

Resource Center for Human Rights (CReDO)

Draft for discussions
(translation from Romanian)

Assessing the level of independence of public institutions and authorities responsible for policy implementation in the justice field in the Republic of Moldova

Prosecutor's Office, Security and Intelligence Service (SIS),
National Anti-Corruption Center (CNA), Center for Human Rights (CpDOM),
National Integrity Commission (CNI), Border Police

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Introduction

The purpose of this comparative study is to identify international best practices (IBP) regarding the autonomy and independence (from political influence) of public institutions responsible for policy implementation in the justice field, and assess to what extent the legislation and practices in the Republic of Moldova correspond to these standards.

The study covers 5 institutions in the Republic of Moldova: **Prosecutor's Office, Security and Intelligence Service (SIS), National Anti-Corruption Center (CNA), Center for Human Rights (CpDOM) and National Integrity Commission (CNI).**

At the first stage, we identified **76 legal provisions and objective criteria** that represent good and best practices regarding the autonomy and independence of the prosecution service, police, intelligence, anti-corruption and ombudsman institutions. Compilations of best practices made by international organizations (the **UN, Council of Europe, OSCE, OECD, IMF**) as well as prominent NGOs and research centers in the field were used as sources (Annex A).

The criteria are grouped in 13 categories, which in their turn refer to three main fields of institutional independence: **1) Depoliticizing of the institution's leadership, 2) Functional and operational independence and autonomy, 3) Transparency and accountability.**

At the second stage, we assessed to what extent the legislation of the Republic of Moldova, in particular, the laws regulating the studied institutions, corresponds to these standards. For each of the 76 criteria, the institution was awarded 1 point if the relevant provision exists in the legislation (or if the objective criterion is satisfied), 0 points if the provision is absent (or the criterion is not met), or 0.5 points if the provision is partially present or not fully functional (with an explanation).

Each category contains 5-7 criteria. Thus, an institution can get a maximum of 5 to 7 points in a particular category in case its legislation and activity is fully in line with identified international best practices. The raw category score is a sum of points an institution gained in the category. The final category score is calculated according to the formula:

$$\text{Final score}_{\text{institution, category}} = (\text{raw score}_{\text{institution, category}} / \text{max score}_{\text{category}}) * 100\%$$

and measures to which **extent an institution corresponds to international best practice.**

The weight of each criterion in the final category score is equal.

Institution's score in a particular field is calculated as an average of the institution's final scores in all categories from this field. The weight of each category in this score is equal.

General score for an institution is calculated as an average of its scores in the three fields. The weight of each field in this score is equal.

This methodology is the first step towards a more ample analysis, which would use focus group and expert survey techniques to improve assessment criteria, determine their relative importance and weight, as well as assess how well legal provisions in question are implemented in practice.

Depoliticizing institution's leadership

ASSESSMENT CRITERIA:

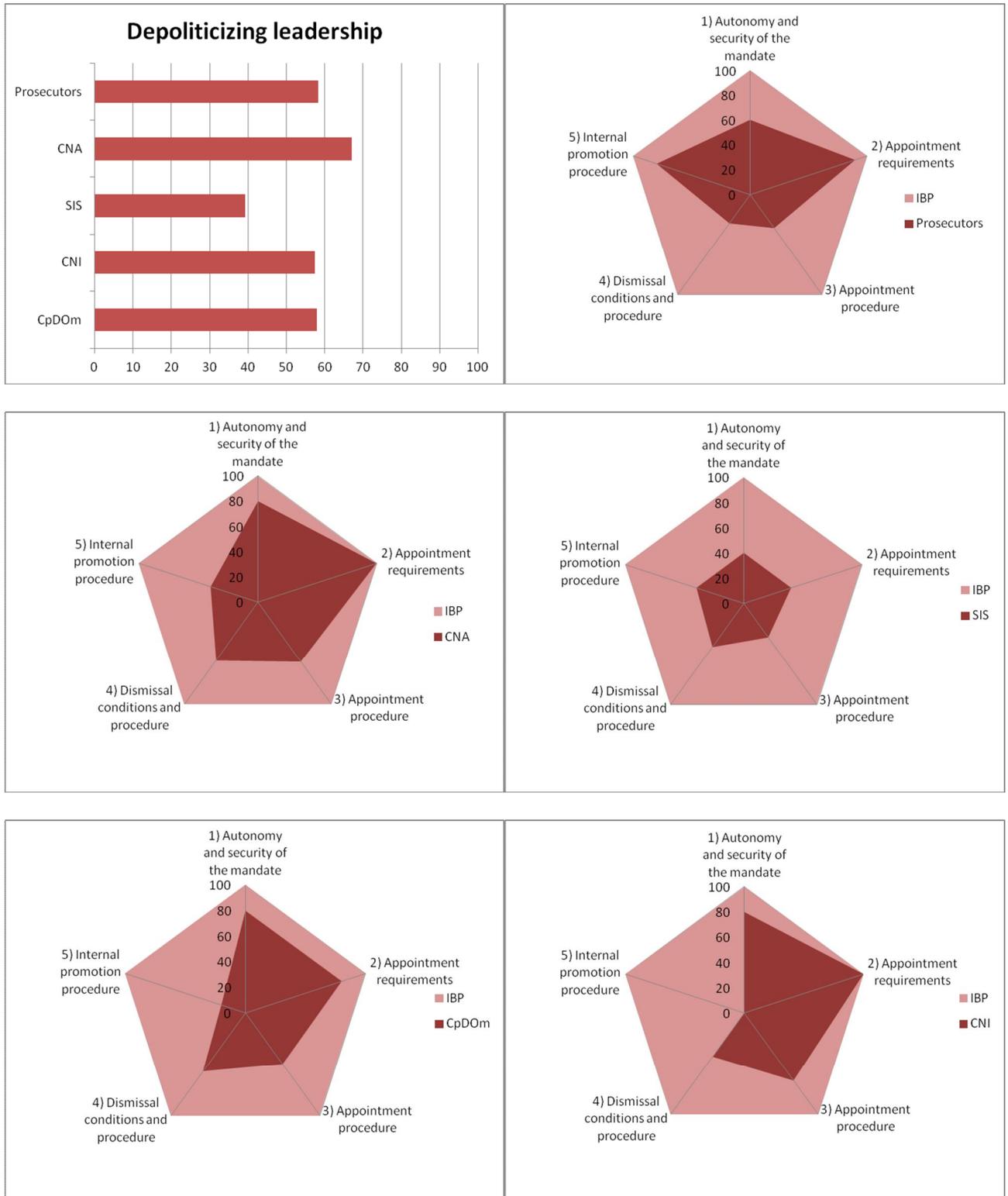
1) Autonomy and security of the mandate	2) Appointment requirements	3) Appointment procedure	4) Dismissal conditions and procedure	5) Internal promotion procedure
Established by law	Established by law	Established by law	Established by law	Established by law
Longer than mandate of the Parliament	Higher education, relevant experience	Appointment by the vote of the majority of elected members of Parliament	The motives are clear, relevant and proportional	Key role belongs to the institution; leadership, not external or political factors
Not renewable	Integrity, moral standing, professional reputation	Recommendation for appointment by a legitimate collegial body, principal and other stakeholders are represented	Transparent procedure (motives are disclosed)	Competitive, merit-based process
Does not coincide with the mandate of the Parliament, elected political body	Absence of restrictive requirements	Participation of professional groups, civil society	Pluralism of opinion: recommendation for dismissal by a legitimate collegial body	Transparent procedure (clear and known criteria)
Appointment in reasonable terms established by law, legitimate continuation and transfer of leadership is ensured	Incompatibility with certain other activities (other public office, business, political party membership), safeguards against conflict of interest	Competitive procedure (selection among several candidates, assessment of competencies and vision for institution's development)	Participation of professional groups	Participation of professional groups
		Transparent procedure (information about candidates and selection results are public)	The person against whom the dismissal procedure has been initiated has the right to be heard	
			Dismissal by qualified majority (2/3 members of Parliament)	

RESULTS

	Prosecutors	CNA	SIS	CpDOm	CNI
1) Autonomy and security of the mandate	60	80	40	80	80
2) Appointment requirements	90	100	40	80	100
3) Appointment procedure	33	58	33	50	67
4) Dismissal conditions and procedure	29	57	43	57	43
5) Internal promotion procedure	80	40	40	20	0
DEPOLITICIZING LEADERSHIP	58	67	39	57	58

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**IBP – international best practice.*

Functional and operational independence and autonomy

ASSESSMENT CRITERIA:

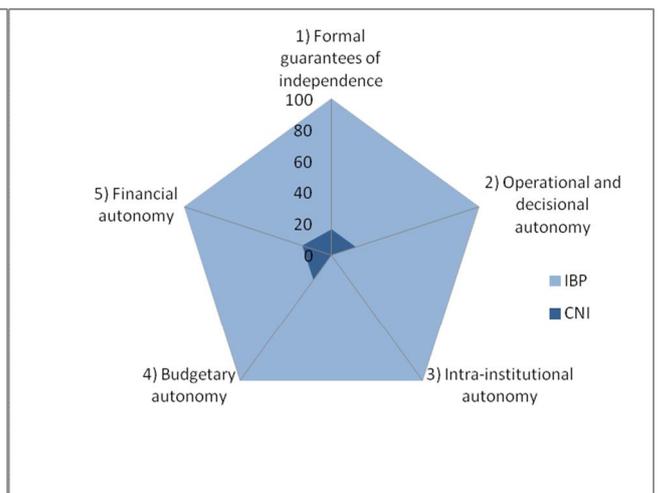
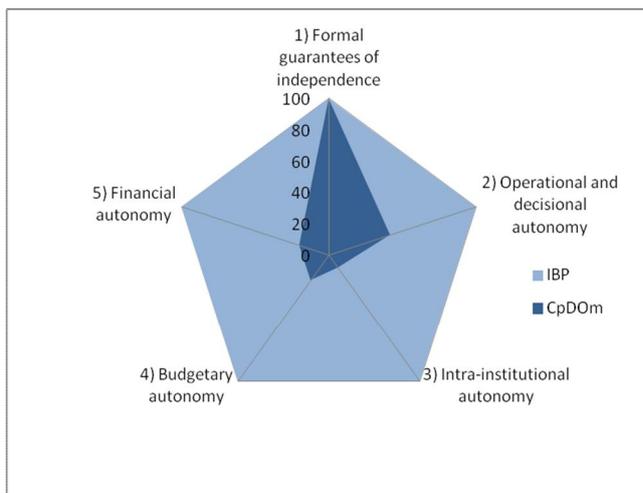
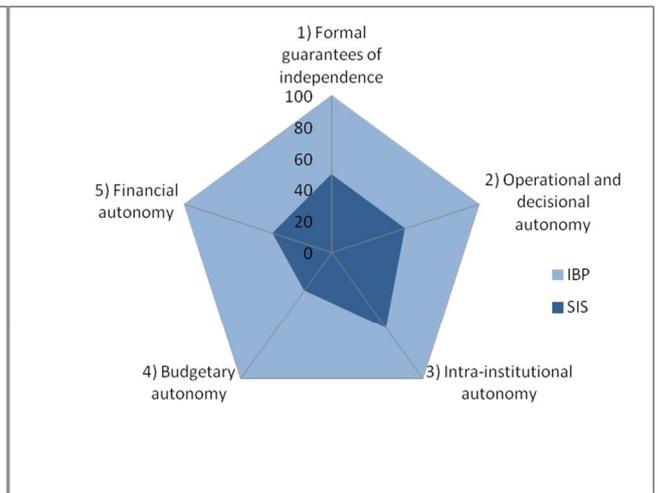
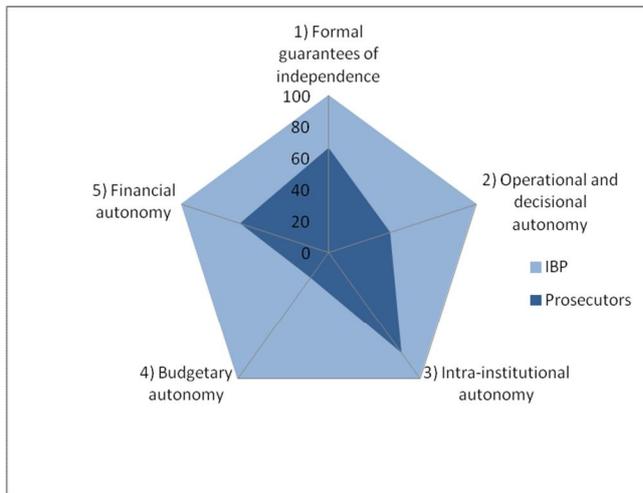
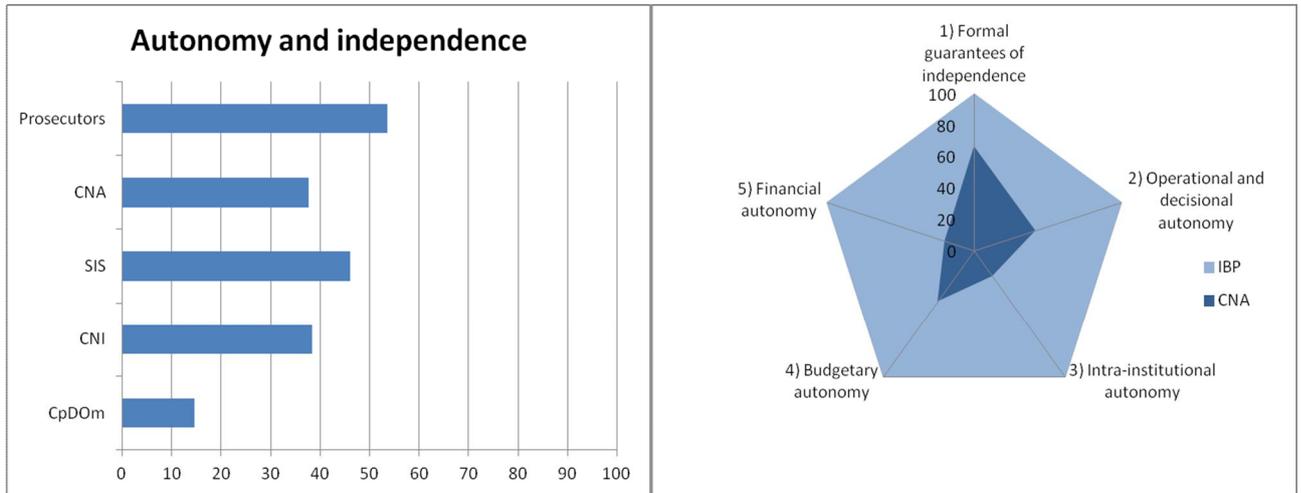
1) Formal guarantees of independence	4) Operational and decisional autonomy	5) Intra-institutional autonomy	2) Budgetary autonomy	3) Financial autonomy
Institution's autonomy is guaranteed by law	Institution's mandate is established by law, no contradictions or overlap with other institutions	The staff is autonomous in operational decision-making	Financing from the state budget	Headquarters and staff covered
Focus on policy implementation and supervision functions	Institution performs only activities stipulated by law	There is a mechanism for denouncing illegal or immoral instructions to the court or a supervisory body	The budget can be reduced in comparison with the previous year only with justification	Basic institutional functions (on the basis of a functional analysis of previous year's indicators) are covered
Operational immunity of the institution's leadership and staff is guaranteed	The principal has control powers only in terms of setting priorities and evaluating the carrying out of institution's mandate	The staff has the right to be heard and the right of appeal in disciplinary or transfer cases	Institution's budget cannot be reduced after state budget has been approved	Expertise costs and hiring of experts, staff training and technical equipment are covered
Interference in individual cases by the principal, others is forbidden	The Judiciary has control and supervisory powers only relating to legality and human rights protection	There are procedures to launch internal investigations and operative activities	The institution formulates its own budget with justification	Staff's remuneration and status are comparable to the European benchmark
Political recommendation to examine and investigate certain cases and situations is forbidden	There is a mechanism for denouncing and investigation of illicit external influences	Penalties and sanctions for illicit influences within the institution provided by law, proportional and cannot be circumvented	If the institution contributes to returning funds to the state budget, a share (10-50%) of these is attributed to the institution's budget	Stable salary structure with raises and bonuses linked to institutional and individual performance
There are enforceable penalties for political interference and recommendation	Clear and proportional sanctions for illicit external influences are provided by law			

RESULTS

	Prosecutors	CNA	SIS	CpDOm	CNI
1) Formal guarantees of independence	67	67	50	100	17
2) Operational and decisional autonomy	42	42	50	42	17
3) Intra-institutional autonomy	80	20	60	10	0
4) Budgetary autonomy	20	40	30	20	20
5) Financial autonomy	80	30	50	30	20
AUTONOMY AND INDEPENDENCE	58	40	48	40	15

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*IBP ó international best practice.

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Accountability and transparency

ASSESSMENT CRITERIA:

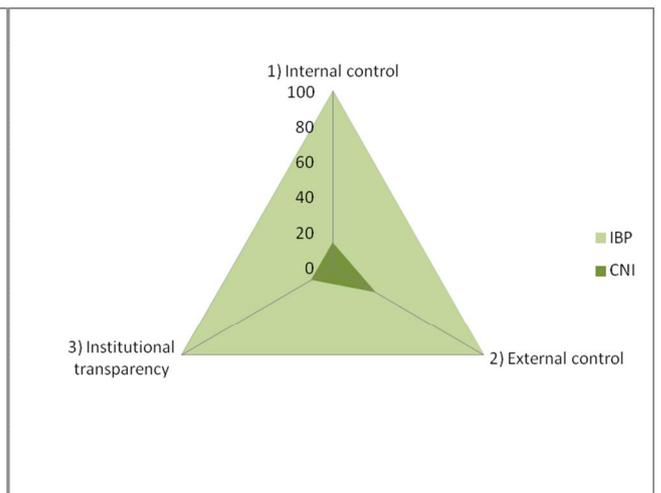
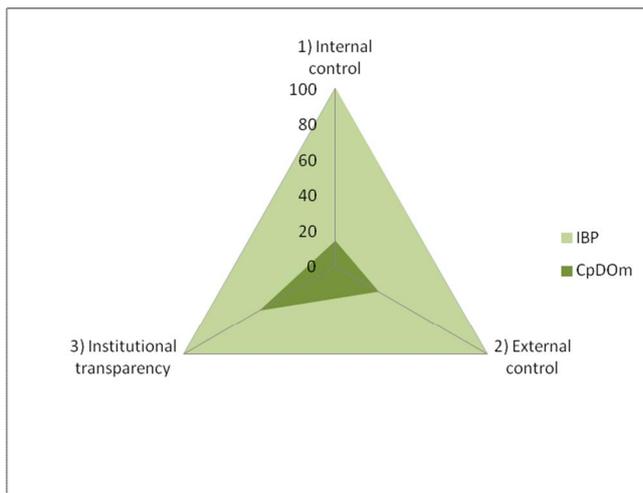
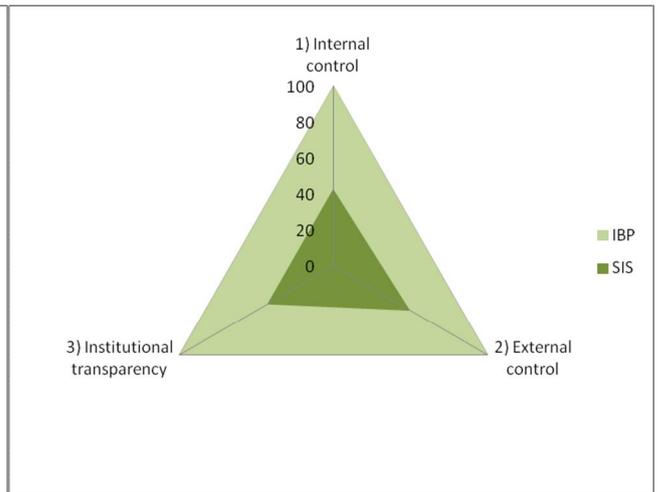
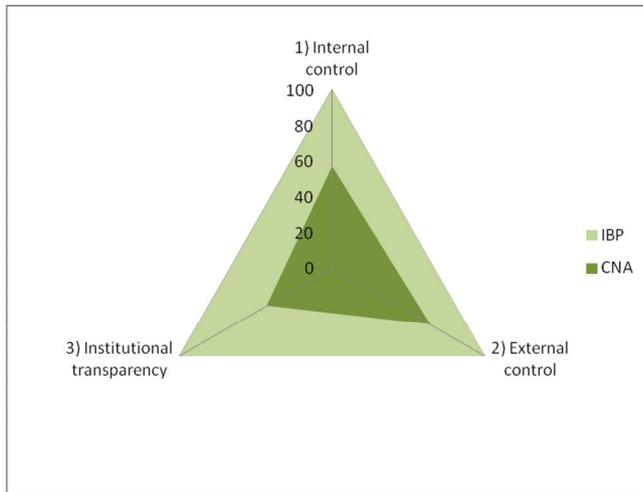
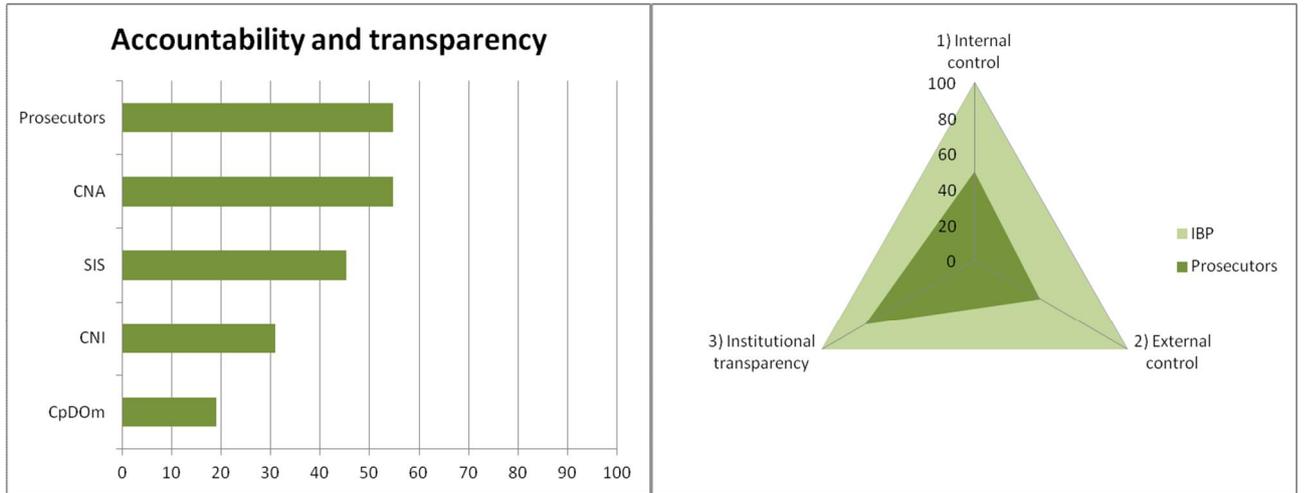
1) Internal control	2) External control	3) Institutional transparency
Institutional plan/program covering public products, results, indicators and expected impact of the institution's activity	Institutional control of the principal and regular reporting are established by law	Principle of transparency in the institution's activity is established by law
Procedure for evaluating the performance of staff and employees	Reports contain both quantitative and qualitative data on achieving the priorities and institutional performance	The institution has a website, information about leadership and contact details are published
Procedure for testing personal integrity	Institution's reports are heard and debated by the parliamentary commissions	Yearly reports are public and updated
Requirement to denounce conflicts of interest and sanctions for noncompliance	Control by the Judiciary: legality, human rights protection	Information about the disciplinary committee's activity is public
Internal code of ethics	Institution is subject to regular public audit	Income statements of the institution's leadership are public
Clear and transparent procedures for disciplinary action and dismissal of staff	There is an independent body for external supervision (representatives of the principal, professional groups, civil society) that hears the citizen's complaints	Access to the public part of the institution's cases and files is provided
Integral system for case processing and internal process management	There is no overlap between different institutions' control functions	Institution's strategic development program was consulted with the public

RESULTS

	Prosecutors	CNA	SIS	CNI	CpDOm
1) Internal control	50	57	43	14	14
2) External control	43	64	50	29	29
3) Institutional transparency	71	43	43	50	14
ACCOUNTABILITY AND TRANSPARENCY	55	55	45	31	19

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Summary of recommendations

Regarding the appointment and dismissal of the institution's leadership:

1. Apart from professional qualifications, there need to be clear criteria for candidates, including ***professional reputation and moral standing*** in the society.
2. Several candidates need to be assessed by a ***joint commission, with professional groups and civil society participating***.
3. ***Transparency of the selection and appointment process*** needs to be ensured.
4. Political discretion of appointment on the basis of a qualified opinion of the aforementioned commission (several candidates can be proposed).
5. The mandate should be ***longer than 4 years***, and preferably ***should not coincide with the mandate of elected officials***; a single (***non-renewable***) long mandate is optimal.
6. The law should establish a list of ***clear and relevant motives*** to initiate a dismissal procedure, the motives being ***proportional to the impossibility to continue the exercise of function***.
7. Intra-institutional promotion and appointment procedures should be ***competitive, merit-based, and involve professional groups***.

Regarding functional independence and autonomy:

1. Laws regulating the activity of these institutions should ***expressly guarantee functional and operational independence and autonomy***. These guarantees should cover and forbid not only ***interference in individual cases***, but also ***political recommendation to examine and investigate certain cases and situations***.
2. In case of institutions responsible for combating phenomena involving high-level decision-makers, independence should be ensured by regulating all of the institution's activities ***only through laws adopted by the Parliament***.
3. For institutions and authorities ***subordinated to the Executive, guarantees of institutional independence should be mandatory and emphasized***. Interference in functional and operational activity by the Executive should be sanctioned. ***Institutions may be subject to control only relating to legality***.
4. Budgetary autonomy means that the institution should be able to formulate its own budget, based on institutional objectives and plans. Any modification of the budget should be justified by a Ministry of Finance opinion. The institution should be granted ***sufficient financial resources to perform its operational activity***. ***Reduction of the institution's budget throughout the year should be expressly prohibited*** by law.
5. The law should establish efficient mechanisms to ***protect the institutions' employees from unjustified influence from outside or from within the institution***. Efficient mechanisms will include accessible procedures for denouncement of such cases, launching internal investigations and operative activities, sanctions and penalties for such influences.

Regarding accountability and transparency:

1. *Principal-agent relations* should be created *between the mentioned institutions and authorities to which they report* regarding policy implementation in the field. The mechanism separating sectoral functions of policy making and implementation should be institutionalized, thus reducing political influence and intervention in the agencies' activity.
2. The model of administrative and operative subordination should be replaced by *performance reporting* on policy implementation objectives and tasks set before the institution. Institutional reporting is a *modern model for strengthening the separation of policy making and monitoring from implementation functions*.
3. Institutional reporting to the concrete authority, the Parliament or the Executive, should be based on several decisive criteria: 1) main object of the institution's activity should not coincide/overlap with the authority to which it reports, 2) institution's activities should be well integrated with authorities receiving final results of this activity, 3) ensuring efficient and result-oriented performance of the institution.
4. In order to ensure adequate reporting on institutional performance and progress of policy implementation, institutions will draft *institutional plans covering products offered to the society, results and indicators that need to be achieved and expected impact on the field of intervention*.

ANNEX 1. Sources of international best practice

Principles of the UN High Commissioner for Human Rights relating to the Status of National Institutions ([The Paris Principles](#)) adopted by General Assembly resolution 48/134 of 20 December 1993

European Commission for Democracy Through Law (Venice Commission), [Compilation on the Ombudsman Institution](#), Strasbourg, 1 December 2011, CDL(2011)079.

European Commission for Democracy Through Law (Venice Commission) Report on European Standards as Regards the Independence of the Judicial System: [Part II ó The Prosecution Service](#), Venice, 17-18 December 2010, CDL-AD(2010)040

[Guidebook on Democratic Policing](#) by the Senior Police Adviser to the OSCE Secretary General, Vienna, May 2008, 2nd Edition

Jeremy Pope, [Independent Anti-Corruption Agencies](#), Chapter 11 in *Confronting Corruption: The Elements of a National Integrity System*, Transparency International Source Book, 2000.

G. Klemen i , J. Stusek, I. Gaika, [Specialised Anti-Corruption Institutions - Review of Models](#), OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2007

J. Pope and F. Vogl, [Making Anticorruption Agencies More Effective](#), IMF Finance and Development, June 2000, Volume 37, Number 2.

Hans Born and Ian Leigh, [Making Intelligence Accountable: Legal Standards and Best Practice](#). Geneva Centre for the Democratic Control of Armed Forces, Norwegian Parliamentary Intelligence Oversight Committee, Human Rights Centre of the University of Durham (UK), 2005.

ANNEX 2. Sources of information on the studied institutions

Prosecutor's Office

<http://www.procuratura.md/>

Legea nr. 294-XVI din 25.12.2008 cu privire la Procuratură

Hotărârea Parlamentului Republicii Moldova nr. 78 din 04.05.2010 privind aprobarea organelor Procuraturii, a localităților de reședință, a circumscripțiilor în care activează și a numărului de personal

Security and Intelligence Service (SIS)

<http://www.sis.md/>

Legea Nr. 753 din 23.12.1999 privind Serviciul de Informații și Securitate al Republicii Moldova

Legea Nr. 170 din 19.07.2007 privind statutul ofițerului de informații și securitate

Legea Nr. 619 din 31.10.1995 privind organele securității statului

Hotărârea Parlamentului Nr. 800 din 11.02.2000 cu privire la aprobarea efectivului Serviciului de Informații și Securitate al Republicii Moldova

National Anti-Corruption Center (CNA)

<http://www.cccec.md/>

Legea Nr. 1104 din 06.06.2002 cu privire la Centrul pentru Combaterea Crimelor Economice și Corupției / cu privire la Centrul Național Anticorupție

Hotărârea Guvernului Nr. 50 din 03.02.2010 cu privire la structura și efectivul-limită ale Centrului pentru Combaterea Crimelor Economice și Corupției

Center for Human Rights (CpDOM)

<http://www.ombudsman.md>

Legea Nr. 1349 din 17.10.1997 cu privire la avocații parlamentari

Hotărârea Parlamentului Nr. 57 din 20.03.2008 de aprobare a Regulamentului Centrului pentru Drepturile Omului, a structurii, a statului de funcție și a modului de finanțare a acestuia

National Integrity Commission (CNI)

Legea nr. 180 din 19.12.2011 cu privire la Comisia Națională de Integritate,
Regulamentul Comisiei Naționale de Integritate

General

Constituția Republicii Moldova din 29.07.1994

Codul Penal al Republicii Moldova Nr. 985 din 18.04.2002

LEGEA Bugetului de Stat pe anul 2011 nr. 52 din 31.03.2011,
Anexa nr.2 Limitele de cheltuieli pe autorități publice finanțate de la bugetul de stat

LEGE Nr. 355 din 23.12.2005 cu privire la sistemul de salarizare în sectorul bugetar
Anexa nr.3 Salariile lunare ale persoanelor din cadrul autorităților publice, numite în funcție conform legislației

LEGE Nr. 48 din 22.03.2012 privind sistemul de salarizare a funcționarilor publici
Anexa nr.1 Salariile de funcție ale funcționarilor publici conform gradelor și treptelor de salarizare
Anexa nr.2 Gradele de salarizare pentru funcțiile publice din autoritățile publice centrale

Legea nr. 158-XVI din 04.07.2008 cu privire la funcția publică și statutul funcționarului public

Legea nr. 16-XVI din 15.02.2008 cu privire la conflictul de interese

Planurile de dezvoltare strategică, rapoartele anuale, codurile de etică ale instituțiilor studiate