

Montenegro: Civil Society Report by Center for Democracy and Transition

An input to the UNCAC Implementation Review Mechanism:
Fourth Year of the review of UNCAC Chapters II and V

14 November 2023

This is the executive summary of a civil society parallel report from August 2023 reviewing Montenegro's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the United Nations Convention against Corruption (UNCAC). The report was supported by the UNCAC Coalition and is intended as a contribution to the UNCAC implementation peer review of Montenegro covering those two chapters. The full report is available on the UNCAC Coalition's website.¹

Montenegro has a comprehensive anti-corruption strategic and legislative framework, with anti-corruption bodies established by law to implement preventive anti-corruption policies and practices. However, the existing legal and institutional frameworks need to be further improved in line with EU standards.² The confiscation of the proceeds of crime is still not adequately covered by the existing legislation.

Assessment of the Review Process

Has the government disclosed information about the country focal point?	Yes	Information was published on Anti-Corruption Agency (ACA)'s website. ³ At the time of writing, the country focal point was the Head of the International Department Cooperation.
Was the review schedule published somewhere?	Yes	The review schedule is on the ACA's website. ⁴

¹ The report was published on the UNCAC Coalition website in August 2023:

<https://uncaccoalition.org/uncacparallelreportmontenegro/>.

² Montenegro 2022 Report, COM (2022) 528 final (12 October 2022), page 5, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 09.09.2022.

³ Webpage of ACA, <https://www.antikorupcija.me/en/international-cooperation/unac/>, accessed on 22.12.2022.

⁴ Ibid.

Was civil society consulted in the preparation of the self-assessment checklist?	Yes	Six civil society organizations were invited to partake in the review process, three attended.
Was the self-assessment checklist published online or made available to civil society?	No	The self-assessment checklist is not publicly available. According to information provided by UNCAC focal point, the self-assessment checklist will be published with the report.
Did the government agree to a visit to the country?	Yes	29 to 31 March 2022. ⁵
Was a country visit undertaken?	Yes	
Was civil society invited to provide input to the official reviewers?	Yes	Civil society was included in the review process, however, information on the consultations is not fully available on the ACA's website. Other governmental websites have been inaccessible due to cyber-attacks. Participating CSOs' input consisted of a joint workshop and meetings arranged between CSO representatives and the official reviewers, focusing on Chapter II.
Was the private sector invited to provide input to official examiners?	Yes	Representatives of the Chamber of Commerce were invited to an official meeting with the reviewers, but cancelled.
Has the government committed to publishing the full country report?	Yes	The Government committed to publishing the full country report in English and a summary in Montenegrin. ⁶ Montenegro signed UNCAC Coalition's Transparency Pledge, in August 2022, voluntarily committing to transparency and civil society inclusion in the second cycle of the UNCAC implementation review. ⁷

Main Findings and Recommendations (R)

⁵ Webpage of ACA, <https://www.antikorupcija.me/me/novosti/2204011248-završena-ekspertskamisija-koja-ocjenjuje-primjenu-konvencije-un-protiv-korupcije>, accessed on 15.01.2023.

⁶ Ministry of Justice of Montenegro (August 2022), Information on the need for Montenegro to join the Transparency Pledge UNCAC Coalition, accessed on: 12.10.2022; and <https://wapi.gov.me/download-preview/65f99399-fcd-4112-8dcb-9f3a3b2f5ce7?version=1.0>, accessed on 12.10.2022.

⁷ UNCAC Coalition, Montenegro signs the UNCAC review Transparency Pledge, August 2022, <https://uncaccoalition.org/montenegro-signs-the-uncac-review-transparency-pledge/>, accessed on 15.06.2023.

Preventive Anti-Corruption Bodies

The Anti-Corruption Agency (ACA) is positively improving its performance,⁸ but lacks independence, and efforts are needed to enhance integrity, impartiality and accountability. Although senior public officials are required to submit asset and liability declarations to the ACA, the agency's work in the detection and prosecution of illicit enrichment needs improvement. Asset and income declarations of top executive officials should be subjected to increased verification.

R: Strengthen the ACA's independence and accountability, through consolidated track records of investigations, better monitoring mechanisms and a credible criminal justice response, especially concerning high-level corruption cases.

Public Sector Employment

Civil servant employment provisions integrate standards for merit-based recruitment and career advancement. Public-sector positions are advertised and open for applications to all. However, nepotism and political influence over public sector employment persists, with appointments to central bodies of the public administration often made on political party lines.

R: Strengthen mechanisms addressing political influence in public hiring, through implementation of Public Administration Reform) Strategy measures and improving the ACA's control over political party campaign employment.

Political Financing

Public funding is awarded fairly and transparently, and political parties are obliged to keep records of revenues and expenditures. However, the process lacks transparency, with limited public access to political party financial reports.

R: Improve political financing transparency and effective oversight.

Public Procurement

A framework for state contracting regulates procurement rules and practices, however, the sector is prone to corruption and malpractice, with concerns about procurement committees' independence and lack of effective oversight.

R: Support systematic changes with adequate capacity-building for Contracting authorities' employees.

Codes of Conduct, Conflicts of Interest and Asset Declarations

The number of administrative and misdemeanor proceedings initiated is increasing,⁹ however, public officials and members of their household's obligation to submit asset and income

⁸ Montenegro 2022 Report, COM (2022) 528 final (12 October 2022), page 5, https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed on 20.10.2022.

⁹ Montenegro Report 2022, Directorate-General for Neighbourhood and Enlargement Negotiations, European Commission, 12 October 2022, available at: https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en, accessed 16.07.2023.

declarations only applies to the assets' country of origin. Public officials are not obligated to allow the ACA to review their bank accounts, making it difficult to verify information provided.

R: Enhance the asset declaration regime and ensure effective implementation of integrity plans to address gaps and allow for effective detection and follow-up of professional conduct breach cases.

Management of Public Finances

The Public Finance Management Reform Program 2022 – 2026, adopted in March 2023, is expected to improve budgetary system functioning, managerial accountability, budget execution and auditing, aligning with EU legislation and ensuring fiscal sustainability. Its adoption is necessary to secure support from the Instrument for Pre-Accession Assistance (IPA) and is a prerequisite for Sector Budget Support through the IPA.

R: Increase government agencies' financial management capacity for effective oversight, detection and prevention of financial irregularities.

Access to Information and the Participation of Society

Although guaranteed by the Constitution and legislation, access to information rights are not sufficiently respected. In 2019, the Government attempted to give institutions the right to refuse publishing information of public importance, which was prevented through a joint CSO initiative.¹⁰ Following a political crisis and institutional instability, the Law on Free Access to Information is pending.

R: Foster government interaction with CSOs in the UNCAC review, organizing an open and inclusive process to ensure the self-assessment reflects various stakeholders' input. Take on board civil society input to strengthen public trust into anti-corruption bodies. Improve public reporting on anti-corruption through nation-wide consultations on anti-corruption policies and practices and greater transparency on anti-corruption measures and decisions.

Judiciary and Prosecution Services

Despite Constitutional judicial independence guarantees, legislation and the Code of Ethics of judges and prosecutors, enforcement is lenient. The judiciary is perceived to lack independence and is susceptible to political influence. Judges and prosecutors must declare their assets; however, the verification of declarations rarely leads to disciplinary measures. The system for effective detection and follow-up of breaches of judicial ethics and discipline needs improvement.

R: Support judicial self-regulatory bodies and enable them to function according to their mandate, including through completing pending processes of Judicial Council lay member appointments. Implement judicial independence guarantees and ensure that judicial ethics and discipline violations are reported, investigated, addressed and sanctioned.

¹⁰ Open letter of 44 NGOs on the occasion of the International Date of Free Access to Information, (27 September 2019), available at: <https://institut-alternativa.org/otvoreno-pismo-44-nevladine-organizacije-uoci-medjunarodnog-dana-spi/>, accessed on 02.02.2023.

Private Sector Transparency

Companies have established internal audit mechanisms and are required to have external/independent audit reports. There are modalities for registering beneficial ownership, yet these lack transparency and petty corruption is perceived to be widespread.

R: Improve company ownership transparency: populate the recently established Beneficial Ownership Register with comprehensive and structured data.

Anti-Money Laundering

Montenegro needs to increase implementation efforts, strengthen cooperation between responsible authorities and build anti-money laundering (AML) institutions' capacity. The AML legislative framework does not provide for non-conviction-based asset confiscation in civil procedures, although efforts are underway to revise asset recovery legislation and allow for effective confiscation and seizure of proceeds of crime, including for the non-conviction-based confiscation of assets. Challenges remain on dividing powers among relevant institutions and ensuring effective management and disposal of confiscated assets. In practice, only limited freezing and confiscation of the proceeds of crime is conducted.

R: Improve court decisions on money-laundering, financial investigations and the capacity to confiscate proceeds of crime. Strengthen AML legislation implementation through support for the FIU's operational independence and resources. Enhance national financial intelligence capacities and skills; strengthen coordination among AML authorities; and advance the system of AML oversight over non-profit organizations, lottery, real estate companies and other private sector entities.

Asset Recovery and Property Confiscation, Return and Disposal

The Mutual Legal Assistance (MLA) law outlines direct property recovery measures, the Criminal Code provides confiscation tools where predicate offences are committed abroad, and the Asset Recovery Law regulates extended and non-conviction-based confiscation. However, freezing and confiscation remains limited due to the lack of money-laundering and asset recovery proceedings. The legislation also neglects international cooperation intended at confiscating the proceeds of crime and instrumentalities. The legal framework defines the return and disposal of confiscated property on a substantive level; however, the MLA law lacks proactive information-sharing provisions. Clearly defined confiscated property return and disposal grounds and procedures on an international level are needed. The MLA law in criminal matters stipulates requirements and procedures for authorities to process legal assistance requests in criminal matters from other countries; however, Montenegro has yet to repatriate confiscated assets to a foreign jurisdiction.

R: Review the legal and operational approach to financial investigations, asset recovery, the fight against money-laundering and ensure stronger mutual understanding between courts and the prosecution on key legal concepts such as money-laundering and quality of evidence.