act for other reasons. Apart from this aspect, the two laws are very different

from each other, even in the definition of some basic notions. The national law extends the definition of corruption to the most various forms, including "violations of laws and other regulatory acts, as well as irregularities and frauds that indicate the existence of corruption". However, protection is restricted to a narrow circle of subjects (employees of state institutions and public legal entities). On the contrary, the current law in Republika Srpska extends whistleblower protection to the private sector, but it virtually limits the notion of corruption to crimes only, with a very restrictive definition focused on abuse of office. The main difference between the two laws lies in the fact that they establish fully diverging protection mechanisms in the case of external reporting. The national law protects whistleblowers through a specialized anti-corruption body which has competence to decide on the requests for whistleblower status, as well as to take measures to counter retaliation. The law in force in Republika Srpska, on the other hand, offers whistleblowers judicial protection by filing a lawsuit to competent courts under adjusted procedural provisions. One person failed to obtain the whistleblower status, only because the deadline for judicial protection is too short. According to the available data, very few people have been granted with the whistleblower status or have requested the status in the procedures prescribed by these two laws. The way in which the laws are implemented is making completely meaningless the models of given protection as it signifies the deep lack of trust in institutions.

### **Recommendation:**

Legal protection for whistleblowers needs to be ensured at all levels of government. There is an urgent need to expand the applicable legal framework to other levels of government, particularly to the level of Federation of BiH. The scope of legal protection for whistleblowers in Republika Srpska needs to be broadened by redefining the basic terms such as "corruption" because the extent and application of the given legal protection depend on the quality of these definitions. Corruption should not be limited only to the criminal offences against official duties and responsibilities, and it should include all forms of violations of laws that indicate the existence of corruption. It is necessary to develop activities aimed at promoting the laws on whistleblower protection (developing a manual, organizing media campaigns, cooperation with CSOs, etc.). The deadlines for whistleblowers, as prescribed by the law in Republika Srpska, are too short and they should be extended as this does not allow whistleblowers to achieve judicial protection.