



## TRANSPARENCY AND ACCOUNTABILITY IN THE MONTENEGRIN GOVERNANCE SYSTEM

### Summary Report of an Assessment Podgorica, February 2009

With a focus on accountability and transparency, the National Democratic Institute (NDI or the Institute) developed an assessment framework to measure indicators of those governance principles necessary for the state to guarantee democracy, the rule of law, human rights, and respect for and protection of minorities. Funded by United Nations Development Programme (UNDP), through the Capacity Development Program (CDP) – NDI designed the framework and conducted an assessment of the Montenegrin governance system by reviewing the country's laws regulating operations of public institutions and evaluating their implementation.

The overall **legal framework** establishes a basis for stable institutions that can guarantee democracy, rule of law, human rights, and respect for and protection of minorities, but there is an absence of detail necessary to establish accountability and ensure implementation.

The Institute and CDP anticipate that public officials, civil society or government monitoring groups, and ordinary citizens can use the assessment framework as a tool to monitor Montenegro's progress in adopting and implementing reforms necessary for compliance with the political components of the Copenhagen Criteria – preconditions for accession to the

The **supervisory function of Parliament** is not sufficiently strong to guarantee access to information needed to exercise oversight. In addition, a lack of administrative capacity and resources, as well as an overconcentration on the daily political battles, limits Parliament's oversight function.

European Union (EU). The project recognizes that the Copenhagen Criteria are not just a set of targets that need to be fulfilled; instead, they define systems needed to be put in place in order to meet the enormous challenges of *being* a member of the European Union – and not just *becoming* a member. NDI's assessment report serves as a baseline measurement against which future

progress can be tracked by individual state bodies and public institutions, providing them with a tool to measure their own performance and improve their internal operations in order to meet the challenges of becoming a responsible member of the European Union.

In considering how the system of governance works in Montenegro, this study concentrated on transparency and accountability as two important dimensions of good governance. The study examines the question of whether each of the three powers of the state – the legislature, judiciary, and executive – are able to play a meaningful role and whether the legal environment and actual practice enable citizens to exercise and access state power to achieve their interests. This following summary report presents some of NDI's recommendations from the assessment (highlighted in **bold**), based on knowledge of legislative systems around the world, as well as the specific challenges faced by Montenegro at this stage of its democratic development. The complete report can be found at: [www.ndi.org](http://www.ndi.org) (English) and [www.ndicrnagora.org](http://www.ndicrnagora.org) (Montenegrin), [www.undp.org.me](http://www.undp.org.me) and [www.gaportal.org](http://www.gaportal.org).

**Independent public institutions** lack the necessary legal framework to guarantee their independence in practice and establish public confidence in the independence of their actions.

While the principles of **division of state power** and of balance and mutual control exist in the new Constitution, neither is fully functional in practice.

## ACCOUNTABILITY OF GOVERNMENT

The legal framework provides for Parliament to elect Government and approve its policy objectives. Elected ministers hold exclusive authority over the functioning and accountability of their ministries, leaving the impression of

ministries as independent bodies. Given the lack of procedural details and sanctions in administrative law for noncompliance, ministers have few guidelines and fewer incentives to implement the lofty principles elaborated in them. Thus, they can operate fairly independently, while counting on the loyalty of staff and being politically accountable to the Prime Minister with limited parliamentary oversight.

Unfortunately, this system does not suffice for MPs and the public to develop confidence in the operations of Government, especially at the implementation stage; and, it does not establish sufficient means for Parliament to hold ministers accountable politically. The Government should **open up direct lines of communication with members of Parliament** so that they develop an understanding of Government's policy objectives. Thus, establishing the practice of **going to Parliament once a year for a presentation of annual policy objectives and debate** could improve Parliament's understanding of the Government's overall priorities and help them plan their own activities. In addition, **individual ministries can offer such annual plans, strategies and progress reports** to the appropriate parliamentary committees. Another way to improve cooperation and coordination with Parliament is for **Government to have a high-level position within the office of the Secretary General responsible for liaison with Parliament.**

**Governance** is the constitutional, legal and administrative arrangements by which governments exercise their power, as well as the related mechanisms for public accountability, rule of law, transparency and citizen participation.

Rob Laking

*Governance of the Wider State Sector, OECD*

International standards dictate that **Parliament's oversight function should give it the right to have access to all Government documents, including all information about public expenditures.** The Budget Law does not provide sufficient time for Parliament to review the budget in a meaningful way and should therefore **be amended to provide a precise deadline for its delivery to Parliament.** Parliament should **introduce changes to the Rules of Procedure to ensure that each committee reviews sections of the budget within its jurisdiction** and to consider whether six hours of debate in plenary is sufficient for discussing the annual budget.

## PARLIAMENT'S OVERSIGHT CAPACITY

The constant political struggle between governing and opposition parties dominates the operations of the Montenegrin Parliament to its detriment. With the release of political tension, Parliament could proceed with the concrete legislative and oversight work primarily in committee sittings. Thus, the NDI assessment suggests that Parliament would be more effective if it **created time in its weekly schedule for strictly political debates separated from legislative and oversight business.** In addition, **Parliament should hold MP Question Period at least once a month, making it mandatory for Members of**

**Oversight** is the **periodic review** of whether an institution is fulfilling its purpose and is accountable. Oversight requires information about internal management processes. An oversight body should have the right to provide suggestions for improving policy outcomes.

**Government to attend**, and there should be **shorter, more focused interpellations as an instrument of scrutiny on specific policy topics**.

In order to create a more balanced relationship between Government and Parliament, more **communication and coordination is necessary to acknowledge the respective roles** that each branch plays in the governance process. Thus, the new **leaders of Parliament and Government should sit down and coordinate a schedule for legislative proposals in the coming year** that is respected. An informal **coordinating body at the leadership level in Parliament and Government could meet on a regular basis to review Government priorities** and make adjustments to Government and Parliament workplans.

#### **Linguistics of “Accountability”**

South Slavic languages use **ODGOVORNOST** as a translation for accountability, responsibility, and responsiveness. The root – **ODGOVOR** – translates into English as ‘answer.’

In English, **ACCOUNTABILITY** is based on the root **account** and implies the ability to give an explanation for actions taken or decisions made. **Responsibility** implies being in charge. **Responsiveness** is the ability to react and provide an answer.

The term **ACCOUNTABILITY** has the strongest inference of the obligation to explain (rather than just shoulder a burden) and of consequences based on the explanation.

**ACCOUNTABILITY** comprises the concept not only of **answerability** (i.e., the need to respond to questions, provide information, and explain actions taken and decisions publicly), but also of **enforceability** (i.e., the ability to punish an individual who does not respond or responds with unsatisfactory answers).

While governing parties in Parliament can rely on the policy making expertise in Government and focus their efforts on shepherding policy initiatives through the body with as little discussion and scrutiny as possible, the Collegium of the Speaker should continue to **examine carefully requests for shortened procedure, rejecting those that do not meet the established conditions and, thereby, preventing the marginalization of Parliament** and adoption of legislation without the appropriate parliamentary consideration for unsound reasons.

**Members of Parliament need to fulfill their positions as professionals** ready to work 40 hours a week in plenary and committees, and receive remuneration for work performed (i.e., attendance) and not

just positions held. If MPs are to be professional, **they need to be treated like professionals and provided the space, staff, equipment, and legislative services necessary to do their jobs**. Without delay, Parliament should **implement its newly approved staff structure**, hire professional staff with proven language and computer skills and a commitment to public service, and put in place a thorough **training and mentoring program** to integrate them into the Parliamentary Service. Parliament has an **urgent need to establish a legislative unit** with non-partisan legal experts knowledgeable about Montenegrin legal traditions, EU law, and general international law. The unit would assume these responsibilities from the Committee for Constitutional Affairs and Legislation so it may perform its political functions, such as monitoring the Rules of Procedure.

#### **COMMITTEE OPERATIONS**

Parliamentary committees **need not wait for legislation to arrive in Parliament** in order to convene sittings to discuss important reform matters. Parliamentary committees should **outline a legislative plan of work** based on a timetable of Government policy priorities so that they can organize their research and work in a rational fashion. In these **committee workplans**, members should **review the jurisdiction of the committee** and **identify policy issues** that will be important in the coming year.

The **Rules of Procedure should be amended and passed as law** to define the legislative and oversight functions of committees, **eliminating the distinction between control and consultative hearings** and replacing it with the ability of committees to invite members of the executive branches, public institutions, and civil society to **provide topical opinions and information**. Such amendments would depoliticize committee hearings and **define committees and their function as reviewing legislation and overseeing implementation**. The Rules of Procedure as a law would require the attendance of invited persons and the supply of information requested.

## ACCOUNTABILITY OF INDEPENDENT INSTITUTIONS

The **credibility of independent bodies is undermined when the selection and internal governance processes are not transparent**. Legal provisions for appointing heads of and/or managing boards of independent institutions need to establish procedures that inspire public confidence. Parliament or government should publicly provide details about the process for choosing nominees and making appointments including a **requirement for public competition and a public hearing of candidates**. The legal framework should provide **requirements for more than a simple majority** to appoint leading individuals, including **staggering the election of members to collective bodies, limiting the candidate's ability to be re-elected, or establishing pre- or post-employment restrictions**.

**Transparency** requires government bodies that are open to public scrutiny. **Openness** suggests that a government body is "available for outside scrutiny" while **transparency** suggests that, "when examined closely, it can be 'seen through' for the purpose of scrutiny and supervision." Transparency is necessary for accountability because, without access to information, an institution cannot be held to account.

European Principles for Public Administration  
(Paris: SIGMA, 22 November 1999)

**Budget and management autonomy can bolster confidence** in an independent institution's ability to make decisions without external influence. If independent bodies want to be given more budget funds or staff independence, they should **demonstrate full transparency and accountability in the expenditure of their budgets**. Independent institutions should make all

**Lex Imperfecta** is a term used for laws with no legal sanction for violations, meaning a regulation is in practice just an empty declaration with no way to enforce it. In the Montenegrin legal system, there are quite a large number of *lex imperfecta* regulations in which the Constitution or law states that an institution "has to do" something, but does not clarify the consequences of not respecting the law.

procedures governing internal management and decision-making **easily accessible on their websites**. Information should be posted even if a perceived conflict might exist because, by publicizing it, **doubts will be reduced**. Moreover, **greater communication with Parliament** about their activities **might help turn MPs into advocates** for the independent institutions.

Many **independent** institutions must submit to Parliament **annual reports** on how the institution

has or will perform its function in terms of activities, expenditures, and results. The legal framework needs to spell out **what to include in these annual reports** and **what Parliament is to do with the information**, including **consequences** of negative parliamentary opinions. **If reporting deadlines and requirements are insufficient to undertake oversight, Parliament should initiate changes** to the legal framework or simply request additional information, when needed.

## VERTICAL TRANSPARENCY: ACCOUNTABILITY TO CITIZENS

All state organs should be **guided by the obligation to serve the public interest and explain decisions to the public** and inform the public about the use of public funds. In the absence of reliable, credible positive information, negative judgments will expand to fill the void. As such, public bodies can improve awareness through their complete openness, which necessitates a proactive approach to providing information.

**Vertical** accountability is the relationship of the state to its citizens. The legislature's openness is important for **vertical transparency** toward the public.

The Law on Free Access to Information is a reactive form of providing information, and requests are often met with 'silence of the administration.' Also, since the Administrative Court has no ability to enforce its decisions, it is a less than perfect solution. **The legal framework should allow timely access to information**, compel respect for the constitutional principles, and sanction non-compliance with the threat of incarceration and fines. The law should provide guidelines on how to determine **what data, documents, reports, and information on state administration are to be made public** and how.

The relationship between state institutions and branches of government is one of **horizontal** accountability. Information sharing between institutions of state power is **horizontal transparency**.

Government should pursue its plan to **reconstruct the Government website**, making it as easy to navigate and search and as uniform as possible, and independent public institutions should **maintain up-to-date, searchable, easy to navigate websites** that include information about decision-making and information about management and internal governance that bolster confidence in their ability to truly act independently. This recommendation is applicable to all state bodies and public institutions.