

SAI Independence Rapid Advocacy Mechanism (SIRAM)

Assessment Report on the allegations of independence threats and risks to the State Audit Institution of Montenegro

SEPTEMBER 2023

What is SIRAM?

The SAI Independence Rapid Advocacy Mechanism (SIRAM) was established in 2018 to advocate and raise awareness of threats to and breaches of SAI Independence, as well as broker support for SAIs facing challenges to their independence.

These threats can manifest in a variety of ways, such as through amendments to a country's constitution or audit legislation, challenges to SAI mandates, and/or attempts to remove the Head(s) of the SAI or delay the appointment of a new Head.

7
cases
solved
since
2018

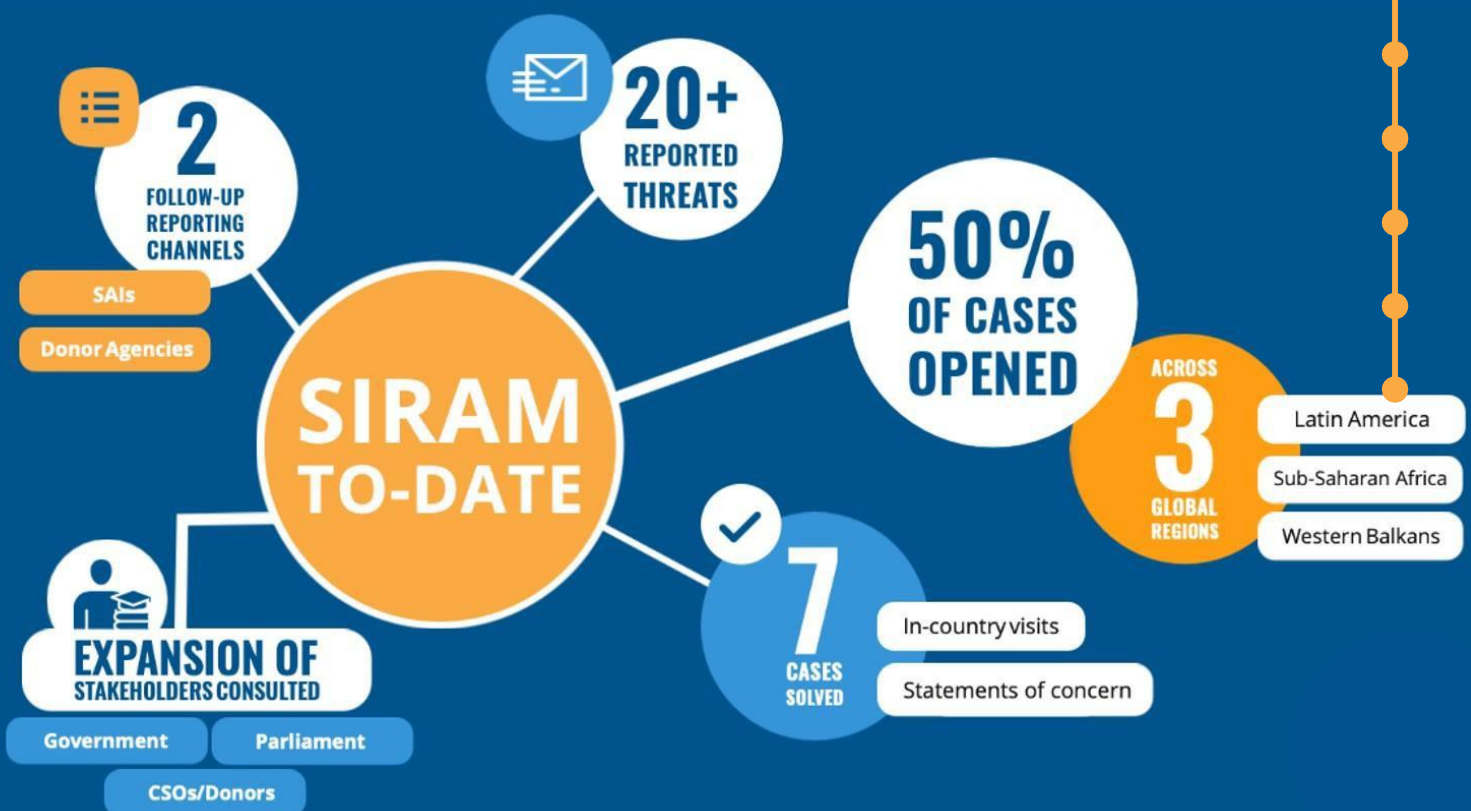
Stages of SIRAM

- 1) Report a threat through various channels and entry points
- 2) Link the threat to relevant pillars of INTOSAI P-1 and INTOSAI P-10
- 3) Provide a timely advocacy response using one or a combination of existing tools
- 4) Monitor developments during and after the response stage

SIRAM cases over the years



Since the establishment of SIRAM in 2018, there has been a sharp increase in the number of threats reported to IDI. Notably, reported cases correlate with regions experiencing greater declines in accountability, good governance and SAI independence.



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Background

1. On November 25, 2022, the Director General of the INTOSAI Development Initiative (IDI) received an official communication from Mr. Nikola N. Kovačević, President¹ of the Senate of the State Audit Institution (SAI) of Montenegro, in which he requested the initiation of the IDI's SAI Independence Rapid Advocacy Mechanism (SIRAM) process, alleging "challenges and potential threats" to the independence of the SAI².
2. The challenges and potential threats to the independence of the SAI were related to two developments. Firstly, the letter from Mr. Kovacevic pointed out that, after making public the adverse opinion of the financial and compliance (regularity) audit report on the Proposal Law on the 2021 Final State Budget Account, the former Minister of Finance in 2021, responsible for the audit results, called a press conference to criticize the work of the SAI. In particular, during the press conference, he stated that (1) the adverse opinion was unfounded; (2) the timing chosen to publish the audit report was unprecedented as it took place just before elections, and (3) the SAI is linked to a political party. In addition, the former Minister also referred to a potential dismissal of the members of the Senate by the Parliamentary majority.
3. Secondly, the communication also mentioned that the President of the Parliamentary Committee for Security and Defense informed, in a press conference, that the agency for national security of Montenegro had "logistics" for eavesdropping on the communications of the SAI, among other public institutions.
4. On January 11, IDI sent an information request to the SAI to get further evidence for determining whether the facts described in (2) and (3) could be considered as threats and risks to the independence of the institution in terms of the INTOSAI's Mexico Declaration principles.
5. On January 16, the SAI sent the response indicating that "... (the statements of the political actor) *can be used to prepare a political platform for destroying the Institution's reputation and image in the future, which can have the negative effect on the process of appointing and electing the president and (the missing) member of the Senate*".

¹ According to the Constitution and the Audit Act of Montenegro, the SAI will be managed by a Senate comprised of five members, whose positions are permanent until the age of retirement. The Parliament appoints the President of the Senate by selecting one of its members for a single period of nine years. On July 30, 2022, the last President of the Senate completed his tenure of nine years remaining as a member of the Senate. The Law on the State Audit Institution of Montenegro states that in case of the absence or inability of the president of the Senate, the eldest member of the Senate will take the office as the president of the Senate. The eldest member of the Senate (that is Mr. Nikola N. Kovačević) took over; he is currently presiding the Senate and representing the Institution until the election of new president of the Senate by the Parliament of Montenegro takes place. At the time of writing, the Parliament has not carried out the appointment of the President of the Senate. In addition, in January 2021, one of the members of the Senate passed away without the Parliament having appointed his replacement, which means that the Senate is working with four members.

² The SAI also sent communications to European Commission, EUROSAI (the European Organization of Supreme Audit Institutions) and SIGMA-OECD, informing them about the threat to their independence.

6. Furthermore, regarding the fact that SAI is not working at its full capacity due to the lack of the appointment of the fifth member of the Senate, the SAI highlighted that *"The institution has five sectors managed by members of the Senate. The sector that currently does not have an appointed member of the Senate covers a significant part of the public finance system, i.e. state funds, and for this reason, it is necessary for members of the Parliament to understand the essence role of the State Audit Institution and not to allow the supreme state audit body to function with the reduced capacities of the Senate"*.
7. Regarding the eavesdropping, the SAI pointed out that did not receive additional information and data related to the development of the situation.
8. On February 7, the SAI sent an additional communication to IDI informing about the willingness of the Chair of the Parliamentary Committee for budget, economy and finance to amend the Law on the State Audit Institution in relation to the tenure of the members of the Senate of the SAI. In particular, the President of the Committee stated, in a media interview, that the permanent position of the members of the Senate must change as this condition is *"...neither democratic nor does it meet European standards..."*. The SAI requested this potential reform on the law to be part of the scope of the SIRAM case.

Scope and objective

9. The scope of a SIRAM case must be related to the principles of the INTOSAI's Mexico Declarations principles. As per the information provided by the SAI, IDI decided that the scope of the case would be focused on: (1) the lack of appointments of the President and the fifth member of the Senate, as well as (2) the potential reform on the Law on the State Audit Institution, which could entail the removal of the members of the Senate.
10. Initially, the first two elements are linked to the principle 2 of the Mexico Declaration (the independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties). In particular, this principle indicates that the applicable legislation must specify the conditions for appointments, reappointments, removal and retirement of the head of SAI and members of collegial institutions. IDI decided that the issue on the eavesdropping on the communications of the SAI would not be included in the analysis.
11. The objective of this report is to assess the extent to which the lack of the appointments in the Senate of the SAI, as well as the potential reform on the law represent either a threat or a risk to the independence of the SAI in relation to the INTOSAI's Mexico Declaration principles.

Assessment Methodology

12. Threats and risks to the independence of a SAI can take place in the legal and practical (*de facto*) dimensions. To achieve the assessment's objective and to cover both dimensions, IDI:
 - a) analyzed the relevant provisions of the Constitution and the Audit Act of the SAI
 - b) obtained testimonies on the issues included in the scope of the case from the members of the Senate as well as a diverse group of stakeholders which are involved in the institutional environment of the SAI, and
 - c) reviewed documents issued by European Union bodies and OECD-SIGMA on the institutional conditions where the SAI operates, aiming at contextualizing the potential practical (*de facto*) threats and risks to the independence of the SAI.
13. IDI was in contact with 21 stakeholders and obtained testimony from ten of them. The testimonies were obtained through written communications, and, in some cases, they were supplemented by in-situ interviews which took place in Podgorica, Montenegro on April 3-4.

Stakeholders which provided testimony during the assessment stage

Function	Stakeholder	Testimony	Date of communication/ interview
Legislative	President of the Parliament	In-situ interview	April 4
	Chair of the Parliamentary Committee on Economy, Finance and Budget	Written communication	February 28
		In-situ interview	April 3
Executive	Minister of Finance, Secretary of State	Written communication	February 28
		In-situ interview	April 4

Function	Stakeholder	Testimony	Date of communication/ interview
CSOs	MANS	Online interview	February 3
		In-situ interview	April 4
	Action for Social Justice	Written communication	March 8
Professional organizations	Institute of certified accountants	Written communication	February 28
	Institute of accountants and auditors	Written communication	March 13
Global organizations	OECD – Sigma	On-line interview	March 15
	Delegation of the European Union to Montenegro	In-situ Interview	April 3
Academia	Law Faculty, Podgorica	Written communication	February 24
		In-situ interview	April 4

Reviewed documents during the assessment stage

Council of Europe - Greco. (2022). *Fifth Evaluation Round - Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies*. Retrieved from <https://www.coe.int/en/web/greco/-/montenegro-publication-of-5th-round-evaluation-report>

European Commission. (2022). *Montenegro 2022 Report*. Retrieved from <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf>

OECD -SIGMA. (November 2021). *The Principles of Public Administration - Montenegro*. Retrieved from <https://www.sigmaxweb.org/publications/Monitoring-Report-2021-Montenegro.pdf>

OECD-SIGMA. (2023). *Montenegro State Audit Institution - News (www.dri.com.me)*. Retrieved from SIGMA considerations concerning ideas to change the length of mandate of the members of the Senate of the SAI of Montenegro: <http://www.dri.co.me/actuality/sigma-considerations-concerning-ideas-to-change-the-length-of-mandate-of-the-members-of-the-senate-of-the-sai-of-montenegro>

SAI's Institutional Profile

14. Article 144 in part 4 of the Constitution establishes that the SAI of Montenegro is an independent and supreme body of state audit and that it will be managed by a Senate.
15. The operation of the SAI is determined by the Law on the State Audit Institution³. According to articles 31, 33 and 34, the Senate is comprised of five members⁴ appointed by the Parliament for a permanent position and the President is selected among Senate members for a single nine-year term.
16. Article 5 and 6 provides the SAI with the powers to conduct financial, compliance and performance audits in relation to expenditures, revenues, debt, and efficiency in the use allocated funds to the audited entities.
17. Article 4 defines a wide range of potential audited entities. In addition to national and local government bodies, the SAI can audit entities which manage state property; receive subsidies; grants or guarantees from the State; do business with a public entity or use EU funds and funds of other international organizations for financing public needs.
18. To cover this broad mandate, the SAI is organized by sectors according to article 29 and each member of the Senate is responsible for one of these sectors, as per article 31.
19. The supervision of the audit procedures and the audit results are responsibility of the Auditing Boards. Article 44 points out that each Auditing

³ The collegial model adopted by the SAI stems from the implementation of the project "Creation and Establishment of a Supreme Audit Institution in Montenegro" led by the German Technical Agency (GTZ), which was aimed at proposing an audit act to the Parliament of Montenegro in 2004.

⁴ The President and members of the Senate enjoy immunity in relation to any opinion issued or a decision made in exercising their functions, except in the case of a criminal offense.

Board shall consist of two Members of the Senate, one of them must be the head of the sector conducting the audit. If the Auditing Board cannot reach a decision, the decision shall be made by the Senate⁵.

20. Since Montenegro is a candidate country for EU accession, the SAI is obliged to respect the *acquis communautaire* in the Negotiation Chapter 32 Financial control. This chapter requires an institutionally, operationally and financially independent external audit institution that implements its audit mandate in line with the standards of the International Organization of Supreme Audit Institutions (INTOSAI).

Institutional country context

21. Testimonies pointed out the existence of a polarized scenario where political forces are not able to reach agreements on key public issues. This situation has led two governments to fall on votes of no-confidence. Stemming from this situation, public institutions, such as the Constitutional Court, had been operating in an incomplete composition due to the lack of appointment of one of its members.
22. Supplementarily, European Commission (2022) indicates that *"...mistrust between and within political coalitions has marked the period during which two fractious governments have been in power. The work of the Parliament has been marked by boycotts of the ruling majority and of the opposition, changes of governments and by the change of two consecutive Speakers in the process. The legislation-making process was significantly affected..."*.
23. "...As regards the Parliament's legislative role, the occasional boycott of certain parliamentary groups weakened the quality of the debates. Bills were often discussed in the absence of basic financial assessments and without an adequate opinion of the government. The Parliament's capacity to scrutinize draft legislation for compliance with the EU *acquis* remains limited..."
24. Stakeholders' testimonies also pointed out a negative society's perception regarding public accountability. In fact, according to Balkan Barometer (2022)⁶, only 15% of the population agree that the parliament can effectively scrutinize the government and make it accountable to citizens.
25. Additionally, the testimonies coincided that this can be explained by two factors. First, there is a structural lack of public trust and, secondly, in practice there is no coordination among oversight institutions which participate in the accountability ecosystem⁷.
26. The absence of coordination affects the prevention and fight against corruption according to the recommendations included in Europe - Greco. (2022), where it is highlighted the need to carry out a review on the overall coherence and effectiveness of the legal framework preventing and fighting corruption to ensure consistency between existing laws and bylaws.

⁵ According to article 37, the Senate shall decide by majority of votes.

⁶ [Balkan Barometer | Welcome \(rcc.int\)](#)

⁷ The accountability ecosystem consists of both formal and informal accountability structures, processes, and relations. According to Halloran (*Halloran, Brendan. 2015. "Strengthening Accountability Ecosystems: A Discussion Paper". Transparency and Accountability Initiative*), the accountability system can be understood as "the interlinked and dynamic governance landscape of state and social actors, institutions, processes, mechanisms and influences, both formal and informal, related to government accountability in a defined context [...] is composed of the actors, processes and contextual factors, and the relationships between these elements that constitute and influence government accountability..."

27. The stakeholders' testimonies also coincided on acknowledging the increasing relevance of CSOs as public accountability actors. In particular, several testimonies indicated that CSOs are currently involved in key public discussions related to the answerability of government, access to public information and transparency. This prominent role of CSOs is also confirmed by *European Commission (2022)* "...the role of civil society in the accession process is recognized and promoted at political level and CSOs are represented in working groups devoted to the chapters of the EU accession negotiations...".

Analysis of the case

28. The SIRAM methodology aims at determining whether Independence principles encapsulated in the Mexico Declaration (INTOSAI P-10) had been infringed in relation to the scope of the assessment.

Lack of appointments of the President and the fifth member of the Senate

29. The delays in the appointments of the President and fifth member of the Senate were confirmed to IDI by the President of the Parliament and the Chair of the Parliamentary Committee on Economy, Finance and Budget, who oversees both appointments processes.
30. In his written communication to IDI, the Chair of the Committee informed that the appointment process of the fifth member of the Senate would start on March 7. He explained that the delay in the appointments was caused by the incomplete composition of the Committee due to the deliberate absence of members of Parliament.
31. The Chair of the Committee pointed out that the President of the Senate would be appointed after completing the designation of the fifth member. At the time of writing, the appointment of the fifth member of the Senate had not taken place.
32. **IDI considers that the delay in the appointments of the President and the fifth member of the Senate represents an infringement to principle 2 of the Mexico Declaration.**
33. The current Law on the State Audit Institution establishes conditions in the appointments for the members of the Senate in line with principle 2 of the Mexico Declaration; however, in practice, the lack of appointments by the Parliament breaches *de facto* such conditions.

34. Additionally, **IDI considers that the delay in the appointment of the fifth member of the Senate contravenes the fulfilment of principle 3 of the Mexico Declaration.** This principle points out that SAIs must be free from interference from the Legislature in the conduct of audits and the organization of the office, among other elements.
35. The Constitution states that the SAI shall be managed by a Senate, establishing a principle of collegiality in the performance of the institution. The implementation of this principle is provided by the Law on the State Audit Institution where the number of the members of the Senate is defined. In addition, the law also links the composition of the Senate to the technical work carried out by the SAI, through the establishment of sectors.
36. IDI could verify that the SAI has had to modify the composition of the auditing boards and the way the Senate members share responsibilities in relation to the sectors due to the delay in the appointment of the fifth member.

The reform on the Law on the State Audit Office

37. The intention to conduct a reform on the Audit Law was confirmed both by the President of the Parliament and the Chair of the Parliamentary Committee on Economy, Finance and Budget during the *in-situ* interviews carried out by IDI on April 3-4. The Committee's Chair also highlighted that the main purpose of the reform is to change the tenure of the members of the Senate and to replace the current ones.
38. When referring to the technical performance of the members of the Senate, as part of the *in-situ* interview, the Chair of the Committee acknowledged the quality and relevance of the audit reports put forward by the SAI to the Parliament and pointed out that the Committee has been supportive in the follow-up of the findings and recommendations included in the reports.
39. Regarding the written statement sent to IDI by the Chair of the Parliamentary Committee on Economy, Finance and Budget that the permanent position of the members of the Senate must change as this condition is "...neither democratic nor does it meet European standards...", it is important to note that OECD-SIGMA (2023) points out that the latest monitoring reports both from the European Union did not voice any criticism of the legal framework or the actual audit work of the SAI.
40. IDI considers that the potential reform on the Audit Law does not represent an infringement to the Mexico Declaration Principles as the Chair of the Committee has the prerogative to review the law. In addition, at the time of writing, there is no bill or proposal which allows to identify the real scope and content of the reform and its alignment to the Mexico Declaration principles.
41. However, **IDI considers that the discussion process of the potential Audit Law reform needs to be monitored.** The new provisions in the Audit Law should be aligned to the Mexico Declaration principle 2 in terms of the tenure, appointment, removal, retirement, and immunity for both the current and the eventual new members of the Senate.

Conclusions and recommendations

42. IDI concludes that the delay in the appointments of the President and the fifth member of the Senate represent an infringement to Principle 2 of the Mexico Declaration. In addition, the lack of the appointment of the fifth member of the Senate represents an interference of the Legislative in the operation of the SAI in terms of principle 3 of the Mexico Declaration.
 - IDI encourages the relevant parliamentary authorities in Montenegro to carry out the appointment process of the President and the fifth member of the Senate in line with the principle 2 of the Mexico Declaration thus avoiding interference from the Legislative in the operation of the SAI in terms of principle 3 of the Mexico Declaration.
43. The proposal to modify the Audit Law is not an infringement to the Mexico Declaration principles but the reform discussion process requires to be monitored.
 - a. IDI recommends the potential reform to be an inclusive and open process with the participation of the current members of the SAI's Senate and other relevant stakeholders such as CSOs.
 - b. IDI encourages the potential reform to be driven by a long run approach with the aim to improve the operation of the institution, considering existing good practices in the INTOSAI community in line with Mexico Declaration principles.

