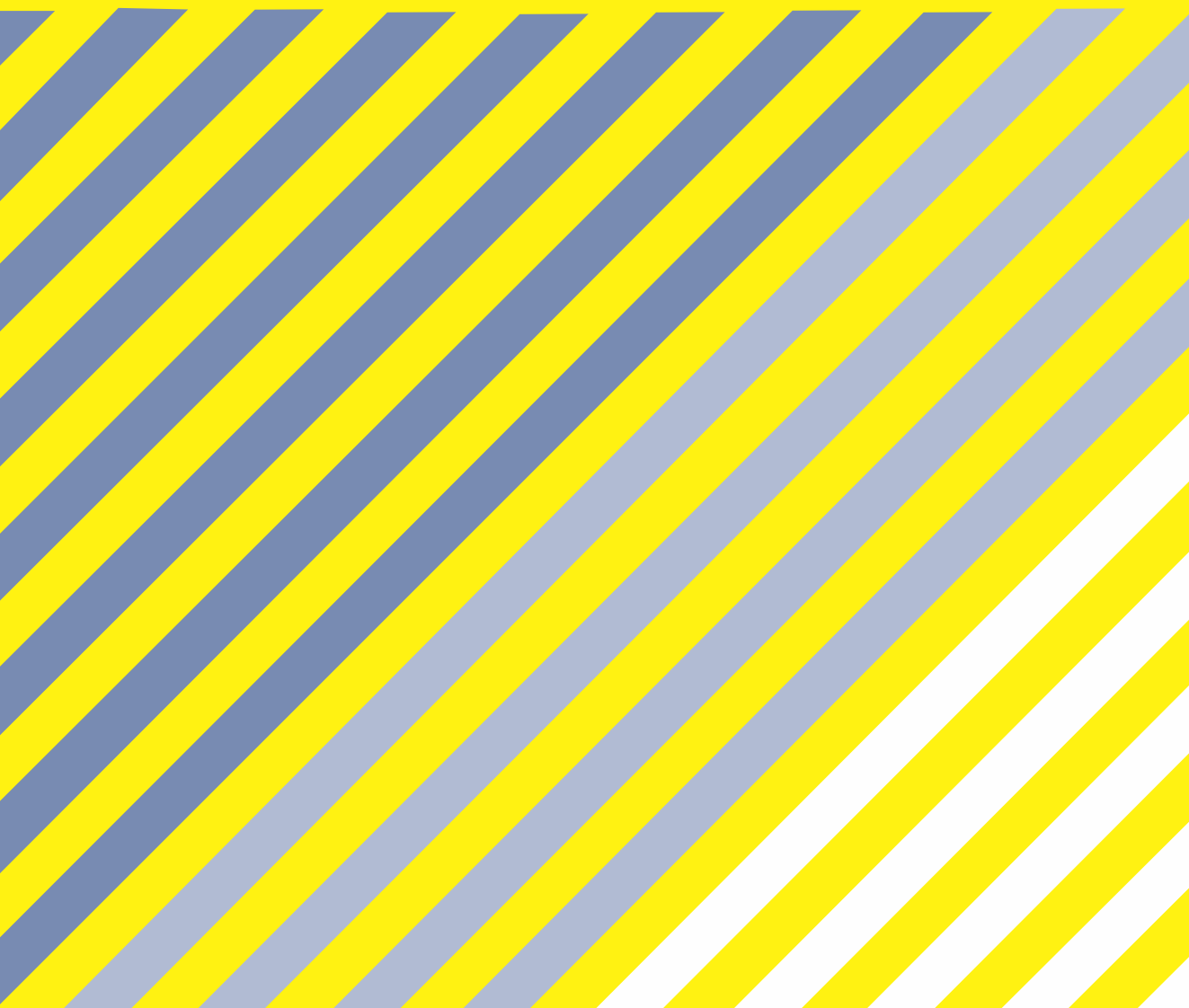


Assessment of spaces for corruption in management of immovable assets at the local level in BiH



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1. Introduction and background information on the Municipal Anti-Corruption initiative

The Municipal Anti-corruption Initiative (MAI) of the OSCE Mission to Bosnia and Herzegovina (the Mission), launched in 2018, monitors anti-corruption trends and processes within the sector of public management in local governance units (LGUs) across Bosnia and Herzegovina (BiH). Developed as part of the Mission's programmatic focus to fight corruption at all government levels, the initiative includes the systematic monitoring of the work of LGU councils/assemblies and co-operation with key stakeholders in local administrations.

The main output of MAI are thematic reports that tackle specific topics within public financial management, present the key findings of the Mission's monitoring, and offer implementable recommendations on how to prevent corrupt conduct in this important sector. The first report, completed in 2019, assessed spaces for corruption in the provision of grants and in-kind support to civil society organizations. This report's focus lies on trends and practices in the management of immovable assets in 22 selected LGUs.¹

The process of topic selection comprised several sequenced and interconnected steps. There are numerous reasons for which the management of immovable assets represents an especially pertinent topic. First, immovable assets usually hold a relatively high value and the disposal of such assets often makes up a significant proportion of any given municipality's revenue.² At the same time, the Mission's preliminary monitoring findings of the work of LGUs pointed to several areas of concern. In addition, the stakeholders consulted by the Mission emphasized that a detailed assessment of immovable asset management practices in their LGUs would help improve efficiency and transparency whilst reducing spaces for corruption. Last, desk research revealed that the topic is under-explored in both BiH and the region and that this report would thus contribute to filling existing gaps in knowledge.³

1 The following LGUs were included: Bihać, Bijeljina, Brčko, Breza, Brod, Donji Vakuf, Goražde, Grude, Han Pijesak, Ilijaš, Kladanj, Mostar, Odžak, Prozor-Rama, Šamac, Šipovo, Sokolac, Srebrenica, Stanari, Tomislavgrad, Trebinje, and Ugljevik. Selection criteria included ensuring a diverse sample in terms of economic development, geographical coverage and number of municipalities and cities, but also ensuring a balanced number of LGUs between the entities and at least one LGU from each canton in FBiH.

2 Reliable and comprehensive assessments of value of immovable assets at the local level and associated revenues are not available. As an illustration, book value of public land and buildings in Brčko District is estimated at 26.4 million BAM, the value of over 10 per cent of total annual budget. See Office of Audit for Public Administration of Brčko District BiH, *Prepreke učinkovitom upravljanju javnom imovinom u Brčko distriktu BiH* [Obstacles to effective management of public assets in Brčko District BiH] (2014), p. 23, available at <http://www.revizija-bd.ba/index.php/izvjestaji-bs/category/28-revizija-ucinka?download=132:prepreke-ucinkovitom-upravljanju-javnom-imovinom-u-bd-ba>.

3 Apart from several toolkits and guides broadly related to the topic (e.g. OSCE Mission to BiH, *Vodič za bolji pristup upravljanju imovinom na lokalnom nivou*, 2012; NALAS, *Municipal Asset Management Toolkit: A Guide for Local Decision Makers*, available at http://www.nalas.eu/Publications/Books/Municipal_Asset_Management_Toolkit), relevant assessments and research in the region have been rather scarce. See e.g. an assessment report from Albania, UNDP Star II Project, *Asset management in local government: Report assessment on current level of knowledge and internal procedures, processes and systems* (2018), available at <https://info.undp.org/docs/pdc/Documents/ALB/Assessment%20report%20on%20Asset%20Management.pdf>

This analysis of the management of immovable assets from the perspective of prevention of corruption is based on a broader understanding of anti-corruption. This perspective focuses on improving public services and promoting transparency and accountability, as well as the importance of promoting the “public service ethos”.⁴ This broader understanding of anti-corruption emphasizes preventive anti-corruption policies and practices, in accordance with the relevant provisions of the United Nations Convention against Corruption (UNCAC). This international instrument, *inter alia*, emphasizes the obligation of state parties to develop co-ordinated anti-corruption policies that “promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”⁵ In this context, and in this perspective, corruption is seen as a problem closely related to *bad or weak governance*.⁶ In addition, when seen specifically from the perspective of corruption risks and integrity management strategies at the local level, sound and efficient asset management and disposal of assets is considered as one of the key pillars of integrity.⁷ At the same time, the disposal of assets is widely considered as an area where the risk of corruption is high. Opportunities for abuse in this sector “become easily exploited and turn into a daily routine business once relevant controls are weak and management practices are poor.”⁸

Nonetheless, this report is not intended to be a comprehensive assessment of the effectiveness or efficiency of immovable asset management systems at the local level in BiH. While the report sheds light on key elements and stages of immovable asset management with a particular focus on *actors and procedures*, the key perspective adopted for this assessment is that of corruption prevention.

Considering the above-outlined principles, this report has three main objectives:

1. To provide an overview of trends and practices in the management of immovable assets in selected local governance units;
2. To identify a nexus between vulnerable points in the legal framework, procedures and practices concerning asset management, and the potential for covert and unsanctioned corruption, i.e., corruption risks, and;
3. To provide recommendations to stakeholders on how to ensure integrity and increase resilience to corruption in this sector.

4 Council of Europe, *Designing and Implementing Anti-corruption Policies: Handbook* (2013) p. 33, available at <https://rm.coe.int/16806d8ad7>

5 UNCAC, Article 5, Available at https://treaties.un.org/doc/Treaties/2003/12/20031209%2002-50%20PM/Ch_XVIII_14p.pdf; see also Council of Europe Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption, 6 November 1997, available at <https://rm.coe.int/16806cc17c>.

6 See e.g. Alina Mungiu-Pipidi, *The Quest for Good Governance: How Societies Develop Control of Corruption* (Cambridge University Press, 2015).

7 Milena Minkova, *Guide to Corruption-Free Local Government*, UNDP (2018), p. 34.

8 *Ibid.*, p. 49.

Given that it provides concrete and implementable recommendations for improving the overall functioning of the asset management system and reducing the corruption risks in this field, both at the regulatory level and in practice, the report is intended primarily for LGU policymakers and local administration. The findings of this report are also relevant for entity legislators, as well as for civil society organizations and citizens of local governance units as a tool for increasing the overall transparency and accountability of local administration in this field.

The report begins with the identification of trends and practices in this field, including the key features of asset management systems such as organizational aspects and policy documents necessary for upholding the principles of good governance and transparency. In addition, findings concerning specific corruption risks in current immovable asset management procedures at the local level are also presented. The report concludes with a set of implementable recommendations aimed at improving the performance of local governments in this field and mitigating the identified corruption risks.

2. Analytical framework and methodology

Key terms and principles

An immovable asset is a piece of land, together with anything that is permanently connected to the land, or below the land unless otherwise regulated by law. Therefore, buildings, roads, parking lots, houses/flats, business premises, communal/sport/culture infrastructure objects, etc. do not constitute a separate immovable asset. Those are considered an integral part of the basic immovable asset - i.e. the plot of land (be it on the surface or below the surface).

Asset management is, for the purposes of this report, defined as “an integrated approach to monitoring, operating, maintaining, upgrading, and disposing of assets cost-effectively, while maintaining a desired level of service.”⁹ It “involves the balancing of costs, opportunities and risks against the desired performance of assets, to achieve the municipality's objectives over the long term.”¹⁰

Management of public assets is based on several principles and practices that are common for asset management in general and good governance in civil service.

These principles include:

- Effectiveness
- Efficiency
- Transparency
- Integrity and accountability
- Civic engagement and public participation
- Legal security and the rule of law.¹¹

This is a complex and multidisciplinary area as it “involves the collaborative work of many people and groups within the municipality, including council, management, finance, planning, sustainability directors, service managers, public works, and operations and maintenance.”¹² It is particularly important to emphasize that, to be effective and respond properly to the needs of citizens, asset management also requires community engagement and input.¹³

9 NALAS, *Municipal Asset Management Toolkit*, available at http://www.danube-water-program.org/media/AM/Municipal_AM_Toolkit_WEB.pdf

10 “How to develop an asset management policy, strategy and governance framework: Set up a consistent approach to asset management in your municipality”, Federation of Canadian Municipalities (2018) p. 2

11 See e.g. Wael Zakout et al., *Good governance in land administration: Principles and good practices*, World Bank and FAO (2007) p. 7, available at <http://www.fao.org/3/i0830e/i0830e.pdf>.

12 “How to develop an asset management policy, strategy and governance framework: Set up a consistent approach to asset management in your municipality”, Federation of Canadian Municipalities (2018) p. 3.

13 “How to develop an asset management policy, strategy and governance framework: Set up a consistent approach to asset management in your municipality”, Federation of Canadian Municipalities (2018) p. 3

The benefits of improved asset management at the municipal level are manifold. They include increased revenue, improved credit rating, attracting domestic and foreign investors, improved understanding of service level options and costs, informed decision-making based on benefits and costs of alternatives, improved ability to communicate and justify decisions regarding assets to stakeholders, environmental effects, and improved quality of life of citizens.¹⁴

Key aspects of asset management

This analysis is guided by the aforementioned notion that a clearly defined, well-regulated and consistently implemented asset management system is a key factor in reducing the spaces for, and thus for the prevention of, corruption in this area. This report adopts an explicit anti-corruption perspective and focuses on the following aspects of asset management:¹⁵

1. Legal and administrative framework – general laws and local statutes. This part examines to what extent and in what way the existing legal framework gives authority to municipal governments over municipal assets in different jurisdictions across BiH.¹⁶
2. Asset management in practice
 - a) *Organizational aspects and human resources*: In this sense, the institutional setting for asset management is particularly relevant; human resources include a clear division of roles and responsibilities, a sufficient level of knowledge and expertise of those managing assets in practice, as well as identifying and meeting their training needs;
 - b) *Asset management policy documents (strategy, objectives, planning)*: this relates to the existence and content of policy documents in this sector;
 - c) *Asset management tools and processes*: this includes data inventories, asset valuations, asset information management, which involve data, information, and knowledge concerning the property, and co-ordination of different actors and departments;
 - d) *Asset management operation and maintenance processes in practice*: acquisition, maintenance, rental and sale of assets; community input and community engagement – how the interest of citizens is determined and factored in asset management procedures;
 - e) *Transparency*: the availability of key information on immovable assets and procedures concerning their usage and maintenance.

14 World Bank, *Strategic Municipal Asset Management* (2000), p. 2; Fernando Fernholz and Rosemary Morales Fernholz, *A Toolkit for Municipal Asset Management*, RTI International (2007), p. 2.

15 See more e.g. Olga Kaganova, *Guidebook on real property asset management for local governments*, Urban Institute Center on International Development and Governance (2012), available at <http://webarchive.urban.org/UploadedPDF/412531-Guidebook-on-Real-Property-Asset-Management-for-Local-Governments.pdf>; NALAS, *Municipal Asset Management Toolkit*, available at http://www.danube-water-program.org/media/AM/Municipal_AM_Toolkit_WEB.pdf; World Bank, *Strategic Municipal Asset Management* (2000); NALAS, *Priručnik za upravljanje imovinom u vlasništvu opština* (2014); Fernando Fernholz and Rosemary Morales Fernholz, *A Toolkit for Municipal Asset Management*, RTI International (2007); RICS Public Sector Property Asset Management Guidelines (2nd edition, 2012), ch. 1; OSCE Mission to BiH, *Vodič za bolji pristup upravljanju imovinom na lokalnom nivou* (2012).

16 This includes the assessment of the ability of the municipal authorities to e.g. register ownership, acquire and dispose of property, determine valuation and negotiate price for buying and selling, use the assets, lease, contract etc. Cf. Fernando Fernholz and Rosemary Morales Fernholz, *A Toolkit for Municipal Asset Management*, RTI International (2007), p. 4.

Data collection

Data collection comprised two principal methods: survey administered to representatives of selected LGUs, and semi-structured interviews conducted with representatives of the examined executives who are involved in asset management. The survey covered a broad range of topics including organizational aspects of asset management, human resources, the criteria in the preparation and adoption of the assets-related decisions, and disposal of assets.

As noted above, the sample included 22 selected LGUs. The selection criteria served to ensure a diverse sample in terms of economic development, geographical coverage and number of municipalities and cities, but also a balanced number of LGUs between the entities and at least one LGU from each canton in Federation of BiH (FBiH).

Initial contacts and interviews with counterparts informed subsequent interviews, enabling the Mission to follow up on missing or incomplete information. Available documents and regulations in the field, including laws, by-laws and relevant decisions of LGU authorities were also analyzed. Finally, continuous monitoring of the operation of LGU structures by OSCE Mission to BiH in the field provided important additional insights and useful clarifications.

The assessment observed three main principles through all stages of data collection: cooperation with selected LGUs, non-intervention, and objectivity.

Limitations

This assessment is largely based on perspectives and insights received from interlocutors representing executive structures of the selected LGUs. Their perspectives were as a rule not checked against the experiences and opinions of other relevant actors – particularly members of municipal assemblies/councils, independent experts, NGOs, or users of immovable assets owned by LGUs. The perspectives of law enforcement and the judiciary were also not included. The assessment addressed this potential bias by using available documents and municipal decisions in this field; it is nonetheless possible that it has not always been entirely circumvented.

3. Overview of asset management in practice and identification of corruption risks

This chapter of the report focuses on the functioning of asset management systems in practice in the selected LGUs and identifies specific corruption risks within these.

An assessment of the functioning of asset management systems at the local level in BiH in practice focuses, first, on the key features of such systems including legal and organizational aspects as well as the relevant policy documents. Second, this chapter identifies and analyses a nexus between specific vulnerable points in immovable asset management practices and procedures and potential corruption, i.e. specific corruption risks.

3.1 *Incomplete legal framework poses a significant corruption risk*

A comprehensive legal framework for the management of immovable assets presupposes the existence of a well-regulated procedure for asset disposal, transparency and involvement of different institutional actors ensuring adequate checks and balances. Such a legal framework decreases the space for discretionary authority of local authorities when issuing decisions on the disposal of public assets. On the other hand, an incomplete legal framework points to the existence of regulatory corruption risks.¹⁷ This is generally most visible in the scarce regulation of standards and processes pertaining to the management of immovable assets.

Given the variety of immovable assets in the local contexts, this complex area is regulated by a number of laws and regulations.¹⁸ A look at the legal framework, however, reveals that the whole field is under-regulated. Relevant laws and regulations¹⁹ typically focus on the procedural aspects of asset disposal at the local level. The municipal/city council/assembly is, as a rule, and with the notable exception of the Assembly of Brčko District BiH (BD BiH), defined as the decision-maker in this field, with the local executive having mostly administrative competences and duties. In both Federation of BiH (FBiH) and Republika Srpska (RS), the relevant decisions are prepared by the mayor and adopted by the (Municipal Assembly / Municipal Council (MA/MC). In BD BiH, the Mayor has the competence to dispose of immovable assets of BD in accordance with the regular annual plan for disposal of immovable assets owned by the

17 In this sense, “[r]egulatory corruption risks are existing or missing features in a law that can contribute to corruption, no matter whether the risk was intended or not”. See Tilman Hoppe, *Anti-Corruption Assessment of Laws (“Corruption Proofing”): Comparative Study and Methodology* (2014), p. 111, available at: http://raisee.org/wp-content/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf

18 Inter alia, the laws on local self-government, on expropriation, on property/real rights, on spatial planning and construction, on concessions, on forests, on waters, on roads, on agricultural land.

19 In particular, Law on Principles of Local Self-Government of FBiH, Official Gazette of FBiH 49/06 and 51/09; RS Law on Local Self Government, Official Gazette of RS 97/16 and 36/19; Law on Real/Proprietary Rights of FBiH, Official Gazette of FBiH 66/13, 100/13, 32/19; Law on Real/Proprietary Rights of RS, Official Gazette of RS 124/08, 58/09, 95/11 and 60/15; Law on Public Property in BD BiH, Official Gazette of BD BiH 28/6, 19/07 and 05/20.

District that the Mayor adopts following a proposal by the Director of the specialized Office for Management of Public Property.²⁰ The same actors and the same procedure in BD are prescribed for issuing individual decisions on asset disposal.²¹

In addition, the public defenders' offices have an important role in securing the protection of public property in procedures concerning asset management. The BD Law on Public Property (Article 32) envisages the oversight of the Public Defender's Office over the disposal of public property in the District. The RS Law on Public Defender's Office, as well as equivalent cantonal laws also stipulate that LGUs are obliged to obtain an opinion of the public defender on drafts of all contracts and decisions on the acquisition, disposal and sale of immovable assets owned by LGUs.

LGUs may acquire immovable property through various legal actions including expropriation, buying, receiving a gift, judicial or administrative decision, or by establishing the right to build. In FBiH and RS, such acquisitions have to be approved by municipal/city council/assembly.²²

The procedure for disposal of immovable assets owned by the RS, FBiH, cantons, BD, and LGUs is regulated in greater detail. The legal framework envisages that immovable assets can be disposed of in a *public bidding procedure* and based on a remuneration determined by the market price.²³ Municipal/city council/assembly issues decisions concerning the manner and conditions of disposal of immovable assets owned by LGUs based on a proposal by the mayor.²⁴ A three-member commission, appointed by the city/municipal council/assembly, conducts the bidding procedure.²⁵ In order to provide for transparency and wide reach, the bidding call is to be advertised in one of the daily newspapers, 15 days before the commencement of the procedure. In addition, such call is to be advertised on public boards and the websites of the LGUs.

Exceptions from the public bidding procedure pertain to the situations where the sale or establishing building right on the asset may be done through *direct agreement*. Direct agreement may be used for building military objects or objects for the needs of state administrative bodies, objects for the use by foreign diplomatic and consular representations, their organisations and specialized agencies of the United Nations, objects of communal infrastructure, religious objects and framing of a construction particle/parcel (loc. *oblikovanje građevinske čestice*).²⁶ *Exceptions in RS* also extend to the possibility of selling the assets below the market price or even free of charge for the purpose of implementing an investment of significance for regional or local

20 Law on Public Property in BD BiH, Article 9.

21 Law on Public Property in BD BiH, Article 10.

22 Article 22 of the Real/Proprietary Rights Law of the FBiH and RS.

23 See e.g. Law on Real/Proprietary Rights of FBiH, Official Gazette of FBiH 66/13, 100/13, 32/19, Article 363, para. 1.

24 Rulebook on the public bidding procedure for disposing of immovable assets owned by the FBiH, cantons, municipalities and cities, Official Gazette of FBiH 17/14; Rulebook on disposal of immovable property of RS, Official Gazette of RS 20/12.

25 The rules of the bidding procedure are also regulated in detail, including the starting price, manner and conditions of payment and time and manner of acquisition of the property by the buyer. Minutes of the whole procedure are to be kept, including the information on all the bids, and any complaints lodged.

26 Law on Real/Proprietary Rights of FBiH, Article 363, para. 3; Law on Real/Proprietary Rights of RS, Official Gazette of RS 124/08, 58/09, 95/11 and 60/15, Article 348, para. 3.

development. LGUs in RS also have the possibility to establish free of charge the construction rights on immovable assets for the purposes of housing of population affected by natural disasters, for families of deceased soldiers and war-disabled veterans. This procedure is to be based on a rulebook adopted by the LGU assembly.²⁷

In BD BiH, exceptions from the public bidding procedure are related to situations similar to those above, but are regulated in greater detail and also include a broader set of specific and specified exceptions and conditions. In particular, these relate to transactions to persons who have lost their immovable assets due to natural disasters, to NGOs or local communities (*mjesne zajednice*) registered in BD BiH, or to cases related to the lease of public property for the purpose of installing temporary buildings.²⁸

In BiH, only the equivalent law in BD BiH²⁹ goes significantly beyond the above described narrow procedural dimension and regulates certain standards and key steps in asset management, such as establishing and maintaining adequate asset registries. In other words, and referring back to the analytical framework for this study, the focus of the legal framework in BiH in this field is placed mostly on *asset management operation and maintenance processes in practice* and on some aspects of *procedural transparency*, while other key elements of immovable asset management are almost completely neglected. In addition, none of the surveyed LGUs in BiH except BD BiH use their available competences to sufficiently supplement the general provisions of relevant laws at the entity and cantonal levels with local regulations.³⁰ Even in cases where such regulation exists, it does not appear comprehensive and systematic.³¹

The scarcity of legal regulation of standards and processes in this field risk *ad hoc* asset disposal decisions and practices which do not necessarily reflect the best interests of LGUs or the public. Such practices may include the intentional depreciation of the value of assets, unnecessary public procurement for asset maintenance, or the failure to initiate legal proceedings promptly to protect an LGU's interests. Therefore, incomplete legal frameworks with significant gaps is a key factor that increases corruption risk in local level asset management in BiH.

27 Law on Real/Proprietary Rights of RS, Article 348.

28 Law on Public Property in BD BiH, Article 12. Furthermore, the Law envisages a special agreement as additional, separate procedure for the disposal of public property, which may be related, but not limited to the interest of economic development or investments in BD, as well as humanitarian reasons. Special agreement may include significantly lower price of, or remuneration for the usage of, public property and the property may be disposed, in exceptional circumstances, without compensation. In cases when BD Assembly does not approve a special agreement, regular procedure for disposal of public property may be conducted in the same case. (Articles 13-16).

29 Law on Public Property in BDBiH.

30 Only half of the municipalities observed have reported that they have adopted such regulations.

31 In some cases (e.g. Bijeljina, Tuzla, Ugljevik, Vogošća), LGU statutes or other acts contain some provisions concerning ownership and disposal of their property, including immovable assets. In others, LGUs also adopt their own regulations detailing the procedure for asset disposal in specific areas, such as lease of business property or management of construction land.

3.2 The functioning of the asset management system in practice

3.2.1 Inadequate organization and human resources

The efficient management of immovable assets presupposes the integration of this concept across the municipal administration. It is crucial that LGU administrations have detailed roles and responsibilities for asset management, including planning and risk analysis, financial, operational, and technical considerations, ideally with a coordinating focal point. Good governance also implies that civil servants possess adequate knowledge and skills in relevant fields. If this is not the case, civil servants may not even be aware that they indirectly participate in a corruption cycle led by their superiors if they are not familiar with good governance principles, relevant legal framework, standards and procedures.

When it comes to organizational aspects, one of the observed LGUs³² has a dedicated office for the management of immovable assets. Two LGUs have a specific unit dealing with these issues³³ while 19 LGUs have competences in this field fragmented or shared between different departments/units. In a number of LGUs, immovable assets are managed by a section within a larger organizational unit, with the department for geodetic and cadaster matters being the most frequent one.³⁴ In most cases, the responsibilities in this field are divided between at least two LGU organizational units - the most common being the departments/units for spatial planning, geodetic and legal-property issues, with financial departments having a subsidiary competence. In the majority of observed LGUs in RS, this competence is vested in a section within a department, most commonly that for housing and communal affairs. In such cases, the financial department has a subsidiary role.³⁵ Instances of shared responsibility between various organizational units are also identified in RS LGUs.³⁶ In LGUs where asset management is vested in more than one organizational unit, a lack of efficient co-ordination and communication mechanisms was also reported.³⁷

Unlike LGUs in both FBiH and RS, Brčko District has a Public Property Office consisting of three sections - legal, maintenance and registry - with 55 employees. The Office is competent to manage movable and immovable property and general resources, as well as to identify and keep property records, including a comprehensive overview of property and safekeeping of data on each property. Such a dedicated structure with specialized property managers and supporting staff presents an example of good practice among the observed LGUs in BiH, for it aids efficient co-ordination and management of assets.

The Mission's analysis suggests that immovable asset management across BiH municipalities is often not systematically organized. Given the varied size of municipalities, it is not required or always feasible to have a separate unit in charge of

32 Brčko.

33 Bijeljina and Mostar.

34 Bihać, Breza, Donji Vakuf, Ilijaš, Kladanj and Tomislavgrad.

35 Bijeljina, Brod, Sokolac, Stanari Šamac, Trebinje and Ugljevik.

36 Han Pijesak, Srebrenica and Šipovo.

37 Bihać, Goražde and Srebrenica.

immovable assets; however, it is crucial to, as a minimum, have clearly assigned responsibilities and roles when it comes to this important task. The absence of a clear and meaningful division of labour in this field risks a lack of clearly-divided responsibilities and incoherent processes, creating room for (unsanctioned) corruption.

When it comes to *human resources*, inputs from selected municipalities have revealed different capacities for the management of immovable assets. LGU administrations, as a rule, do not have standardized procedures and job descriptions for staff involved in asset management. This underlines a lack of due attention afforded to this important area. In some instances in the municipalities assessed in FBiH, a single person is responsible for the management of immovable assets: typically an expert associate who is appointed as the municipal focal point for immovable assets.³⁸ In other LGUs, several employees perform such duties, ranging from two,³⁹ three⁴⁰ to 11 persons. The observed LGUs in RS also have similar human resources arrangements, with a number of employees reportedly hired based on short-term contracts. The reported number of personnel working on immovable assets in RS municipalities noted in this analysis varies from two⁴¹ to five.⁴²

Although the **numbers of persons working on these matters can and should vary** depending on the size of municipality, number of assets etc.⁴³, the Mission observed highly inconsistent practices which point to the lack of a systematic approach in managing municipal assets. It is also worth noting that the staff involved in asset management often do not have detailed job descriptions or clear roles. Additionally, even in cases where several persons oversee immovable assets, they usually perform other duties within the department and/or unit.

Capacity-building efforts are also inadequate. In most cases, there is no obligatory and continuous basic or specialized training organized for staff in charge of immovable assets. Staff in more than half of LGUs observed reportedly had no specific training on asset management issues in the past four years. Sporadic training sessions were organized under the auspices of civil service agencies or relevant administration for geodetic and property affairs, but the majority of respondents stated that they had not recently benefited from such training.⁴⁴ Although interlocutors from several LGUs⁴⁵ emphasized the need for capacity building on immovable assets, including the application of relevant laws, continuous training and education efforts in this field, either by LGUs themselves or by the entity/BD civil service agencies, are lacking.

38 Breza and Donji Vakuf.

39 Kladanj, short-term.

40 Goražde, Tomislavgrad.

41 Sokolac.

42 Bijeljina and Brod.

43 According to some estimates, for example, three to four highly qualified asset managers with administrative support should be able to adequately manage “a portfolio of approximately 225 properties”. Olga Kaganova, Guidebook on real property asset management for local governments, Urban Institute Center on International Development and Governance (2012), p. 70, available at <http://webarchive.urban.org/UploadedPDF/412531-Guidebook-on-Real-Property-Asset-Management-for-Local-Governments.pdf>.

44 For example in Brod, Han Pijesak, Sokolac, Srebrenica, Stanari, Šamac, Šipovo, Trebinje and Ugljevik.

45 Bihać, Šamac, Stanari and Tomislavgrad.

This lack of adequate division of labour, insufficient specialization and capacities of staff could limit the effectiveness of efforts to avert corruption in this field. Having in mind the complexity of procedures and the challenge of co-ordination between organizational units within LGUs, as well as largely inadequate human resources, there seem to be no sufficient guarantees that key processes will be conducted in such a manner as to uphold the principles of legality, efficiency, and transparency.

3.2.2 The absence of strategy and planning

Standards and best practices in this field suggest that asset management policy documents are an important tool towards establishing a clearly defined asset management system. Additionally, such policy documents provide for a transparent strategic and operational framework in each LGU. An immovable asset management plan or strategy, for example, serves to guide planning, acquisition, operation, maintenance, and disposal of such assets. This, in turn, limits discretion in decision-making.

This assessment reveals that none of the observed LGUs has specific policy documents on the management of immovable assets. None have developed an asset management strategy; in one instance only, an LGU has dedicated financial resources for the operation of a committee on the development of such a strategy.⁴⁶ Annual plans for asset management were identified in three LGUs.⁴⁷ Two LGUs produce annual reports on the usage of immovable assets, but with no annual plans or strategy in this field.⁴⁸

Reference to immovable assets is also included in some municipal development plans. Nonetheless, these documents, as a rule, have a much larger scope and ambition and are not appropriate for providing comprehensive technical guidance in this sector.

Integrity plans are also an important tool in identifying and addressing corruption risks in specific areas and processes, including the local level.⁴⁹ Nonetheless, this assessment found that nine out of 22 LGUs have an integrity plan, while in only four of them integrity plans reportedly contain specific measures related to asset management. Whilst the integrity plan is no replacement for a solid legal framework, it underlines the efforts of LGUs to address corruption risks.

The lack of a local-level asset management strategy and reporting system can lead to different types of *ad hoc* decisions concerning immovable asset disposal contrary to the interest of LGUs and citizens.

46 Bihać.

47 Brčko District BiH, Breza and Goražde.

48 Donji Vakuf and Ugljevik.

49 Integrity plan (sometimes referred to as anticorruption strategic plan) is an internal anticorruption document drafted as a result of self-assessment of institutional vulnerability to corruption and other forms of unethical behaviour, containing legal and practical measures aimed at preventing and addressing such behaviours. See more e.g. Transparency International Bosnia and Herzegovina, Priručnik: Uvođenje planova integriteta na lokalnom nivou [Introducing integrity plans at the local level: A Manual], available at <https://ti-bih.org/wp-content/uploads/2015/06/TIBIH-Manual.pdf>.

The fact that more than half of the LGUs observed do not have integrity plans, and that in less than half of LGUs where integrity plans exist immovable asset management is specifically included, contributes to the broad impression that corruption risks are not adequately addressed at the structural level.

3.2.3 The lack of asset registries and data inventories

Closely related to the existence of policy documents are asset management processes and techniques developed and implemented at the LGU level. As noted in the introductory sections, as a matter of good governance, these should include the development and maintenance of a detailed data inventory, as well as fostering co-ordination between various actors and departments. The asset register should note basic data on the status and condition of all immovable assets owned by a given LGU. Such documents lay the ground for a functioning data management system.

Nonetheless, this assessment found that none of the LGUs observed have a comprehensive asset registry. As noted in the previous section, with the exception of BD BiH, there is no legal requirement for LGUs to keep such a register, nor is there a legal obligation to keep a standardized data set for municipal assets. All LGUs reportedly have some sort of record on immovable assets, but these are not kept in standardized formats and have not been made and maintained based on a clear and unified methodology. Moreover, these records are reportedly often held across various departments, including bookkeeping and accounting records, court and cadaster registers for land and registries of contracts, and are often not co-ordinated.⁵⁰ Thus, it does not come as a surprise that, in several LGUs, audit offices found significant shortcomings in this area, pointing to a lack of comprehensive and reliable data on assets owned by LGUs.⁵¹

In BD BiH, a detailed data inventory is kept in the form of an electronic register. This inventory contains records of all immovable assets and is updated monthly. The register includes general information on property, legal entitlement, value, data on current users, and data on income and expenditure. The registry is managed by a separate section within the Public Property Office, which has six employees. However, the register is still incomplete due to a lack of responsiveness on the part of BD institutions' in submitting the required data. It is also worth noting that the 2018 BD audit report concluded that the Office had failed to ensure comprehensive and reliable data in the register and that it is not harmonized with records in the main treasury book and records of other relevant institutions. The fact that even the more advanced systems of asset registry in BiH such as that of BD face significant problems is indicative of the challenges in this field.

The absence of a publicly accessible immovable asset register with all relevant and updated information on its status, conditions, market value, possession, income and expenditure, collected in co-ordination with various units of the LGUs in question can lead to various corruption risks. For example, in the absence of such registers, some of the following abuses may be more likely to occur: intentional non-maintenance in order to reduce the market value to sell an asset under its fair market value; unnecessary

50 Bihac, Brod and Donji Vakuf.

51 Brčko, Brod, Srebrenica and Šipovo.

public procurements and maintenance work for devastated assets; use of the assets contrary to their stated purpose; failure to file a lawsuit in a timely manner and subsequent limitations related to legal proceedings; illegal construction works, etc.

3.3 Specific corruption risks in the procedures for immovable asset disposal

Apart from observing the general structural conditions, it is possible to identify specific corruption risks within immovable asset management procedures.

It is particularly important to note that, as a rule, the legal framework on the disposal of public assets explicitly provides for checks and balances between various institutional actors at the local level. Such provisions aim to decrease the space for discretionary authority of individual institutional actors when issuing decisions on the disposal of public assets, thus mitigating corruption risks at a regulatory level. Indeed, checks and balances in this field are relatively well-regulated as far as the legal framework is concerned (the institutional triangle consisting of the mayor, the council/assembly, and the public defender's office).

Reportedly, the practice of LGUs varies when it comes to the roles and responsibilities of institutional actors in charge of immovable asset disposal. Respondents from relevant departments in the observed municipalities report that the above procedure in which the executive initiates the decision-making process is followed in 17 LGUs, while in five the MA/MC is responsible for initiating the procedure for immovable asset disposal. Some LGUs⁵² reported that citizens can also start the asset management related processes themselves and that they sometimes use this right, in accordance with the prescribed procedure for citizens' initiative. In some municipalities observed,⁵³ MA/MCs reportedly sometimes authorize the mayor to directly dispose of immovable property, without specifying the amount of funds. These varying reported practices point to the fact that, in some cases, the situation on the ground departs from the procedures prescribed by the legal framework, limiting the effectiveness of oversight of relevant decisions.

3.3.1 Inadequate quality and structure of decisions concerning immovable assets

According to the Mission's monitoring reports, in 2019 over 430 decisions of relevance to immovable asset disposal were adopted in the observed LGUs. While the time needed for the preparation of MA/MC asset-related decisions depends on the nature of immovable property and the type of transaction, such decisions, according to inputs from LGUs, on average take around a month to be prepared and adopted. Interlocutors also confirm that such decisions are rarely adopted in an expedited procedure. At the same time, several LGUs report that asset-related decisions are added at the very MA/MC session (*shortened proceedings*). Even in those LGUs, however, that is not reported as a common or frequent practice.

52 Bijeljina and Sokolac.

53 Prozor-Rama and Trebinje.

Importantly, the quality and structure of proposed decisions present an important factor in checking the discretionary powers vested in the mayor's office. Detailed information to these ends enables informed debate and reasoned decision-making on the part of the members of MA/MCs, who should have the last say in these procedures.

Nonetheless, both the quality and structure of the proposed decisions vary considerably both within and across jurisdictions in BiH. In general, neither the format nor the content of these decisions appears adequate. Most of the observed LGUs include financial benefits as justification in their decisions concerning immovable assets. Nonetheless, in five LGUs, the practice of excluding even this crucial element of the decision is reported. In eight municipalities observed these proposed decisions do not include an elaboration of general benefits of the suggested course of action for the LGU in question. Some of the available decisions in this area reveal that, even in cases where the section on benefits and impact is included, that part is often presented in rather general terms and without sufficient elaboration.

Generally, such a deficient format and content of proposed decisions seem to be largely tolerated and accepted by the MA/MCs. It is indicative that only three LGUs⁵⁴ reported that immovable asset management decisions were taken off the agenda of their MA/MCs in 2019 because councilors had requested additional information.

In sum, not all elements for the successful functioning of checks and balances at the local level seem to be in place. This is particularly the case with adequate communication between the local executive and the MA/MCs in the decision-making processes concerning immovable assets. If proposed decisions concerning the management of immovable assets are often not detailed enough and do not elaborate on the financial and other benefits of a proposed transaction, it is questionable whether the members of the MA/MCs in question have sufficient information to consider and adopt such decisions.

3.3.2 The lack of standardized asset valuation procedure

In a majority of LGUs (20 of 22), an estimated market value of the immovable asset to be disposed of is regularly included in proposed decisions. Nonetheless, practice varies as to the methods for establishing the estimated market value. While in the majority of LGUs observed (13 of 22) certified court experts perform this estimate, in practice, this is also carried out by the relevant departments/directorates, specialized committees or municipal commissions.⁵⁵

The respondents also emphasize that there are instances of unrealistic asset valuations leading to the depreciation of assets, as well as a lack of reliable information for valuation stemming from the underdeveloped real estate market in most parts of BiH.⁵⁶ Even in cases where asset registers exist in some form,⁵⁷ they as a rule do not contain information on the value of recorded assets.

54 Bijeljina, Brčko and Tomislavgrad.

55 Kladanj and Prozor-Rama.

56 For example in Bihać, Goražde, Grude, Mostar, Prozor-Rama, Tomislavgrad. For more information on real estate market please see, for example <http://www.fgu.com.ba/en/newse-reader/real-estate-market-report-of-the-federation-of-bih-for-2018.html>.

57 For example in Tomislavgrad.

The lack of clear procedures and established methods for asset valuation, and the variety of such methods used in practice, may pose a serious corruption risk and open door to abuse of the entrusted resources for private purposes. More specifically, the fact that there is no standardized method for determining the market value of immovable assets may, and according to the insights from the LGU interlocutors, in some instances does, lead to manipulation with the established price of immovable assets sold or bought by LGUs.

3.3.3 The lack of public consultations

Public consultations are an important mechanism that ensures that decisions concerning the management of immovable assets are adopted in the best interest of the inhabitants of the LGU in question. In addition, public consultations contribute to transparency and accountability in decision-making procedures related to immovable assets. According to the laws regulating local self-government, LGUs are obliged to ensure that the asset management is performed in accordance with laws and regulations, in a transparent manner, in the interest of their inhabitants, and with due diligence (see annex for details). This means that, at least judging from the legal framework, the interest of local citizens is put at the forefront of municipal asset management. At the same time, however, ways for determining the interest of local inhabitants in different situations are not defined in the relevant laws.

On a positive note, according to reports from the field, the transparency of immovable asset management procedures in individual LGUs is formally ensured to a significant extent. When it comes to publicizing the relevant decisions, most of the observed LGUs rely on a general means of communication, such as websites, bulletin boards, and official gazettes. Several LGUs also report using daily newspapers for this purpose, while one LGU cites broadcasting MA/MC sessions as a way of making relevant decisions public in addition to the standard means of communication. Based on the provisions of the freedom of access to information laws in BiH (at State, entity, and BD levels) every individual is entitled to request specific information, including that related to immovable assets. LGU representatives reported that all relevant decisions in this field are, as a rule, made public.

According to the information from selected LGUs, however, the practice of holding public consultations in this field is an exception rather than the rule. Two-thirds of observed LGUs do not organize public consultations as a basis for the finalization of immovable asset-related decisions. Even the representatives of LGUs where public consultations on these matters are held report that they do this rarely. According to the information from selected LGUs, involvement of the public is usually stronger in cases where the immovable assets-related decisions are part of strategic documents (e.g. municipal development strategy and regulation plans).⁵⁸ Similarly, public consultations are ensured as part of the procedure for the adoption of spatial planning documentation.⁵⁹ In some cases, limited consultations are held within the city council or with expert committees, but the wider public is regularly excluded. In BD BiH, public

58 This is reported in Breza, Goražde, Kladanj and Odžak.

59 E.g. in Brod, Stanari and Trebinje.

hearings are held prevalently in the context of the procedure for concluding a special agreement in the public interest.⁶⁰

Broadly-accepted standards and good practice in this field suggest that public consultations and community input are among the key pillars of a well-functioning asset management system, especially with regards to high-value asset disposal and development. Whilst it is not realistic to have public consultations on every decision related to asset management, the overwhelming lack of public consultations not only prevents citizens from having their voices heard, but also undermines the transparency of and accountability for such decisions. Even if the transparency of decisions concerning immovable assets is, as noted, mostly ensured, that cannot serve as a substitute for the meaningful participation of citizens in decision-making processes in this important area.

3.3.4 Inadequate oversight function of the MA/MCs

In addition to their role in the adoption of decisions related to immovable asset management, MA/MCs should perform general oversight of the strategic direction, efficiency, and success of immovable asset management. The practice of submitting reports on immovable asset management by the executive to be discussed by the MA/MC would further emphasize their key role in this field, simultaneously contributing to accountability and transparency.

Nonetheless, information from the field suggests that only 12 out of the 22 observed LGUs practice such reporting and communication between the local executive and the legislature on a regular basis. In some cases, annual reporting to the MA/MC is confined to one type or one aspect of immovable asset management.⁶¹

The fact that approximately half of the observed LGU executives do not submit reports to the MA/MCs on the disposal of immovable assets is concerning. The lack of such reports, combined with the inadequate quality and content of immovable asset-related decisions proposed by the executive, significantly degrades the quality and effectiveness of local-level immovable asset management. This presents a risk for corruption by withholding reliable tools from MCs/MAs to perform their vital oversight function. In addition, such practice suggests that the executive is a significantly more important actor than is envisaged by relevant laws and regulations, which further limits oversight by the legislative branch.

3.3.5 Overt discretion in the usage of the collected funds

Finally, regardless of considerable funds collected through the management of immovable assets, the purpose for which such resources can be used is usually not determined. Overall, only five out of 22 observed LGUs⁶² clearly define the purpose for

60 Law on Public Property in BD BiH, Articles 13-16. This involves an additional, separate procedure for the disposal of public property, which may be related, but not limited to the interest of economic development or investments in BD, as well as humanitarian reasons.

61 In Šamac, for example, the department for economy submits annual information on the lease of commercial property to the MA.

62 Bijeljina, Breza, Mostar, Šamac and Šipovo.

which funds deriving from the management of immovable assets can be used. At the same time, only four LGUs⁶³ have reported a clearly defined procedure for monitoring of spending of these funds. This risks overt executive discretion in the usage of revenues from immovable assets which could be problematic considering the significant value of the funds collected.

63 Bijeljina, Ilijaš, Mostar and Šipovo.

4. Conclusions and recommendations

Based on the above analysis, one can conclude that an asset management system at the local level mostly exists only in disconnected parts. A notable exception from this rule is Brčko District BiH which, despite some observable procedural shortcomings (in the sense that, save in some special cases, the BD Assembly is mostly excluded from decision-making processes in this field), can serve as an example of good practice in BiH. This is so because Brčko District does have a detailed legal framework and a dedicated institutional structure for the management of public property, including immovable assets. Elsewhere, one can find only a loose framework, where key mechanisms – such as strategic documents, asset registries and checks and balances of different institutional actors – are either non-existent or insufficient. Thus, in such circumstances, particularly vulnerable points from the perspective of corruption are difficult to single out.

Bad management opens the door to corruption, as do the lack of a systematic approach and poor oversight and accountability mechanisms. Immovable asset management at the local level in BiH raises numerous concerns in this regard. Furthermore, the lack of strategic planning and co-ordination, coupled with insufficient usage of important management tools such as asset registries which, even where they exist, sometimes lack vital information including valuations of the assets concerned, makes it difficult to ensure sufficient accountability of LGU administrations, particularly the executive, for their overall performance in this field.

This report has identified some of the key shortcomings in terms of both the legal framework behind and practice of immovable asset management at the local level. Apart from the general gaps in the immovable asset management system, the report has pointed out specific vulnerable points that are particularly worrying from the perspective of corruption risk. While the whole field requires serious interventions at the level of both the legal framework and practice – as the numerous problems with immovable asset management at the local level in BiH can only be addressed in a systemic manner – these specific corruption risks should be considered as a matter of priority.

Thus, to improve the overall effectiveness of local-level asset management in BiH and address both the general and specific corruption risks, the Mission recommends the following:

Legal framework

Recommendation 1: Improve the relevant legal framework in FBiH and RS by regulating key substantive aspects of effective immovable asset management – particularly organizational aspects, asset registries, and mandatory annual planning and reporting – using the legal framework of Brčko District BiH, among others, as a source of promising practice, and taking examples of international best practice into account.

Alternatively, this can also be done by developing model local regulations to be adopted by MA/MCs.

Asset management tools and practices

Recommendation 2: Introduce standardized organizational and institutional arrangements in charge of asset management; consider the nature of work and provide for a clear description of roles and responsibilities, at the same time envisaging a focal point and/or dedicated unit for these purposes.

Recommendation 3: Develop a specialized training program for immovable asset management and promote the importance of continuous and mandatory capacity building in this area.

Recommendation 4: Develop asset management policy documents in line with good governance principles, providing for strategic and operational guidance on the management of LGU assets.

Recommendation 5: Conduct a comprehensive information gathering and mapping of LGU assets to serve as a basis for the development of relevant strategic documents.

Recommendation 6: LGUs should develop a comprehensive and reliable asset registry to include information on ownership status, location, size, condition, value, current use, estimated service life and other significant information on assets they own.

Specific corruption risks

Recommendation 7: Standardize the procedure for asset valuation across LGUs.

Recommendation 8: Determine the specific purposes for which the funds collected through managing immovable assets can be used and introduce the practice of monitoring of usage of these funds.

Recommendation 9: Improve the mechanisms and practice of public consultations concerning decisions on immovable assets owned by LGUs.

Recommendation 10: Standardize the format of proposed decisions of relevance for immovable asset management so that they contain all key elements, adequate reasoning and elaboration.

Recommendation 11: Promote and encourage in all municipalities the practice of annual reports on the management of immovable assets owned by the LGUs to be submitted to and considered by MA/MCs.

