



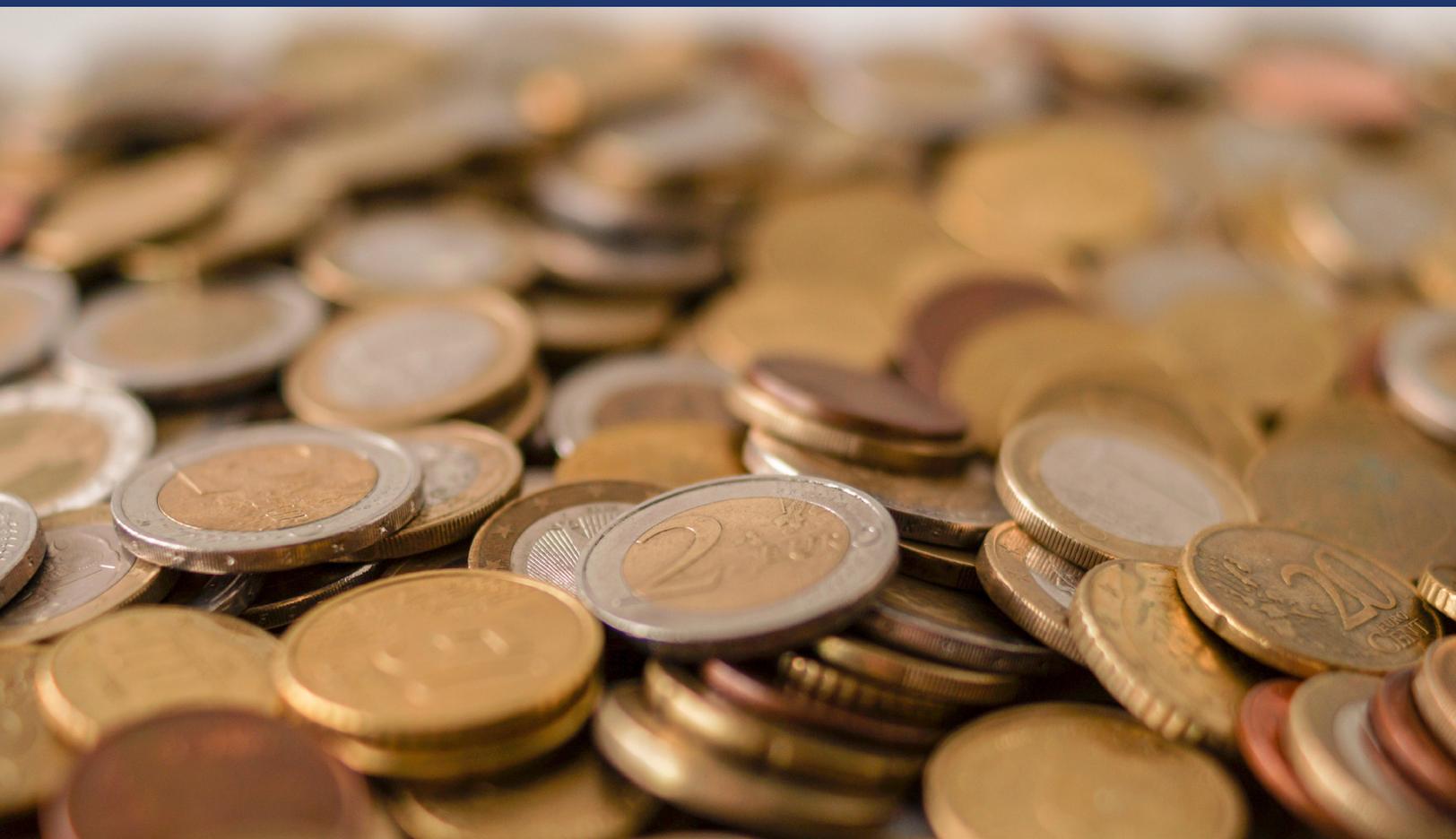
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# Abuse of State Resources Research and Assessment Framework

*Guidelines for the Democracy and Governance  
Community of Practice*



**March 2018**

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## I. Introduction<sup>1</sup>

The abuse of state resources (ASR) can be a major corruptive force in the electoral process, introducing or exacerbating power inequalities and giving unfair electoral advantage to incumbents. These abuses can compromise the integrity of an election, create an unfair playing field (or undermine competitiveness), and reduce public trust in the legitimacy of the process and its outcomes.<sup>2</sup> While this assessment methodology focuses on electoral processes, it is also acknowledged that abuses of this kind may harm the effectiveness of governance and waste limited public resources. Although the concept of abuse or misuse of state resources (in some regions known as “administrative resources”) is indirectly highlighted in a handful of international and regional public law documents, there are few comprehensive information sources available.<sup>3</sup> Similarly, the democracy and governance community of practice lacks methodologically rigorous approaches to assess the effectiveness of legal measures.

The “Abuse of State Resources Research and Assessment Framework: Guidelines for the Democracy and Governance Community of Practice” is an abbreviated companion document to the complete *Abuse of State Resources Research and Assessment Framework*. Both documents are based on in-depth, comparative analysis of laws and regulations that target the abuse of state resources in election campaigns and the effectiveness of these provisions in deterring or remedying these abuses. These assessment tools focus on the use of the legal and regulatory framework to prevent specific abuses related to a state’s resources, which are confined herein to restrictions on state personnel, the use of state funds and physical assets, and official government communications to the public. As these tools were designed to evaluate abuses of state resources in election campaigns for which there are recognized international standards, they do not delve deeply into some other common areas of abuse (for example, government procurement and contracting, public works spending around elections, and vote buying). However, as detailed in subsequent sections of this document, several of these topics are addressed separately from the legal framework analysis as part of the ASR “enabling environment.”

This condensed version of the full assessment tool is intended as a less time- and resource-intensive option for international and citizen (domestic) civil society actors, implementers, and advocates to use in conducting an initial assessment of the effectiveness of the ASR legal framework in a given country. This shorter version of the tool will help these groups identify priority issues and vulnerabilities that they can use in developing their strategy for monitoring, addressing, and/or advocating for measures to mitigate the abuse of state resources. The full *ASR Research and Assessment Framework* document provides a more comprehensive evaluation methodology for an assessment team that relies on more intensive desk and field research.

The development of this tool was informed by and predicated on several important principles recognized in international law and comparative good practice. The following three principles will underpin the methodology described in this document.

### Principle 1

First, the legal framework must establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections. Provisions regarding permissible uses of

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<sup>1</sup> This section draws from an IFES white paper, “Unfair Advantage: The Abuse of State Resources in Elections.” See Megan Ritchie and Erica Shein, “Unfair Advantage: The Abuse of State Resources in Elections” (2017), <http://www.ifes.org/publications/unfair-advantage-abuse-state-resources-elections>.

<sup>2</sup> Bruno Speck and Alessandra Fontanta, “‘Milking the System’: Fighting the Abuse of Public Resources for Re-election,” CHR Michelsen Institute (CMI)/ U4, No. 7 (2011).

<sup>3</sup> For more information, please refer to Ritchie and Shein, *Unfair Advantage*.

state resources should clearly apply to both incumbent and opposition political forces, and “should not favor or discriminate against any party or candidate.”<sup>4</sup> The legal and regulatory framework should require public employees to act in a neutral and impartial manner, and make a “clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign.”<sup>5</sup> In addition to clearly establishing parameters for the appropriate uses of state resources, the most effective ASR-prevention and mitigation systems will have a range of remedies available, and identify a clear remedy for each potential violation determined by the law.<sup>6</sup>

#### Principle 2

Second, effective and transparent oversight by independent institutions is essential to address the abuse of state resources. Institutions responsible for auditing the use of administrative resources should be granted the necessary authority and mandate to monitor parties and candidates, and must be equipped with the necessary human and financial resources to effectively carry out these mandates.

#### Principle 3

Third, relevant institutions should properly enforce sanctions and penalties to hold accountable those state officials who violate the law, regulations, and rules established by their institutions. As noted by IFES in a recent American Bar Association publication, “The enforcement of remedies and sanctions is important not only to give substance to rights, but also to deter future instances of malpractice and fraud. The effectiveness of certain sanctions as a deterrent depends in part on enforcement. If the courts, [election management body], or other state bodies are unable, or unwilling, to enforce a sanction or implement a remedy, the deterrent effect decreases.”<sup>7</sup>

### Important Definitions

**Abuse of state resources:** “the undue advantages obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, to influence the outcome of elections” (Organization for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Handbook for the Observation of Campaign Finance 66 [2015])

**Financial resources/state funds:** operating budgets of government institutions (e.g., travel budgets) *Note: this analysis does not look directly at state contracting mechanisms or spending authorized by legislators for public works and other programs*

**State physical resources:** assets owned by the state, including (but not limited to) buildings, vehicles, land, and equipment

**Oversight body/authority:** The entity or entities with monitoring, regulatory or supervisory control over the use of state resources (e.g., anti-corruption commissions, ministries of justice, the offices of prosecutors or the attorney-general, state audit commissions and election management bodies)

**Immunity:** Protection for public employees from politically-motivated prosecution, removal from office, and other reprisals based solely on conduct appropriate for carrying out their legal mandates

**Remedy:** The means to achieving justice in any matter in which legal rights are involved; for example, the enforcement of penalties, sanctions and restitution or other court order

<sup>4</sup> OSCE/ODIHR, Election Observation Handbook 18, 5<sup>th</sup> ed. (2005), 47.

<sup>5</sup> Venice Commission and OSCE/ODIHR, *Joint Guidelines for Preventing and Responding to Misuse of Administrative Resources during Electoral Process*, 106th Sess., Doc No.778/2014, at ¶ 4 (2016).

<sup>6</sup> Magnus Ohman and Megan Ritchie, “Campaign Finance,” in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016).

<sup>7</sup> Katherine Ellena and Chad Vickery, “Measuring Effective Remedies for Fraud and Administrative Malpractice,” in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016), 111.

## II. Analytical Framework

The purpose of this methodology is to measure the effectiveness of the ASR framework in a specific country. **It evaluates the legal framework on the basis of its ability to create conditions for competitive elections as defined by international standards relevant to the use of state resources in elections.** The legal and regulatory framework will be considered to be effective if it enables the deterrence, detection, and remedy of ASR abuses in a manner commensurate with international standards.

Additionally, based on the comparative research conducted to inform the development of this methodology, we have determined that an essential element of legal effectiveness is the available *political will* for implementing laws or reforms. Assessments based on this methodology should address the political will available or lacking in a given context, and offer appropriate recommendations. Examples of elements that support political will (see table below) will be important for evaluating the ability of stakeholders to hold officials accountable under the legal framework governing ASR and will be revisited in the form of specific questions for research, and used to develop and prioritize recommendations.

<i>Elements of Political Will</i>	<i>Incentives</i>	<ul style="list-style-type: none"> <li>✓ Checks and balances in the government that hold officials accountable for carrying out their mandates</li> <li>✓ Incentives for positive action (or withdrawal of disincentives), including from the international community</li> </ul>
	<i>Relationships</i>	<ul style="list-style-type: none"> <li>✓ Interest groups and political parties/forces that are supportive of the effort, or that do not seek to provide organized opposition (including both actors directly regulated by ASR rules, and those that are not)</li> <li>✓ Receptive and engaged public</li> <li>✓ Supportive partners in the international community</li> </ul>
	<i>Consequences</i>	<ul style="list-style-type: none"> <li>✓ Social and political conflict are minimal</li> <li>✓ Reputational costs are minimal (or advantageous), both for public officials and political actors contesting elections</li> <li>✓ Power can be sustained despite an effective opposition</li> </ul>

### Key Pillars of Inquiry

Based on the three core principles outlined in the introduction to this methodology, the analytical framework is divided into three pillars of inquiry: legal and regulatory framework (Principle 1), oversight institutions (Principle 2), and enforcement (Principle 3). The table on the following page provides an overview of the elements of the law relevant to each pillar, as well as high-level indicators of effectiveness.

<i>Principle</i>	<i>Necessary elements of the legal framework</i>	<i>Indicators of effectiveness</i>
<p>Establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections <i>(Principle 1: legal and regulatory framework)</i></p>	<p><b>General Elements</b></p> <ul style="list-style-type: none"> <li>• Clear definitions of the permissible uses of state resources as well as what constitutes an abuse</li> <li>• Regulations that clearly apply to both incumbent and opposition political forces and do not favor or discriminate against any party or candidate</li> <li>• Distinctions between the operation of government, activities of the civil service and the conduct of the electoral campaign</li> <li>• Clear balance between the general right to stand for elections and the need for a clear separation between candidacy and public office</li> <li>• Range of penalties/remedies, including criminal and disciplinary sanctions, that are targeted to specific offenses or categories of offenses</li> </ul> <p><b>Restrictions on State Personnel</b></p> <ul style="list-style-type: none"> <li>• General requirements to act impartially</li> <li>• Specific bans on state personnel campaigning while on duty (potentially banning certain state personnel from participating in campaigns at all)</li> <li>• Specific requirements for public officials who are seeking elected office, differentiated by position</li> <li>• Restrictions on or rules for contributing resources to electoral campaigns</li> </ul> <p><b>Restrictions on the Use of State Funds and Physical Resources</b></p> <ul style="list-style-type: none"> <li>• Restrictions on the use of physical resources (e.g., vehicles, facilities, equipment)</li> <li>• Restrictions on the use of state funds</li> </ul> <p><b>Restrictions on Official Government Communications to the Public</b></p> <ul style="list-style-type: none"> <li>• Restrictions on the use of official government communication tools</li> <li>• Restrictions on advertising by government institutions during campaign periods</li> <li>• Requirements for the equitable use of state-led/managed media</li> </ul>	<ul style="list-style-type: none"> <li>• Subjects of the law (including public employees and candidates) are aware of the rules by which they are bound and are given an opportunity to present a case in the event of an alleged violation</li> <li>• Assignment of mandates and responsibilities to oversight bodies facilitates monitoring, investigation, and enforcement of ASR-related cases, whether these mandates are entirely distinct or provide for some institutional multiplicity</li> <li>• Institutions exercise their legal authority and mandate to monitor parties and candidates and to enforce penalties regardless of political affiliation</li> <li>• State oversight actors are effectively insulated from political pressure and reprisals</li> <li>• Institutions are reporting potential abuses of state resources in a timely, transparent, clear and comprehensive manner</li> <li>• Process for addressing violations is transparent and accessible</li> <li>• Available remedies are timely, proportional to the abuse they seek to address, enforced, and have the desired deterrent effect</li> <li>• Standing rules are clear and practicable, deterring frivolous claims without having a chilling effect on legitimate complaints or charges</li> </ul>
<p>Ensure effective and transparent oversight by independent institutions <i>(Principle 2: oversight institutions)</i></p>	<ul style="list-style-type: none"> <li>• Provisions establishing a mandate for independent oversight institution(s)</li> <li>• Mechanisms for ensuring compliance with rules and regulations</li> <li>• Provisions for human and financial resources to support the mandates of oversight bodies</li> </ul>	<ul style="list-style-type: none"> <li>• Process for addressing violations is transparent and accessible</li> <li>• Available remedies are timely, proportional to the abuse they seek to address, enforced, and have the desired deterrent effect</li> </ul>
<p>Properly enforce sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions <i>(Principle 3: enforcement)</i></p>	<ul style="list-style-type: none"> <li>• Provisions that clearly outline the requirements for standing to register complaints or press charges (i.e., the legal right of specific actors to initiate a dispute or charge under the law, generally due to a specific connection to and harm from the action that is being challenged)</li> <li>• Mechanisms that enable the judiciary or other relevant institutions to properly enforce sanctions</li> </ul>	<ul style="list-style-type: none"> <li>• Standing rules are clear and practicable, deterring frivolous claims without having a chilling effect on legitimate complaints or charges</li> </ul>

### III. Research Guide

This research guide contains the following primary elements:

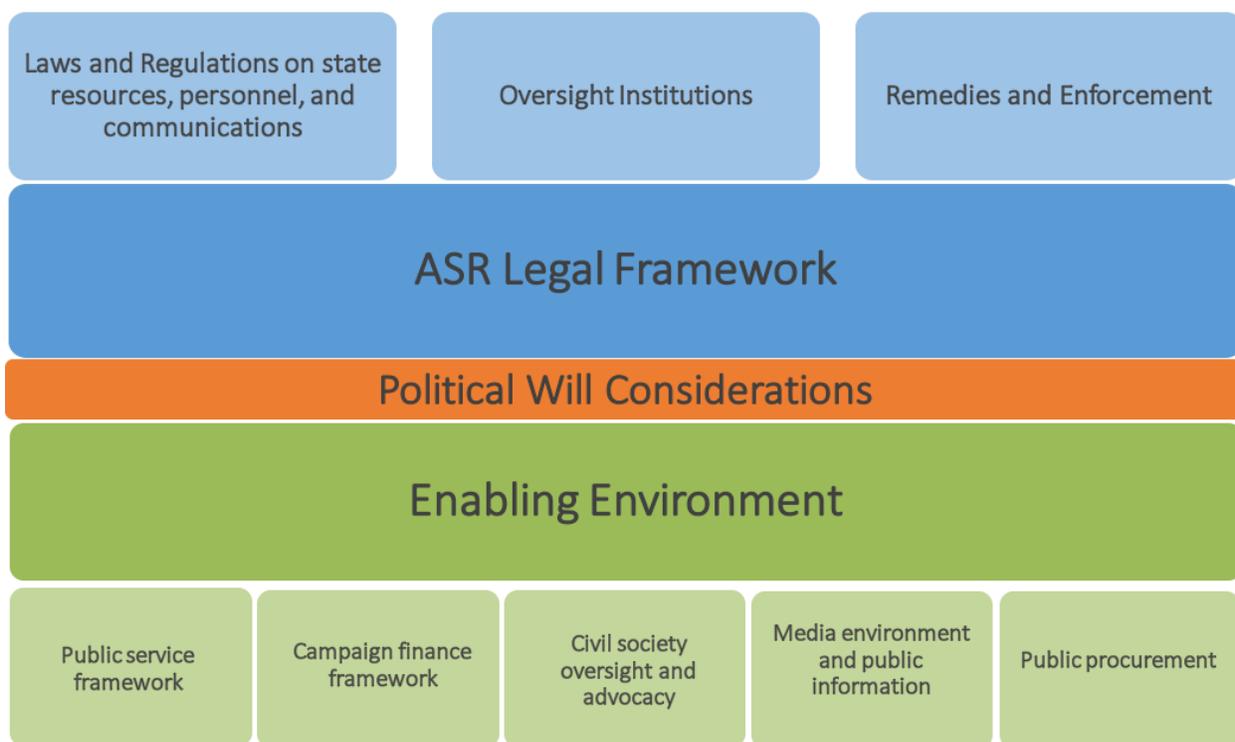
1. **Overarching research framework**
  - *Outline of the main areas of inquiry*
2. **Assessment process guidelines**
  - *Guidelines for desk research, stakeholder interviews, report writing, and tracking the implementation of recommendations*
3. **ASR Legal Framework Analysis**
  - *Research questions for each of the three pillars of inquiry: legal and regulatory framework; oversight institutions; and enforcement*
4. **Enabling Environment Analysis**
  - *Research questions for each of the five focus areas of the enabling environment: public service framework; campaign finance framework; civil society oversight and advocacy; media environment and public information; and public procurement*
5. **Guidance for development of recommendations**

#### Overarching research framework

The graphic included below shows the high-level areas of inquiry for this assessment methodology. The areas in **blue** represent the three pillars for understanding the ASR legal framework. Although the purpose of this assessment tool is to measure the effectiveness of the legal framework regulating the use of state resources in elections, the analysis would be incomplete without taking stock of contextual factors (indicated below in **green**). More crucially, any recommendations resulting from the assessment would likely fail to capture important nuance, and could be impractical to implement. To ensure the methodology is sufficiently focused, the methodology highlights five specific contextual areas of interest (aggregated herein as the *enabling environment* for ASR).

The research guide includes key questions that should be researched and addressed for each sub-area specific to the **ASR legal framework** and the **enabling environment**, respectively. These questions will contribute to the analysis and narrative that will form the main body of the final report.

The third element in this graphic is **political will**, illustrated here as a central factor that influences both the legal framework and the enabling environment. As discussed above, an understanding of the dynamics shaping political will is important for evaluating the ability of stakeholders to hold officials accountable under the legal framework governing ASR. **Political will** does not have its own research guide; instead, specific questions have been incorporated into the **ASR legal framework** and **enabling environment** analysis and the recommendations guidance.



## Assessment process guidelines

### Desk Research

Desk research is a required element of this assessment process. If more than one person is involved in the desk research, the division of tasks should be clearly defined at the outset, and frequent contact should be maintained to ensure consistency in the analysis. As much primary and secondary source material as possible should be collected during this process, and researchers should develop a list of suggested questions for clarification through stakeholder interviews.

### Stakeholder Interviews

The purpose of stakeholder interviews is to help answer questions from the legal framework and enabling environment analyses that could not be effectively answered during the desk research phase. This gap may in particular relate to attitudes and actions of different stakeholders. Before this portion of the research commences, the issues to be addressed should be clearly defined, interviewees identified, and a list of questions should be developed (this may be different for different types of respondents).

### Report Writing

The final assessment report should include: an executive summary, high-level recommendations table, a summary of the assessment methodology, and the ASR legal framework and enabling environment analyses. These five sections may also be supplemented with a set of annexes, including a list of informant types or key contacts; legal framework desk research summary of laws and sources; and other materials for the reader. For brevity, overall conclusions should be included in the executive summary rather than a separate concluding section. In addition to including a high-level recommendations table at the outset of the report, recommendations should ideally be emphasized throughout the analysis of the ASR legal framework and enabling environment.

### *Tracking of Implementation of Recommendations*

An important element of the assessment process is to track the status of recommendations made in the final report. Each recommendation from the assessment report should be individually tracked and assessed over time (approximately every six months or one year). The implementation of recommendations can be evaluated based on pre-determined criteria, such as whether the issue has been resolved, progress has been made, no change has occurred, or the issue has regressed or gotten worse.

# ASR Legal Framework Analysis

The following questions should be assessed during the desk research phase, based on a thorough review of the domestic legal framework. It is likely that some of these questions cannot be answered through desk research, either since information is unavailable or is difficult to interpret. In such cases, the gaps should be clearly highlighted to be addressed during the field research phase. **Answering these questions should involve both an examination of the legal framework and an analysis of how laws and regulations are implemented/upheld in practice.** Where available, additional secondary sources and literature should also be reviewed during desk research to begin to evaluate the practical implementation of these laws and regulations.

Principle 1: Establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections (legal and regulatory framework)

## *Restrictions on State Personnel*

### Legal Requirements to Act Impartially

1. Are there legal requirements compelling state agencies and personnel (including appointed personnel) to act impartially in all matters, including in relation to political parties, candidates and election campaigns? Are these requirements in the constitution? In administrative or electoral codes? Are they implemented in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
2. Are there legal requirements for institutions within the government, such as election management bodies and law enforcement agencies, requiring political neutrality? Are these requirements implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
3. Does the legal framework define bribery and coercion crimes (for example, in the Penal Code)? What are available sanctions? Is the law followed in practice?
4. Who has standing to file a complaint concerning abuse of state resources as it relates to legal requirements of state personnel to act impartially?
5. Are there any provisions in the legal framework protecting individuals from retaliation (i.e., from harassment or job insecurity) as a result of filing abuse of state resources complaints related to the impartial behavior of state personnel?

### Restrictions on State Personnel Running as Candidates for Public Office

1. Are there any legal requirements for state personnel to resign from their positions before standing for elected office (and if so, how long before candidate nomination)? Are these requirements implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
2. Who has standing to file a complaint concerning abuse of state resources as it relates to restrictions on state personnel running as candidates for public office?
3. Are there any provisions in the legal framework protecting individuals from retaliation (i.e., from

harassment or job insecurity) as a result of filing abuse of state resources complaints related to state personnel running as candidates for public office?

### Restrictions on State Personnel Participating in an Electoral Campaign

1. Are there any provisions in the legal framework restricting state personnel from participating in electoral campaign activities while *on the job* (e.g., requirements to government personnel to avoid election campaign activity while on duty and/or during government office hours, or prohibitions on use of staff time for campaign or political purposes as opposed to the performance of official business)? Are there exemptions to these restrictions? Are these requirements implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
2. Are there any provisions in the legal framework restricting state personnel from participating in certain electoral campaign activities while *off the job* (e.g., using an official title or position while engaging in partisan election activity, making campaign speeches at partisan gatherings, or taking an active part in managing a partisan political campaign of a political party or political group)? Are there exemptions to these restrictions? Are these requirements implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
3. Are there any provisions in the legal framework restricting specific state personnel from participating in electoral campaign activities, both on and off the job, *based on their position* (e.g., prohibitions on judges from partisan political participation or prohibitions on non-regular government representatives [such as military personnel] from engaging in certain activities while on active-duty status)? Are there exemptions to these restrictions? Are these requirements implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
4. Who has standing to file a complaint concerning abuse of state resources as it relates to restrictions on state personnel participating in an electoral campaign?
5. Are there any provisions in the legal framework protecting individuals from retaliation (i.e., from harassment or job insecurity) as a result of filing abuse of state resources complaints related to state personnel participating in an electoral campaign?

### Restrictions on the Use of State Funds and Physical Resources

#### State Funds

1. Are there any provisions in the legal framework restricting the use of state funds in election campaigns (except when provided as part of legally regulated public funding of political parties and/or election campaigns)? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
2. Are there any provisions in the legal framework restricting provision of funds from state-owned or affiliated agencies to political parties or candidate, or banning political parties or candidates from receiving funds from state-owned or affiliated agencies? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to

address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?

3. Are there restrictions on public spending during a period ahead of elections, such as increases on pensions or temporary employment schemes? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
4. Who has standing to file a complaint concerning abuse of state resources as it relates to restrictions on the use of state funds?
5. Are there any provisions in the legal framework protecting individuals from retaliation (i.e., from harassment or job insecurity) as a result of filing abuse of state resources complaints related to the use of state funds?

### Physical Resources

1. Are there any provisions in the legal framework preventing the use of the state's physical resources in election campaigns (except when provided as part of legally regulated public funding of political parties and/or election campaigns), (e.g., government buildings, equipment, vehicles, parks)? If the use of specific resources is permitted, is it available to all political parties and candidates on an equal basis? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
2. Are there any provisions in the legal framework restricting the use of the state's physical resources in election campaigns to only those that can be procured without additional cost to the government (e.g., elected officials may use government buildings/equipment/vehicles for election activity if the government is fully reimbursed for time used)? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
3. Who has standing to file a complaint concerning abuse of state resources as it relates to restrictions on the use of physical resources?
4. Are there any provisions in the legal framework protecting individuals from retaliation (i.e., from harassment or job insecurity) as a result of filing abuse of state resources complaints related to the use of physical resources?

### Authority to Regulate Campaign Activities

1. Are there clearly specified rules for relevant authorities on the issuing of permission regarding rallies and other campaign activities, and limitations that may be imposed on such activities? Do these rules enable equitable access to campaign sites? Do these rules and procedures correspond to international principles of freedom of assembly, association and political expression? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
2. Who has standing to file a complaint concerning abuse of state resources as it relates to the regulation of campaign activities?

3. Are there any provisions in the legal framework protecting individuals from retaliation (i.e., from harassment or job insecurity) as a result of filing abuse of state resources complaints related to the regulation of campaign activities?

### **Restrictions on Official Government Communications to the Public**

#### Restrictions on Use of Government Communications to Influence Electoral Campaigns

1. Are there any provisions in the legal framework restricting use of state funds to print or distribute communication specifically related to the *time* during/around the electoral campaign period (e.g., prohibitions on mass mailings or emails paid with official government funds or official publications from being sent during the 30 days before an election)? Are there exceptions to these rules (e.g., are there special dispensations for the Ministry of Gender or other agencies to encourage women to participate in politics)? Are these requirements implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
2. Are there any provisions in the legal framework restricting use of state funds to print or distribute communication on/around the electoral campaign period related to *content* of official communication (e.g., restrictions on use of official symbols or other government insignia, including stationary, seals, website links, footage of official government proceedings)? Are these requirements implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
3. Are the administrators of government agency social media accounts and/or individual government personnel with personal social media accounts required to remain impartial during campaigns? Is there a code of conduct for social media usage by state personnel? Are posts from candidates and parties all considered to be election advertisements? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies? What mechanisms are available to monitor and enforce any such provisions?
4. Who has standing to file a complaint concerning abuse of state resources as it relates to restrictions on the use of government communications?
5. Are there any provisions in the legal framework protecting individuals from retaliation (i.e., from harassment or job insecurity) as a result of filing abuse of state resources complaints related to the use of government communications?

#### Restrictions on State Media

1. Does the country have legal provisions regarding freedom of expression and are they respected? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
2. Are there rules governing the allocation of free state media airtime to election contestants? Do these rules in any way give preference or additional time to incumbent candidates or parties (including by favoring larger parties)? Are these rules implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?

3. Are there any legal requirements for publicly owned media to be impartial in reporting on political actors and election campaigns and to devote equal time to all competitors (including requirements to be impartial in reporting on female political actors and election campaigns)? Are these requirements implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
4. Are there rules governing paid political advertising in state media? Are the rules governing paid political advertising consistently applied? Does the law prohibit hidden political advertising? Are these rules implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
5. Are there any provisions in the legal framework restricting state media from receiving monetary or in-kind donations from any political party or candidate during an election campaign? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
6. Are there any provisions in the legal framework restricting state media from publishing false statements about the election activities of a candidate or a political party? Are there provisions in the legal framework restricting state media, including government or government employee social media accounts, from libelous expression? Are these provisions implemented/applied in practice? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
7. Are there any provisions in the legal framework restricting state media from political activities that represent a conflict of interest? What remedies are available in the legal framework to address these provisions, including both criminal and/or administrative sanctions, and other corrective remedies?
8. Who has standing to file a complaint concerning abuse of state resources as it relates to restrictions on state media?
9. Are there any provisions in the legal framework protecting individuals from retaliation (i.e., from harassment or job insecurity) as a result of filing abuse of state resources complaints related to the use of state media?

#### Principle 2: Ensure effective and transparent oversight by independent institutions (oversight institutions)

1. What bodies are responsible for oversight and/or enforcement of laws and regulations pertaining to the abuse of state resources? What are the legal mandates of these institutions (e.g., preparing a report, publishing information, investigating incidents or applying sanctions)?
2. Do institutions adequately fulfil their mandates? If several institutions have a formal role, is the division of their tasks clear under the law? Are there any instances where they abuse this power in practice for political gain in an election?
3. What is the procedure for the appointment/removal of the oversight bodies' members, including their terms of office and safeguards for their independence? Are there any requirements for the appointment of both male and female members? Is the process for the

appointment open, transparent and does it involve the participation of civil society? Are the conditions and qualifications required for membership clearly stated, publicly available and verifiable? Do members have a proven track record of experience in the relevant sector (e.g., media)?

4. What is the source of funding for oversight institutions? What control does the oversight institutions have over their budget or use of funding?
5. Does the law require any institution to issue regulations or guidance regarding the use of state resources? Is the law followed in practice?
6. How much time is allowed for routine and campaign finance auditing to assist in identifying the abuse of state resources?
7. Do enforcement agencies/oversight bodies have equitable gender representation? Are women more or less likely to file complaints against male counterparts (possibly due to a lack of protection or fear of retaliation)? What is the general culture toward women in positions of government employment? Do any of these problems lead to unequal enforcement of state personnel restrictions?
8. Do the oversight bodies have sufficient capacity to monitor the abuse of state resources in practice? What resources and staff do the oversight bodies have for the purpose of supervising the use of state resources? Do they actively engage in monitoring?
9. What are specific incentives or disincentives – both individual and institutional – for carrying out oversight mandates?
10. Do oversight institutions anticipate negative consequences that may inhibit their will to carry out their mandates (for example, a reduction in funding as a result of pursuing sensitive cases)? Positive consequences that may encourage them (e.g., public approbation in the media)?
11. If the legal framework does not include specific protections for complainants, are whistle-blower provisions in place for civil servants with knowledge of abuse perpetrated from within a government agency? Do whistle-blower provisions protect whistle-blowers from retribution?

**Principle 3: Properly enforce sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions (*enforcement*)**

1. Are sanctions and penalties (as identified in Principle 1) enforced by relevant institutions, including the judiciary? Do oversight institutions have the power to levy and enforce sanctions without applying to the court system? Are there gender-based differences in the application of sanctions and penalties?
2. Are there any challenges in practice pertaining to compliance with imposed sanctions by offenders?
3. If applicable, are whistle-blower provisions adequately and fairly enforced?

## Enabling Environment Analysis

The below questions should be addressed as possible during the desk research phase. Many of the questions regarding attitudes and behavior may be best addressed during field research. Such instances should be clearly highlighted during the desk research for further exploration during field interviews. The assessment of the enabling environment should be fairly brief, and these questions should serve primarily as a general guide. Depending on country context, it may be advisable to focus on a few key questions for each category, or provide a general overview from a comparative perspective – picking a few points to compare to the regional or similarly situated country examples.

### *Public service framework*

1. Is the state administration generally seen as independent from the governing party?
2. Is the hiring, promotion, and removal process for civil servants dependent on political appointment or meritocracy? Is this true at all levels of the civil service hierarchy?
3. Are there training programs for the civil service focused on impartiality and legal/regulatory restrictions on behavior?
4. Are women appointed to government positions in the same numbers as men? Are there any reports of sexual harassment, threats, or exploitation related to government appointments?
5. Are salary scales along the civil service hierarchy generally considered fair? Are salaries sufficient to discourage corruption?

### *Campaign finance framework*

1. Does the law ban or place limits on any specific sources of campaign contributions or donations to political parties and/or candidates? Is there any mechanism in place to determine whether these limits are being followed?
2. Are there asset disclosure laws in place for candidates for political office? Is there a clear process for the public to request and receive information about disclosures in a timely manner?
3. (If not covered in the ASR legal framework analysis) Are there any legal provisions for direct public funding (i.e., regulated provision for money to be given) to political parties or candidates? What are the eligibility criteria? Does the public finance structure award parties for including women (or penalize them for excluding women)?
4. Does the law place any restrictions on election expenditures of political parties and/or candidates? Do electoral contestants comply with the law?
5. Does the law require reporting of campaign finance contributions to political parties and/or candidates? Are such reports made available to the public in a timely manner? Is there evidence that the responsible political finance regulator reviews these reports?
6. Do political parties have to maintain financial records and report regularly on their finances? Are such reports made available to the public?
7. Is there a clear mandate for the body/institution (or bodies/institutions) responsible for political finance regulation? Are these institutions effective and independent?

### *Civil Society Oversight and Advocacy*

1. Does the country have a robust civil society organization (CSO) presence, demonstrating interest in this topic? Are these CSOs perceived as being politically neutral?
2. Is civil society engaged in monitoring the abuse of state resources during election campaigns? Do CSOs have the capacity to engage in monitoring activities? How active are they within this space? How publicly available is their information?
3. Are there mechanisms for civil society organizations to request an investigation or file a complaint about the abuse of state resources? Are these mechanisms well-publicized and easily accessible?
4. Are there formal consultation mechanisms established between and among oversight bodies, civil society, political parties and candidates?

### *Media Environment and Public Information*

1. Is there a robust tradition of investigative journalism in the country? Are there mechanisms in place for the safety and security of journalists? Are there self-regulatory mechanisms for journalists?
2. Do journalists have access to all election activities?
3. Are there legal provisions regarding freedom of information? Do freedom of information laws (and their implementation) protect the right of citizens and media outlets to access political finance information during election campaigns?
4. Do journalists benefit from adequate training, support and practice? Do journalists have the requisite knowledge for elections reporting such as an understanding of the political and electoral system, an understanding of the overall electoral process, familiarity with electoral law, especially as it affects media reporting and an understanding of the role of the media in covering elections?
5. Do journalists seem knowledgeable about the regulatory framework around the use and abuse of state resources, and about the actual practice of such use and abuse? Is there an interest in investigating and reporting issues relating to this issue?
6. Are instances of the abuse of state resources adequately covered in the media without bias?

### *Public Procurement*

1. Are government contractors subject to restrictions on political activity? Are grantees? How are these regulations enforced?
2. Do regulations prohibit contractors from diverting funds awarded by the government for political purposes? If so, how are the regulations enforced? Are contractors required to keep records in compliance with accounting standards to prove they are being paid only for allowable costs?
3. Do regulations ensure that contracts are only awarded for development projects that are needed within a given timeframe? Are there restrictions on when projects can be undertaken surrounding an election?

## Development of Recommendations

Although recommendations are often developed as the assessment is winding down, it is arguably the most essential piece of the process. It is important that recommendations are specific, identify responsible actors, and identify elements that can be harnessed in reform efforts or that will need to be mitigated. In addition, as this assessment tool will allow for a very detailed analysis of a relatively narrow area of the electoral legal system, it is necessary to prioritize recommendations as much as possible. The structure below – populated with four example recommendations – will support the assessment team to develop actionable recommendations, prioritize them, and present them clearly to the reader. Recommendations should distinguish between those pertaining to the “ASR Legal Framework” and “Enabling Environment” sections of the report. The final column identifies the priority level of the particular recommendation. *Note: If time or resource constraints do not allow for a complete analysis, developing recommendations and identifying responsible actors and priority levels for each of these recommendations should be prioritized.*

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
<b>ASR Legal Framework</b>				
Consider amendments to the legal framework to protect civil servants from political interference by senior officials and to further restrict the ability of senior political officials to participate in campaign events	Parliament	<ul style="list-style-type: none"> <li>✓ Existing, highly engaged CSO advocacy and monitoring groups</li> <li>✓ Potential champions within major political parties</li> </ul>	<ul style="list-style-type: none"> <li>✓ Political incumbents benefit from existing legal framework</li> </ul>	High
Require civil servants to take leave without pay, rather than vacation time, in order to participate in campaign activities	Parliament Public agencies	<ul style="list-style-type: none"> <li>✓ Existing, highly engaged CSO advocacy and monitoring groups</li> <li>✓ Potential champions within major political parties</li> </ul>	<ul style="list-style-type: none"> <li>✓ Limited public interest in curbing ASR abuses</li> <li>✓ Potential resistance from civil servants satisfied with existing legal framework</li> </ul>	Moderate
<b>Enabling Environment</b>				
Conduct analysis of civil service staffing levels in municipalities and create reasonable standards for the permissible number of employees based on population	CSOs International community	<ul style="list-style-type: none"> <li>✓ Existing, highly engaged CSO advocacy and monitoring groups</li> <li>✓ Influence of the international community to push for change</li> </ul>	<ul style="list-style-type: none"> <li>✓ Limited public interest in curbing ASR abuses</li> </ul>	High

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
Provide targeted training to investigative journalists that focuses on objective reporting and supporting ASR accountability	International community Media	✓ Influence of the international community to push for change	✓ Potential resistance from media outlets due to politicization and/or limited financial incentives for investigative journalism	Low

In the table above, the summary recommendation should be entered in the first column, followed by the relevant actor or actors responsible for implementation. In the political will columns, two additional elements are identified in summary form: existing features of the political landscape that can be leveraged (by the international community, technical assistance providers, or other stakeholders) because they enable or do not block reform, and features that may need to be mitigated or overcome as they present barriers related to political will. These features include incentives (e.g., checks and balances in the government that hold officials accountable, such as penalties and sanctions for misbehavior or support from powerful actors, including from the international community); relationships (e.g., interest groups and political parties/forces that are supportive of the effort, or that do not seek to provide organized opposition, a receptive and engaged public, and supportive partners in the international community); and consequences (e.g., social and political conflict are minimal, reputational costs are minimal or advantageous). The final column offers a way to characterize the importance of the action as high, moderate, or low.

## IV. Annex

### Reference List for Further Reading

#### Abuse of State Resources

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Venice Commission and OSCE/ODIHR, *Joint Guidelines for Preventing and Responding to Misuse of Administrative Resources during Electoral Process*, 106th Sess., Doc No.778/2014, at ¶ 4 (2016).

#### Other Election Standards

Chad Vickery, ed., *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (Washington, D.C.: IFES, 2011).

Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights, *Election Observation Handbook*, 5<sup>th</sup> Ed. (2005).

Katherine Ellena and Chad Vickery, "Measuring Effective Remedies for Fraud and Administrative Malpractice," in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016).

Magnus Ohman and Megan Ritchie, "Campaign Finance," in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016).

#### Legal Effectiveness

Anthony Allott, "The Effectiveness of Laws," *Valparaiso University Law Review* 15, no. 2 (1981): 229-242, <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1579&context=vulr>.

Malcolm M. Feeley, "The Concept of Laws in Social Science: A Critique and Notes on an Expanded View," *Law and Society Review*, 501 (1976), <http://scholarship.law.berkeley.edu/facpubs/50>.

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#### Political Will

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*From Political Won't to Political Will: Building Support for Participatory Governance*, ed. Carmen Malena (Kumarian Press, 2009).

Lawrence Wocher, "Deconstructing 'Political Will': Explaining the Failure to Prevent Deadly Conflict and Mass Atrocities," *Princeton Journal of Public and International Affairs* 12 (Spring, 2001), <http://jpia.princeton.edu/sites/jpia/files/2001-10.pdf>.

Emeka Polycarp Amechi, "Poverty, Socio-Political Factors and Degradation of the Environment in Sub-Saharan Africa: The Need for a Holistic Approach to the Protection of the Environment and Realisation of the Right to Environment," *Law Environment and Development Journal* 5, no. 2 (2009), <http://www.lead-journal.org/content/09107.pdf>.

World Bank, *World Development Report 2017: Governance and the Law*.





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