



BUILDING INTEGRITY

SELF ASSESSMENT

PEER REVIEW REPORT

MONTENEGRO

Podgorica, December 2013

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OVERVIEW

1. The Building Integrity (BI) Programme is part of NATO's commitment to strengthening good governance in the defence and security sector elaborated in the Partnership Action Plan on Defence Institution Building (PAP-DIB)¹ agreed at the Istanbul Summit in 2004. Making effective use of resources in the defence and security sector is a challenge faced by all nations. The BI Self-Assessment/Peer Review Process is part of the practical tools to promote good practice and strengthen transparency, accountability and integrity in the defence and security sector. The BI Self-Assessment Questionnaire provides nations with a snapshot of current structures and practices. The subsequent BI Peer Review helps nations to confirm areas of good practice and those that may require further effort.
2. In line with the Government's support of the Building Integrity Programme within the South Eastern Defence Ministerial (SEDM) framework, at a ministerial meeting on 20 July 2012, the Montenegrin Minister of Defence expressed her Ministry's interest in carrying out a Self-Assessment (SAQ). The Ministry of Defence (MoD) subsequently submitted their completed BI SAQ to NATO in February 2013.
3. In accordance with the Law on Parliamentary Oversight of the Security and Defence Sector, the Parliamentary Committee for Security and Defence stressed that both the Government and Parliament are strongly committed to counter corruption through measures that build integrity. They further stressed that they will provide support to the MoD to ensure that a building integrity plan is put in place and that all required training is undertaken. MoD officials expressed the intention to make the necessary changes to promote integrity, transparency and accountability within the Ministry.
4. The Ministry of Defence has already stated that procurement is an area of high risk. Questionable activities in previous years concerning sales of excess military property indicate the need for increased oversight. This should involve a coordinated and cooperative effort on the part of Parliament, the MoD and government authorities.
5. This report focuses on the Peer Review of the Self-Assessment Questionnaire completed by the Montenegrin MoD. Extensive meetings and interviews were conducted from 13 to 16 May 2013. A follow up visit took place on 4 and 5 December 2013 the findings of which are included in this report. A list of those taking part in the initial Peer Review interviews and the follow up visit is at Annex 1, Annex 2 and Annex 3.
6. The Peer Review Team noted several examples of good practices and these are highlighted in the detailed findings and comments.
7. The Peer Review Team offers the following general recommendations for Montenegro's consideration:

- a. Develop a MoD internal action plan to address the recommendations from this report and how best to take this advice forward. The BI experts could be requested to return for any follow-on action as necessary, to perform a review of progress or other assistance as determined by the MoD in consultation with NATO.
- b. Initiate systemic and comprehensive anti-corruption training for all civilians and military personnel. Encourage senior leadership to openly promote programmes to build integrity and increase transparency.
- c. Urgently consider reversing the decision made in May 2013 to align and move the Department of Contractual Arrangements and Procurement from the Material Resources Branch to the Section for Finance, Contracting and Procurement. Therefore, the Peer Review Team strongly encourages the Government to change the current structure into a new system ensuring that separate individuals have delegated powers of examination for procurement and finance.
- d. Continue to align efforts in embedding EU legislation especially in the area of public procurement. This should notably include a comprehensive review of public procurement procedures as they apply to the MoD to determine the changes necessary which will improve the transparency and efficiency of defence-related procurement activities.
- e. The Government should review procedures for state property management, handling and utilisation, and ensure there are adequate regulations for the use, transfer, and disposal of any type of state property with a military purpose. Regulations on asset disposals in the defence sector should be aligned with international standards.
- f. Develop new human resource management policies concerning the special vetting of persons selected for positions which are sensitive or at risk for potential corruption.
- g. Make maximum use of existing partnerships tools and mechanisms to embed transparency, accountability and integrity in the Montenegrin defence and security sector. In spring 2013, Podgorica identified BI as a PARP goal. This is a very good first step. Further use of existing partnership mechanisms could be explored such as integrating BI recommendations in the Membership Action Plan and Annual National Programmes.
- h. Make use of BI-NATO SEDM programme, including promoting good practice and strengthening regional capacity.

DETAILED FINDINGS AND COMMENTS

Democratic Control and Engagement

8. According to the Law on Parliamentary Oversight of the Defence and Security Sector (December 2010), democratic and civilian control of the Ministry of Defence is executed by Parliament directly through the Defence and Security Committee. Parliament requires that the President or an authorised member of the committee provide a detailed Ministry of Defence annual performance report and recommendations for improvements or changes for consideration by the Parliament. In addition, the President or an authorised member of the committee is responsible for ensuring that appropriate information is disseminated to the public and other public bodies.

9. The responsibilities of the Defence and Security Committee include oversight of the work of the following institutions: Ministry of Defence (MoD), Armed Forces (AF) of Montenegro, National Security Agency (NSA), Police Directorate, Ministry of Internal Affairs (MoIA), as well as other agencies and institutions of the security and defence sector. The committee also has oversight of national security documents, plans for the deployment of members of the Armed Forces of Montenegro on multinational operations as well as the deployment of members of other civil bodies such as Police and State Administration employees in peacekeeping missions and other international activities. This committee is also tasked to evaluate the execution and performance of the budgets allocated to the Ministry of Defence, Armed Forces, National Security Agency, Police Directorate and Ministry of Internal Affairs.

10. The Ministry of Defence is responsible for: developing the National Defence Plan; defence planning, programming, budgeting and budget execution; proposing the organisational structure and size of the Armed Forces; ensuring that the execution of decisions and other acts by the President of Montenegro are in accordance with the law; organising electronic communications and the protection of information in the defence system; and conducting military intelligence, counter intelligence and security affairs in accordance with the law.

11. The President of Montenegro chairs meetings of the National Security Council (NSC) and acts as the Commander in Chief of the Armed Forces in accordance with decisions and recommendations of the NSC. Parliament issues the National Security Strategy, the Military Strategy, declares states of war and emergency, and renders decisions for the deployment of forces on international missions. All documents related to national security are accessible to the public through the websites of the Parliament, Government and the Ministry of Defence.

12. The Constitution of Montenegro stipulates that the Defence and Security Council whose members include the President of Montenegro (Chairman), the President of the Parliament and the Prime Minister is responsible for:

- a. Decisions on the command structure of the Armed Forces of Montenegro.
 - b. The analysis and evaluation of the security situation in Montenegro and if necessary making recommendations to Parliament of appropriate measures.
 - c. Recommending to Parliament that a state of emergency or a state of war be declared. The Defence and Security Council will also provide recommendations to Parliament concerning the deployment of military personnel in support of international missions; and
 - d. The appointment, promotion, or revocation of appointments in the Armed Forces of Montenegro.
13. The National Security Agency is responsible for matters related to the protection of order, security and territorial integrity of Montenegro as stipulated by the Constitution.
14. The Public Prosecutors office is the national body responsible for prosecuting offenders. Crimes, including organised crime and corruption, are the responsibility of the Special Prosecutor. Courts are independent and autonomous. Courts adjudicate in accordance with the Constitution, Montenegrin law and international agreements, while the establishment of extraordinary courts is prohibited. The Supreme Court ensures the unified implementation of laws by all courts.
15. The Constitution and the 2012 Law on Free Access to Information provide for access to information. In meetings the Peer Review Representatives of the MoD underlined the importance of transparency and value of free and unhampered journalism. However, recent reports identify the MoD as being among those government agencies reluctant to provide information. The media plays an important role in the detection of cases of suspected corruption and the authorities should make best use of the information available to seek to strengthen their relationship with the media.
16. A new strategy to improve public relations has been developed by the Head of the Public Relations and Protocol Department to improve the current level of service and to promote new ideas and recommendations. Implementation of the new strategy was expected at the end of June 2013. Since the initial visit in May 2013 the new strategy has been accepted and is now in place. Additional staff officers have been recruited in line with the recommendations made by the Peer Review team in May 2013, there are now seven staff in total. Additionally, the official website of the MoD, www.odbrana.gov.me is now updated on a regular basis and reflects current activities, news and general information. The MoD also publishes a free magazine, "The Partner", which is widely available.
17. The Public Relations and Protocol Department has recruited younger personnel who speak, read and write in English and are familiar and experienced in the use of social media websites. This has been very successful and interest in the defence sector by younger members of the wider population has increased.

18. Since the adoption of the new strategy and recruitment of additional staff, the Public Relations Department have reduced the time taken to answer enquiries and investigate complaints.

19. Work continues to improve relationships with NGO's and to ensure that requests for information from NGO's are dealt with professionally and timely. NGO's are encouraged to attend events, seminars and briefings to further develop good working relationships. Work will continue as part of an ongoing process of improvement and development.

20. The State Audit Institution (SAI) reports to Parliament and the Government. The SAI requests its budget directly from Parliament which also appoints its members. It is the institution serving the constitutional parliamentary mandate to oversee the executive. The Law on the SAI was adopted in 2004 and has been amended several times, the last in 2007. The German Technical Cooperation agency (GTZ) initiated an assistance project in 2002 which led to the creation of the SAI in 2004.

21. The Constitution defines the SAI as an independent and supreme authority of state audit. It is an agency directed by a senate of five and a president elected from among them. The remit for auditing includes all bodies funded from the state budget or created using state property and the SAI can carry out regularity (financial) and performance audits regarding the use of public funds and assets. However, to date the audits performed have mostly concentrated on regularity. The staff has more than 50 personnel, of which almost 40 fill positions as senior or junior auditors. Apart from the SAI senate, staff members are civil servants who are recruited and managed according to merit-system rules defined by law.

22. In determining its annual work plan, the SAI can include a broad selection of bodies and institutions. All organisations are legally obliged to submit any information requested by the SAI. This approach may be made more effective by introducing more risk-based selection criteria upon which to base its choice of bodies to be audited each year.

23. The SAI submits its audit reports to Parliament and Government, while its annual report is made available to the general public. Secondary legislation also stipulates the dissemination of special reports through publication, internet, press releases, press conferences and other means. The provisions on reporting transparency make no exception for security and defence-related audit reports. The SAI audited the MoD for the first time in 2008 and in 2012 it audited the NSA. Subsequently, the NSA was noted as being very diligent in implementing the recommendations of the SAI.

24. The institution of an Ombudsman was created in 2003 as a Protector of Human Rights and Freedoms and whose competences were focused on the field of human rights. This institution has no jurisdiction on matters other than human rights; therefore, maladministration and corruption fall outside its normal remit. In consequence, the Ombudsman (Protector) can intervene over defence and security forces only if there are allegations of human rights violations. In 2011, the Ombudsman processed 13 complaints against the Ministry of Defence and adjudicated 12 of those. The Ombudsman submits an annual report and as many specific reports as necessary.

25. The Ombudsman and his deputy are elected by a simple majority of Parliament for a six-year term with possibility of re-election. The position is full time and incompatible with membership in political parties. The Ombudsman can initiate a legislative procedure to amend existing laws or introduce new legislation in the field of human rights and propose a procedure on the constitutionality of laws to be filed before the constitutional court. The Ombudsman can also request the initiation of disciplinary procedures against officials deemed to be responsible for human rights violations.

Recommendations:

- a. The Public Relations and Protocol Department is commended for its efforts to improve the service they provide and should continue to develop new ideas and maintain a high standard of service.
- b. Ensure that the MoD website is updated regularly and includes information such as regular briefing dates, special events, venues and timings of activities.
- c. The SAI should introduce more risk-based selection criteria upon which to base its choice of agencies to be audited each year.
- d. The Ombudsman (Protector) should have more financial autonomy and managerial independence from the executive.
- e. A progress report on MoD integrity initiatives should be produced at the six-month point of implementation for further discussion with NATO IS/PASP and eventually made available to SEDM and the EAPC.
- f. The newly established BI Working Group within the MoD should continue to support ongoing cooperation with NATO HQ as well as NATO BI SEDM to take advantage of BI capacity building educational programmes and activities. The establishment of the BI Working Group is a good practice which should be shared with others BI stakeholders.
- g. The MoD should consider publishing this report on the MoD website and update information as well as progress made on a regular basis.

NATIONAL ANTI-CORRUPTION LAWS AND POLICY

26. Montenegro is a full member of the Regional Anti-Corruption Initiative and has signed the Declaration of Ten Joint Measures to Curb Corruption in South Eastern Europe in 2005 (Brussels Declaration). It is also a member of GRECO (Group of States of Council of Europe against Corruption), the body which monitors the implementation of the European Council Conventions against corruption. Montenegro is also engaged in MONEYVAL, the Council of Europe's Committee for the Prevention of Money Laundering and the EGMONT Group, the global association of financial intelligence services.

27. The National Strategy to fight Corruption and Organised Crime defines strategic directions including goals, objectives and principles. It provides for the establishment of an effective system to fight corruption and organised crime in both the public and private sectors, and for the development of an effective and sustainable system to evaluate the national response to the

threats posed by corruption and organised crime. The recommendations of the National Committee's interim report and the obligations defined in the National Programme for the Integration of Montenegro into the European Union (EU) for the period 2008 – 2012 were used as the starting point in defining strategic goals.

28. The Strategy for the Fight against Corruption and Organised Crime for the period 2010-2014 and the Action Plan for that strategy for the period 2010-2012 were provided to the Peer Review Team. Reform objectives defined by the Judicial Reform Plan 2007-2012 have been included in the Action Plan and include measures for their achievement. The Anti-Corruption Strategy defines legal and institutional frameworks to fight corruption and organised criminal activities in Montenegro. Laws providing the legal framework supporting the fight against corruption and organised crime are in force. Anti-corruption efforts in the security and defence sector are not addressed specifically in the national strategy; however, the Ministry of Defence is aware of potential areas that are a corruption-risk.

29. The Strategy for the Fight against Corruption and Organised Crime for the period 2010 – 2014 is based on previous experience, reports of national and international organisations on anti-corruption reforms in Montenegro as well as on sector specific action plans noted in previous documents. Areas identified in the strategy as of particular risk for bribery and corruption include the privatisation process, the public procurement system, spatial planning, education, health, local self-governance, civil society, the media and sport.

30. The fight against corruption at the national level involves a number of bodies adopting and implementing strategic documents and action plans. A special focus was placed on the raising of public awareness on the importance of fighting corruption and encouraging the participation of citizens and institutions to confront this important social issue.

31. A committee made up of representatives of the Judiciary, Police and Prosecutors (known as the "Tripartite Commission") is responsible for following up matters relating to corruption and organised crime and for reporting such matters directly to the Government.

32. The Directorate for the Anti-Corruption Initiative (DACI), under the authority of the Ministry of Justice, is the Government's central body responsible for the prevention of corruption and has a wide range of tasks and responsibilities. These tasks include educating civil servants and employees, local officials and councillors, representatives of NGOs and the private sector, and secondary school students; conducting research on the extent, forms, causes and mechanisms of corruption; providing a hotline for the reporting of alleged corruption and for the provision of this information to the appropriate body for further investigation; participating in regional and international organisations and implementing joint projects with local and international partners; organising educational programs through the media; producing, distributing and promoting informative written material to target groups; and participating in global anti-corruption campaigns.

33. The Directorate for the Anti-Corruption Initiative (DACI) and the Commission for the Prevention of Conflict of Interest have some overlapping

roles in the fight against corruption. There is an initiative to merge DACI with the Commission on Conflict of Interest and it is felt that this will enhance the structures which currently operate independently.

Recommendations:

- a. Urgently develop the MoD Anti-Corruption Strategy and ensure it is coordinated with and supportive of the national strategy.
- b. Establish a track record in implementation of national strategies on organised crime and corruption.
- c. Consider a MoD public information campaign to promote integrity, accountability and transparency throughout the MoD and Montenegrin Armed Forces.

ANTI-CORRUPTION POLICY IN DEFENCE AND SECURITY

34. The new Civil Service Law mandates the development of integrity plans within each government institution to address the main vulnerabilities to corruption and the law requires the development of mechanisms to reduce the risk of corruption and promote good practice. In the MoD, the Head of the Internal Revision Department is responsible for working alongside DACI to produce and implement the integrity plan. Together, they are working alongside other Ministries, including the Ministry of Justice, to maximise their experiences.

35. A working group has been established in the Ministry of Defence under the Head of the Internal Revision Department and has already met several times. Currently work on the BI plan is limited but a template has been produced but not yet fully developed. It is anticipated that a fully developed plan will be produced and adopted for implementation by the end of January 2014. It is unclear how or if this target date will be met as there is clearly a great deal of work to be undertaken and experience in planning, particularly performance measurement is very limited. The MoD is encouraged to consider enveloping partnership goal to support development and implementation of a BI Action plan.

36. Civilian staff within the MoD is subject to the Law on Conflict of Interest and are obliged to declare income and assets, while military personnel are excluded from this requirement. The government should review the Conflict of Interest Law and consider its application to all personnel holding positions at risk of corruption, to include those serving in the military.

37. There are no special procedures for members of the Ministry of Defence or armed forces to report perceived corrupt practices. They are required to follow the standard procedures currently in place which serve both the private and public sectors in Montenegro. Open phone lines are available for individuals to call DACI and report suspected corrupt activities. There is no specific law protecting whistle blowers, but the 2011 Law on Civil Servants obliges civil servants to report corruption to their superiors who are then to take appropriate measures, including protecting the anonymity of the whistleblower. However, the 2012 Code of Ethics for Civil Servants appeared

to provide insufficient protection to fully protect whistleblowers from abuse. This has now been rectified by a new law on anti corruption expected to be effective from December 2013. This will afford significantly improved protection to whistleblowers.

38. The position of Inspector General was established in the MoD Department of Inspection Oversight in 2006. The Inspector General, a military officer, is appointed by the government through a public procedure upon his/her nomination by the Minister of Defence. The Inspector General reports directly to the Minister and has a mandate of four years. The main responsibility of the Inspector General is to carry out inspection oversight and internal control in accordance with the 2007 Law on Defence and to protect the rights of military personnel. The Inspector General is also responsible for the oversight of the combat readiness of the armed forces, but has no role in financial management, public procurement or internal financial control.

Recommendations:

- a. Urgently complete the Integrity Plan for the MoD. Determine the capacity of the MoD staff to complete this complex task and implement the plan. Additional staff may be required.
- b. Consider if additional assistance is required from NATO to achieve the production of a detailed Integrity Plan.
- c. Identify selected MoD personnel from across the staff to support implementation of the integrity plan and ensure they cooperate effectively with NATO BI including with the BI pool of experts, and make full use of BI education and training programmes.
- d. Review as a priority the Conflict of Interest laws with a view to applying them equally to both civilian and military personnel, but especially those in positions prone to corruption risk.
- e. Consider developing special procedures within the MoD for members of the Ministry of Defence or Armed Forces to report perceived corrupt practices and review how best to fully protect whistleblowers.

PERSONNEL, EDUCATION and TRAINING

39. On 1 January 2013, the new Law on Civil Servants and State Employees came into force. A Code of Ethics for Civil Servants and State Employees has been developed and implemented this serves as a guide for civil servants and state employees of the Ministry of Defence. A new merit system has been introduced regarding the hiring of government employees; however, the lack of constitutional backing may be detrimental to the sustainability of these reforms.

40. The Ministry of Defence's Personnel Admission Commission is responsible for both open and restricted recruitment of civilian staff for the MoD. This commission provides to the Minister of Defence, a list in order of ranking of candidates deemed to meet the skills and qualifications required for the position. The Minister is then free to make the final selection but is

required to justify the decision as to which candidate was selected. There is a right of appeal by candidates who were not selected. This system does not appear to be well documented, transparent or well regulated and leaves the procedure and the individuals involved in the process open to allegations of nepotism and unfair treatment. It is hoped that the upcoming revision of the Law on Administrative Procedures will address the issue of providing rationale for administrative decisions, improve transparency and facilitate audit trails. The entire recruitment process should be reassessed as part of the recommended review of the Human Resource (HR) system. It was advised that there is a project managed by the Norwegian Government to provide a gap analysis and assist in the development of new HR procedures.

41. Aspects of personal conduct and behaviour are established by the Law on Civil Servants and State Employees, and for military personnel by the Law on Armed Forces. The Law on the Armed Forces prescribes that a person serving in the armed forces shall perform his/her duties in accordance with the Code of Military Ethics. The Code is a set of ethical principles for persons serving in the Armed Forces and is based on international and national standards. The Code of Military Ethics was issued by the Ministry of Defence and published in the "Official Gazette of Montenegro" in October 2010. An extract representing a code of ethics derived from this code of conduct is printed on a small pocket size card and is carried by all military personnel. Breaches of the Code of Ethics are considered to be cause for discipline.

42. Disciplinary procedures can be initiated by an individual's immediate superior and are substantiated through a disciplinary committee. The interested party is to be heard before any final decision is taken and legal assistance may be sought by the individual. Military personnel may appeal administrative decisions on discipline to civilian courts, while civil servants and state employees may appeal decisions to an administrative court.

43. There have been no proceedings in relation to corruption taken against civilian personnel in the Ministry of Defence or military personnel of the Armed Forces in the last three years and before; nonetheless, the lack of any proceedings does not in itself indicate the absence of corruption. However, the report of the Tripartite Commission on the review of corruption and organised crime cases for the period 2010 to 2013 is currently being written and will be submitted to the government when completed.

44. Training in building integrity is organised by the Human Resource Management Authority in conjunction with DACI. Some training has already taken place but this will be reviewed and updated in line with the Building Integrity Plan for the MoD.

45. The Head of the Internal Revision Department and a limited number of MoD staff have already attended BI courses but additional training is required, a needs analysis is being developed and will be reviewed taking account of offers for assistance available through NATO and BI SEDM.

46. Positions more exposed to the risk of corruption have not been identified in the MoD and therefore there is no policy for the rotation of personnel in posts which have been identified as being at risk.

Recommendations:

- a. Review all posts in the MOD which are deemed to be more exposed to the risk of corruption or are deemed to be sensitive positions, and develop a rotation policy for these billets.
- b. Review the entire civilian HR system to include recruitment and promotion procedures. Career management and respective training requirements should also be a part of the review.
- c. Initiate systematic and comprehensive needs analysis, taking account of anti-corruption training and education offered for all civilians and military personnel through BI NATO and SEDM.
- d. Encourage senior leadership to continue to openly promote programmes to build integrity and increase transparency and ensure BI aspects are embedded in leadership training and education.

PLANNING AND BUDGET

47. Annual plans are developed in accordance with national legislation. The preparation of these documents is carried out primarily by the General Staff, Logistics Staff, and MoD financial staff. A Strategic Defence Review has been adopted in July 2013 and among its recommendations are changes to existing short, medium and long term planning. Its implementation should improve the effectiveness and efficiency of the MoD's planning efforts. Planning, programming and budgeting are currently cash based (input) and do not provide visibility of programmes or objectives (output based).

48. The bidding process takes place at the beginning of the annual budget cycle for the following year. All public bodies are responsible for submitting their individual requests for a budget allocation to the Ministry of Finance. The Ministry of Finance reviews each request and prepares a draft budget proposal for the Government. After Government review, the draft budget is sent to Parliament as a draft proposal and representatives of each government agency are required to appear before Parliament to defend their budget submission. The Security and Defence Committee represents the MoD and answers any questions raised by Parliament. Public hearings on the MoD budget are held before members of the Parliamentary Committee for Security and Defence, as well as before the full Parliament when considering the Annual Report on the work of the Ministry of Defence. Once adopted, the Law on the Budget is published in the Official Gazette of Montenegro. This takes place prior to the beginning of the new budget year.

49. At the end of the budget year, a report in the format of a balance sheet is submitted by the MoD to the Ministry of Finance. This report is then submitted to Parliament and once adopted, is published in the Official Gazette of Montenegro. In addition to this formal reporting of the MoD's budget, the Ministry also submits its balance sheet to various non-governmental organisations and other interested parties. This is a sound practice which should help build trust and confidence with civil society. The Law on Budget also requires the Ministry of Defence to submit quarterly reports on budget performance to the Ministry of Finance.

50. All requests for payment submitted to the Ministry of Finance are required to be signed by the Minister of Defence or a person authorised by him and the Head of the Financial Department or their Deputy. The Ministry of Finance is responsible for validating personnel numbers and for authorising salary payments to individuals. There is no delegated authority system in place in the MoD, as currently all payments have to be signed by the Minister. This can be delegated, but generally it is the Minister who authorises payments before they are submitted to the Ministry of Finance for payment. This is a burdensome task for the Minister and consideration should be given to implementing a clearly defined structure whereby signing powers are delegated through a transparent, efficient and accountable system. Letters of delegation should be drawn up and signed by both the person making the delegation and those receiving it. This letter of delegation should include the responsibilities and the accountability of the delegate.

51. All procedures related to assets, including management and leasing are carried out in accordance with the Law on Property of Montenegro. Pursuant to the provisions of the law, authorised bodies responsible for the disposal of assets are required to maintain records of all actions taken in relation to the disposal and decommissioning of assets. Such assets include those which have reached the end of their usable life or are surplus to requirements. In order to proceed with a disposal action, a report must be prepared on the condition and value of items, and the reason for disposal. This report must be submitted to the Ministry of Finance and the Government of Montenegro seeking approval to dispose of these assets as surplus. It was not clear if there was an annual planned programme for the disposal of assets or if each request was dealt with as and when the surplus was identified.

52. On receipt of approval to dispose of surplus assets, the responsible agency is required to make a public announcement detailing the proposed sale; evaluate offers received; proceed with the sale based on the evaluation; and on completion of the sale, provide a report to the Government with details of the sale.

53. Revenues generated from the sale of assets are paid to the account of the Ministry of Finance, as the body responsible for assets and finances, and for asset recording and reporting. In the case of the MoD, details of the sale of assets are included in their annual report which is submitted to the Government and Parliament of Montenegro. The use of income generated by the sale of surplus assets is decided by the Ministry of Finance and the Government.

54. Despite the detailed procedures for the disposal of assets, according to the Montenegrin State Audit Institution, in 2006 and 2007 the Defence Minister approved the sale of significant amounts of defence equipment and defence property (valued at some 14.6 million Euros). The sale was not detailed in the MoD budget for the relevant years, nor was the revenue properly recorded or spent in compliance with Montenegrin financial regulations.

55. In addition to the capital and current financial allocations in 2008, 2010 and 2012 provided to the Ministry of Defence, additional funding was made available from receipts generated from sales of surplus armaments and

military equipment. In order to provide additional funds to the MoD, the initiative for using funds generated from the sale and lease of former military property was launched in 2012. There are still a number of cases under review relating to the disposal of these assets. Advice is currently being sought on the disposal of assets such as ammunition, as these require additional safeguards. It was not clear if there was a standard system in place for the planned disposals of assets or real estate in previous years, or what the system was for receiving receipts. More transparent procedures for disposal of assets and increased oversight would reduce the risk of corruption.

Recommendations:

- a. Consider moving from an “input” to an “output” based financial system to improve transparency and management of funds. Such a change will impact the planning and programming system.
- b. Develop a clear strategy and annual plan for asset disposal which is visible to the Ministry of Finance and Parliament and which includes the management of receipts generated from these sales.
- c. Review procedures for state property management, handling and utilisation and ensure there are adequate regulations for the use, transfer, and disposal of any other type of state property with a military purpose. Align regulations on asset disposals in the defence sector with international standards.
- d. In order to maximise sound financial management, new procedures should be introduced to provide more transparency and improve outdated management policies. A delegated authority system should be considered.
- e. As a matter of urgency separate the management and control of financial procedures from contractual procedures. A recommendation to reverse the decision made in May 2013 to amalgamate the finance and contract departments under one appointment is made in other areas of this report.

OPERATIONS

56. There is no specific military doctrine on how to address corruption in context of operations. An education module which highlights the impact of corruption on operations and addresses good practices should be included in pre-deployment training for the Armed Forces. The Montenegrin MoD is encouraged to take review the NATO’s Building Integrity Education and Training Plan¹ and to take part in the annual discipline conference to identify requirements.

¹ PO(2012)0364 and MCM-007S-2012, dated 18 July 2012.

Recommendations:

- a. Include a module on the concept of corruption as a security risk in pre-deployment training as a matter of policy.
- b. Develop a system to capture anti-corruption lessons learned from operations.
- c. Encourage participation of deployed personnel or personnel to be deployed in NATO BI related courses to understand the concept, risk and consequence of corruption during an operation or mission.
- d. Encourage the development of national and/or regional courses with specific tailored curriculum. Assistance from NATO and BI Subject Matter Experts remains available.

PROCUREMENT

57. The 2011 Law on Public Procurement entered into force on 1 January 2012, but the EU Directive 2009/81 on Defence has not been transposed. This legal framework is supplemented by the Laws on Administrative Procedures (2003), on Administrative Disputes (2003), and on Concessions (2009), as well as the Decrees on the Organisation and Functioning of the State Administration (2012) and on Special Purpose Foreign Trade (2010).

58. The legal framework establishes exceptions to the application of the general legislation on public procurement and excludes weaponry and munitions procurement along with other defence-related supplies. The broad range of exceptions to public procurement procedures encourages arbitrariness in public procurement, supports increased single source procurement and therefore encourages inflated prices while increasing the risk of corruption.

59. The Decree on Special Purpose Foreign Trade determines that the purchase of assets for special means is carried out through confidential equipment procurement procedures. The Minister of Defence has discretion to decide when procurement should be identified as confidential, and the degree of confidentiality within the criteria established by the legal framework, especially the Law on Foreign Trade Ammunition, Military Equipment and Goods with Dual Use.

60. Institutional arrangements for public procurement consist of the Public Procurement Authority, which is an autonomous administrative body responsible for policy preparation and implementation, and the State Public Procurement Control Commission, which is the reviewing body for complaints. The two institutions have acquired wider control powers under the new Law, while the Ministry of Finance is in charge of supervision of the legality and purposefulness of the Public Procurement Authority.

61. Each contracting authority has to appoint a "Procurement Officer" responsible for monitoring the legal conformity of all procurements carried out within the remit of that authority, but final decisions on procurements are taken by tenders committees, both for open and confidential tenders. Despite no clear specification existing in legislation as to who can be a member of a

tender committee, efforts are being made in the MoD to establish a pool of personnel who can be called upon to sit on a tender committee. It is intended that this action will build integrity in the procurement system, thus reducing the risk of corruption. The establishment of a tender committee does not remove the authority, responsibility or accountability of the Procurement Officer. This arrangement must be carefully implemented to make clear the role and responsibilities of the Procurement Officer and Tender Committees. It is understood that the Procurement Officer remains responsible for the quality of the procurement processes and outcomes, and is liable to administrative sanctions in case of errors.

62. Contracting authorities are required to inform the Public Procurement Authority before initiating procurement procedures. The latter publishes the tender on its website, known as the Public Procurement Portal, which is an example of “good practice”. Potential tenderers are given sufficient time to prepare their bids, as the length of time depends on the complexity of the tender. The minimum time limit in open procedures is 37 days, but the contracting authority may extend the time limit or shorten it by reason of urgency (but never less than 22 days).

63. Defence and military procurement responsibilities are centralised in the Ministry of Defence and the Armed Forces. The 2011 Act on Organisation and Systematisation of the Ministry of Defence created the Department for Contractual Arrangements and Procurement under the Material Resources Branch.

64. This department has the main responsibility for all procurement procedures within the MoD and the Army. Other departments provide input to the process. The department is comprised of military and civilian personnel, as well as legal and financial staff. It was not clear whether the training received by staff in this department was sufficient and whether the staff has been provided the tools necessary to ensure the integrity of the system. In May 2013, the Department for Contractual Arrangements and Procurement was realigned from the Material Resources branch to the section for Finance, Contracting and Procurement. It was not clear why this action was taken, but it contravenes good practice as it removes independent financial scrutiny from the procurement chain. The head of section has the responsibility for not only contractual scrutiny but also for financial scrutiny, thus removing any opportunity for the separation of duties or independent review. Separate individuals should have delegated powers of examination for procurement and finance; this should not be divested in one person or separate individuals reporting to the same Head of Department.

66. The initial recommendation made in May 2013 by the NATO BI Peer Review Team to separate financial and contractual functions has not been actioned. In December 2013, during the follow up meeting it was advised that in order to separate these functions the Ministry of Finance has to make changes in the law to reverse the earlier decision to amalgamate the two departments. It was unclear if the Ministry of Finance had been involved in the initial decision to amalgamate the two departments. It was also unclear if the Ministry of Finance had been consulted regarding this issue. The reversal of the decision made in May 2013 to amalgamate these two areas remains an

urgent recommendation by the NATO BI Peer Review teams who visited Montenegro in May and December 2013.

67. The Ministry of Defence has already stated that procurement is an area of high risk and therefore every effort should be made to ensure that not only public funds are protected but also that the staff working in these high risk areas are given special consideration. However, it was noted that there was no rotation of staff in sensitive procurement positions, nor special vetting of such personnel. This, coupled with the current structural arrangements for finance and procurement, is a significant risk in terms of corruption.

68. The law forbids discrimination and obliges all contracting authorities to act impartially and in a transparent manner. Procurement specifications are part of the tender documentation, and this reduces the risk of favouritism towards a given supplier. It appears that the law is respected in this regard, but there seems to be a loophole in the law when it comes to objectivising the criteria for assessing the offers, which are provided by the bidders.

69. The Law on Procurement devotes significant attention to preventing possible conflicts of interests on both demand and supply sides. The contracting authority is required to disclose any potential conflict of interest affecting anyone participating in a procurement procedure. No civil servant or authority can, up until two years after the conclusion of the contract, enter into an employment relationship with a bidder to whom a contract was awarded in which that authority was involved.

70. Tender committees are required to keep records and report the procurement procedures with recommendations regarding the choice of the most appropriate bid to the contracting authority, usually a minister. The minister is not compelled to accept the recommendation issued by the tender committee, nor is he obliged to ask a prior authorisation from Parliament or the Council of Ministers. This is one of the main flaws of the current legal framework, although in practice the minister usually chooses the bidder recommended by the tender committee. The Minister enjoys large legal discretion to award procurement contracts, or to discontinue the awarding procedure and he is not required to provide reasons for his decisions. It is hoped that this weakness in the process will be addressed in the ongoing review of the Administrative Procedures Law. The Public Procurement Authority routinely publishes the final award on the Public Procurement Portal, while the MoD follows the good practice of also publishing the award on its website.

71. The State Commission for the Control of Public Procurement Procedures is responsible for the complaints and review mechanism. Its main responsibility, as an autonomous body, is to protect the public interest and the rights of the bidders. The Commission has four members with a five-year mandate who are professionals appointed by the government, but reporting to Parliament. The Secretariat of the Commission is made up of civil servants or state employees. Decisions of the Commission are final, binding and immediately enforceable by the relevant contracting authority.

72. Complaints may be lodged directly to the Commission with a copy to the contracting authority. A fee of 1 % of the contract value, up to a maximum of 8,000 euros, is required to lodge a complaint. The fee was introduced to prevent those with ungrounded complaints from abusing this right, but in some cases where the contract value is relatively low it may deter well-grounded complaints.

73. The most common breaches of procurement provisions have been: discriminatory terms of reference; evaluation criteria inconsistent with the procurement purpose; disregarding reasonable potential alternative offers; passivity of bidders by failing to ask for tender clarifications which are legally mandatory for the contracting authority; and deficient and/or incomplete technical specifications.

74. A major cause for concern is the lack of parliamentary oversight regarding the transparency of the mechanisms used by government for high value military acquisitions as well as for defence related asset disposals.

Recommendations:

- a. As a matter of urgency, reverse the decision made in May 2013 to align and move the Department for Contractual Arrangements and Procurement from the Material Resources Branch to the Section for Finance, Contracting and Procurement.
- b. Review the procurement list of those items identified as being exceptions to the general procurement rules on military and security with the aim of reducing the number of items on the list.
- c. Develop special procedures for selecting, vetting and training both individuals chosen as procurement officers and members of the tendering committees.
- d. Develop a system for rotating personnel deemed to be employed in areas of high risk.

ENGAGEMENT WITH DEFENCE COMPANIES AND OTHER SUPPLIERS

75. The 2011 Law contains provisions determining the exclusion of bidders based on suspicion of corruption or conflict of interest. In case of suspicion of corrupt practices by the tenderers, the contracting authority, including the Ministry of Defence, shall forward the issue to the public prosecutor, with a recommendation to include the relevant bidder on a "black list". The inclusion on a black list has limited consequences, as only the authority taking the initiative to include someone on such a list is constrained by this action. Other state institutions may still contract with a blacklisted supplier.

76. The Government adopted a General Ethics Code for Public Procurement while demanding that each institution adopt its own code consistent with that of the government. The Ethics Code for Procurement of the MoD is still under development. There are no requirements for potential tenderers to show good business compliance records, but the Ministry of

Defence, for example, can request information from other state departments (social security contributions, tax clearance, etc.). There is no requirement for tenderers to demonstrate any examples of “good practice” or to require any internal integrity training or procedures within their businesses.

Recommendations:

- a. Determine if legislation is necessary in order to require companies which do business with the MoD to have a written code of ethics.
- b. Consider development by the MoD of an approved register of companies and suppliers who are authorized to provide services to the MoD.

**MONTENEGRO BUILDING INTEGRITY (BI) PEER REVIEW TEAM VISIT
May 2013**

Team Composition

Dr. Olivier F. Desarzens (Lead) – NATO BI

Mrs. Patricia Shearing (Subject Matter Expert, UK)

Mr. Francisco Cardona (Subject Matter Expert, Spain)

Mr. Svein Eriksen, (Subject Matter Expert, Norway)

**MONTENEGRO BUILDING INTEGRITY (BI) PEER REVIEW TEAM VISIT
December 2013**

Team Composition

Ms. Bénédicte Borel (NATO-IS/Political Affairs & Security Policy Division)

Mrs. Patricia Shearing (Subject Matter Expert, UK)

**MONTENEGRO BUILDING INTEGRITY (BI) PEER REVIEW
May 2013**

Montenegrin Representatives Interviewed

Parliamentary Committee for Security and Defence

Mr. Mevludin Nuhodzic

Mr. Vasilije Lalosevic

Mr. Suljo Mustafic

Protector of Human Rights and Freedoms

Mr. Šucko Bakovic, Protector of Human Rights and Freedoms

Ministry of Defence

Dr. Ivan Masulovic, Deputy Minister for Defence Planning

Major Sasa Jovanovic, Head of Department for International Co-operation

Lt Colonel Miroslav Rajkovic, Senior Advisor Defence Planning Department

Commander Nusret Hanjalic, Head of Defence Planning Department

Lt Colonel Dejan Bojanic, Directorate for Human Resources

Mrs. Vesna Mijovic, Directorate for Human Resources

Mr. Savo Vucinic, Head of Security Data Protection Authority

Mr. Miodrag Vukovic, Head of Internal Revision Department

Colonel Goran Medojevic, General Inspector

Mr. Savo Milasinovic, Head of Finance, Contracting and Procurement

Ms. Sandra Drecun, Adviser, Defence Policy Sector

Colonel Mehmedin Tahirovic, Head of Public Relations and Protocol

Lt Colonel Emil Halimovic, Department for Contracting and Procurement

Mrs. Suzana Domazetovic, Department for Contracting and Procurement

General Staff

Colonel Zdravko Petrovic

Colonel Miodrag Vuksanovic

Colonel Dragan Maric

DACI

Mrs. Vesna Ratkovic PhD – Director of DACI

Mrs. Nina Krgovic – Deputy Director DACI

**MONTENEGRO BUILDING INTEGRITY (BI) PEER REVIEW
December 2013**

Montenegrin Representatives Interviewed

Ministry of Defence

Mrs. Sanela Djozgic, Chief of Cabinet, member of the BI working group

Mr. Miodrag Vukovic, Chief of Internal Audit Department and Manager of Integrity, BI working group

Colonel Dejan Bojanic, Chief of Department for Status, Legal and Housing Issues, Directorate for Human Resources, member of the BI working group

Mrs. Vesna Mijovic, Advisor for resolving the Rights and Obligations arising from Labor, member of the BI working group

Mr. Luka Nikcevis, Chief of Department for Legislative Activity and European Integration

Dr. Mehmedin Tahirovic, Chief of the Department for Public Relations and Protocol

Mr. Savo Milasinovic, Chief of the Department of Finance, Contracting and Procurement

Lieutenant Colonel Vesko Rutesic, Procurement and Financial Service

Mr. Vladan Martic, Procurement and Financial Service

Ms. Sandra Drecun, Advisor for EU, NATO, EU Department, Directorate for Defence Policy

Ms. Vanja Vukovic, Advisor for EU, NATO, EU Department, Directorate for Defence Policy