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Preface

Statement of the Secretary-General of the United Nations,
Mr. Kofi Annan* /

“Corruption in the public sector threatens countries all over the world. It weakens democratic institutions, encourages organised crime, and undermines public services.... Member States take the threat of corruption very seriously and are ready to develop comprehensive strategies to combat it.

These efforts must include initiatives to strengthen institutional and legal frameworks, establish rigorous law enforcement and public education programmes, and institute mechanisms for the return of assets derived from corrupt activities. Delegates at the 10th Session of the United Nations Commission on Crime Prevention and Criminal Justice... made it clear that the majority of anti-corruption programmes worldwide include many of these components, but they also stressed that much remains to be done.

Delegates agreed that countries should employ an evidence-based approach to gauge the extent of corruption. This will provide leaders with the necessary information to form anti-corruption policies and furnish them with benchmarks to measure progress. Delegates also called for co-ordination of anti-corruption efforts by public and private institutions on the national and international levels, in order to ensure that the battle against corruption is both efficient and comprehensive.

...Governments should eliminate regulations that generate opportunities for corruption, and establish system-wide standards that foster transparent decision-making. They should also explore ways of preventing transfers of illegally acquired assets. Because of the political and legal obstacles that confront such efforts, this issue could be addressed most effectively by an international legal instrument providing a common basis for sharing information, conducting investigations, tracing assets, overcoming bank secrecy, confiscating and repatriating assets, and extraditing offenders.

Most importantly, all leaders must work to change the culture which accepts corruption as an ineluctable part of daily affairs, and to develop among young people a respect for, and expectation of, integrity in their public officials. All citizens should treat it as part of their civic responsibility to provide information on incidents of suspected corruption. But before this can happen, the public must have ready access to information, and ‘whistle-blowers’ must be protected by law.

...We, the United Nations, believe that it is essential for all people to be able to trust their governments. ...”

Foreword

There is increasing consensus that the elimination of corruption is not merely desirable as an element of sustainable development strategies, but that this is actually a necessary condition for promoting and achieving the international ideals of free markets, democracy, the rule of law and broad prosperity. This entails measures to combat corruption and promote integrity in both public and private sector activities.

Corruption distorts economic decision making, deters investment, undermines competitiveness, and ultimately weakens economic growth. It also erodes critical functions with respect to the development of public policy, the democratic selection of governments and policies, the delivery of effective public services, and the development and application of rule of law structures.

There is evidence that the social, legal, political and economic aspects of development are linked, and that corruption in any one sector therefore impedes development in all of them.

Where corruption is tacitly accepted as a means of doing business, efforts to improve legal and regulatory frameworks and to establish integrity across public and private sector functions are unlikely to succeed. Conversely, where public and private sector structures such as the rule of law and transparency of proceedings fail to protect and treat fairly the various stakeholders, corruption may flourish.
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General Introduction
I. GENERAL INTRODUCTION

About the toolkit

Since 1994 the world has witnessed an unprecedented increase in the efforts of governments and international agencies to raise awareness about the negative effects of corruption. International organisations, governments, and the private sector have come to realise that corruption is a serious obstacle to effective government, economic growth, and national and international stability. For these reasons, there is an increased interest and need for international and national anti-corruption legislation, policies and measures.

The purpose of this anti-corruption Tool Kit is to help governments, organisations and the public to understand the insidious nature of corruption, the damaging effects it can have on the welfare of entire nations and their peoples, and to provide an inventory of measures used successfully to assess the nature and extent of corruption, deter, prevent and combat corruption, and to combine and integrate the various “tools” into successful national anti-corruption strategies. While there are common factors, the nature and effects of corruption are unique to each country and society, and the toolkit is intended to provide a range of options which will enable each country to assemble an integrated strategy which will be as effective as possible in meeting its needs.

Corruption is a very old phenomenon, and one that by its nature, tends to conceal its existence and harmful effects. As a result, serious efforts to combat the problem are still believed to be in their infancy in most countries, and reliable information about the nature and extent of domestic and transnational corruption is difficult to obtain. The search for information with which to assess corruption is further impeded by the very broad nature of the phenomenon and a lack of consensus about legal or criminological definitions, which could form the basis of international and comparative research. Nevertheless, some jurisdictions have developed successful measures, and the elements of the toolkit have been based on these successes and lessons learned from successes and failures wherever possible.

The most common anti-corruption efforts have either been directed at prevention or deterrence. Prevention measures have tended to involve efforts to educate members of the public and specific target groups about the nature and effects of corruption, in order to build consensus which supports integrity and values which resist corruption. Deterrence measures are intended to increase the risks, costs and uncertainty associated with acts of corruption. Unlike many common crimes, corruption generally involves actions which are readily capable of deterrence. Whether a corrupt act involves a small individual bribe or a serious and ongoing course of conduct, the participation of each person involved tends to be based on an assessment of the potential costs and benefits before any action is taken, and circumstances which may increase costs or reduce benefits may well deter that individual from becoming involved. Prevention measures also affect this assessment, making potential offenders more aware of hidden or indirect costs of corruption, and making others more likely to report or complain about it. In the context of corruption, deterrents include both criminal justice and other measures. Risks and costs considered by offenders include the obvious risks of criminal prosecution and punishment, but also less direct risks associated with simple exposure, moral condemnation or practical administrative measures such as the loss of access to government contracts or other business opportunities.

Corruption is a very broad-ranging and dynamic problem. It occurs in patterns which include many different forms, and those involved are usually capable of adapting their conduct when necessary. Thus, in cases where deterrence measures appear to be successful, there is the possibility that they have simply displaced corruption into other types of conduct or other social or economic sectors. For example, attempts to reform individual agencies or companies may simply provide an advantage to corrupt competitors, criminal justice crackdowns may result in attempts to corrupt the justice system, and measures which render bribery more difficult may
lead offenders to turn to threats and intimidation instead. As a result, successful anti-corruption strategies must also generally be evidence based, dynamic, integrated and holistic. They must be able to accurately assess the problem in advance, and from time to time as the strategy is implemented; able to create or adapt strategic elements to respond to changing assessments; individual elements must be integrated and coordinated with one another on an ongoing basis; and the overall strategy must be sufficiently broad that essential elements of government and society – including previously unaffected areas into which corrupt conduct is displaced – are not left out.

The tools in this toolkit are based on lessons learned from the technical cooperation activities facilitated by the Global Programme against Corruption, under the framework of United Nations Centre for International Crime Prevention (CICP). These activities have adopted a modular approach that draws from a broad set of “tools”, anti-corruption policies and other measures. These anti-corruption tools are highly flexible and may be utilised at different stages and levels, and in a variety of combinations according to the needs and context of each country or sub-region.

Individual tools may be used to augment existing anti-corruption strategies, but as a general rule, tools should not be used in isolation. No serious corruption problem is likely to respond to the use of only one policy or practical measure. It is expected that countries will develop comprehensive anti-corruption strategies consisting of a range of elements based on individual tools and that the use of these tools will require careful consideration and coordination. The challenge is to find combinations or packages of tools that are appropriate for the task at hand, and to apply tools in the most effective possible combinations and sequences. Regarding packaging, for example, codes of conduct for public officials are usually directed both at the officials involved, to establish standards they are expected to meet and at the general public, so they know what standards they have a right to expect. Regarding timing or sequencing, tools intended to raise public expectations can do more harm than good if expectations are raised before other tools intended to actually deliver the expected higher standards have had time to work.

The relationship between individual tools or policy elements is complex, and may vary from one country to another depending on factors such as the nature and extent of corruption and the degree to which institutions and customs needed to combat it are already present or need to be established. With this in mind, the description of each tool includes a list of other, related tools and some discussion of the nature of the relationships involved. With respect to each tool, any other tool may be seen as coming before or after that tool in sequence, and it could be seen as desirable to use the two tools either in combination with one another or to choose one or the other on an exclusive basis. Further complexities are added when the relationships between multiple packages or combinations of tools are considered.

There is no universal blueprint for fighting corruption: this Tool Kit can only offer suggestions and information as to how other countries have successfully used these tools. Generally, it is expected that countries will follow an initial assessment of the nature and scope of corruption problems with the development of an anti-corruption strategy, setting overall priorities and coordinating specific programmes and activities into a comprehensive framework. Subsequently, specific elements of the strategy are developed and implemented. Throughout the process, progress is monitored and information about what is effective and what is not is used to reconsider and modify each element and the overall strategy as necessary.

The Tool Kit covers prevention, enforcement, institution building, awareness raising, empowerment, anti-corruption legislation and monitoring. This extensive, but by no means exhaustive, collection of theoretical and practical approaches and their applications has been developed from anti-corruption research and technical assistance activities, including the Global
Programme’s comprehensive Country Assessment, undertaken by the United Nations and other organisations and nations world-wide. This Tool Kit is part of a larger package of materials intended to provide information and resource materials for countries which are developing and implementing anti-corruption strategies at all levels, as well as other elements of civil society with an interest in combating corruption.

The package consists of the following major elements:

- **The United Nations Manual of Anti-Corruption Policies**, which contains a general outline of the nature and scope of the problem of corruption and a description of the major elements of anti-corruption policies, suitable for use by political officials and senior policy-makers.
- **The United Nations Anti-Corruption Handbook for Investigators and Prosecutors**, contains descriptions of specific issues and options which confront criminal justice professionals in domestic and transnational corruption cases.
- **The United Nations Anti-Corruption Toolkit**, which contains a detailed set of specific segments intended for use by those officials called upon to select elements of a national strategy and assemble these into an overall strategic framework, as well as the officials called upon to develop and implement each specific element.
- **The case studies**, which set out practical examples intended to illustrate the use of individual tools and combinations of tools in actual practice. These are intended as a reference in support of the toolkit, providing information about such things as the conditions under which a particular programme will work or will not work and the modification or adaptation of various tools to fit various circumstances in which they are likely to be used.
- **The international legal instruments**, in which all of the major relevant global and regional international treaties, agreements, resolutions and other instruments are compiled for reference. These include both legally-binding obligations and some “soft-law” or normative instruments intended to serve as non-binding standards.

All publications are available on the internet at UNODCCP’s web page [http://www.odccp.org/odccp/corruption.html](http://www.odccp.org/odccp/corruption.html) in an integrated format. To assist users who do not have access to the Internet, individual publications will also be produced and updated as necessary. Elements of this Tool Kit may also form the basis for other publications, specialised in accordance with the needs of particular regions or target audiences, such as judges, prosecutors or law enforcement agencies.

Since the Tool Kit is, by its very nature, continuously being refined and developed, CICP welcomes comments and inputs to improve its scope and content in order to provide greater insight and understanding of individual anti-corruption measures. It is important to bear in mind that lessons are as readily learned from failures as successes, if not more so, and users of the Tool Kit are urged to provide comments regardless of whether or not their initial implementation of anti-corruption measures was seen as successful or not. The most successful tools will be identified, refined and incorporated into the Tool Kit. It is expected that further “tools” will be added as required and that the existing content will be revised periodically to take account of lessons learned and the recommendations of countries which use it.

**Using the Tool Kit**

The Tool Kit has been designed for maximum flexibility, and can be used by governments or agencies as they think best, having regard to their assessment of corruption and any measures which may already have been developed or implemented to combat it. Elements can be used to

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1 An example of country assessments can be found on the Global Programme against Corruption’s web page [http://www.odcep.org/odcep/corruption.html](http://www.odcep.org/odcep/corruption.html).

2 Comments to the Anti Corruption Tool Kit can be sent to Petter.Langseth@cicp.un.or.at
provide basic information about corruption, for the training of officials, to provide advice or assistance in gathering and assessing information or for other purposes, but the fundamental purpose of the Tool Kit is to suggest elements for a comprehensive national anti-corruption strategy and to assist governments in developing, integrating, implementing and assessing these elements. Generally, this will involve the following steps.

Initial assessment

Prior to considering specific tools or anti-corruption measures, countries should engage in a transparent and extensive assessment of the nature and extent of the problem and of the strengths and weaknesses of the institutions which will be called upon to take measures against it. Transparency is important to ensure that the results of the assessment will be a valid reflection of the actual problem on which planning and the setting of priorities can be based, and to ensure the basic credibility of the national strategy, which is essential to participation and compliance of those affected, including the general population, who are the ultimate clients of the public service.

Ongoing assessment

The initial assessment is unlikely to remain a valid and accurate assessment once the implementation of elements of the strategy has commenced. The impacts of specific elements will often be unpredictable and effects such as the displacement of corrupt conduct may adversely affect other elements or create the perception that the strategy is not working, thereby eroding support. This requires ongoing assessment and periodic adjustment, dealt with on the same transparent basis as the initial assessment. Ongoing assessments should be undertaken on a comprehensive basis at intervals to assess overall progress, but may also be focused on specific issues or areas if the need for information and possible adjustment becomes apparent.

The methodology of assessment (Tools #1 and #2)

Tool #1 is intended for use in identifying the nature and extent of corruption. It describes specific methods, including surveys, interviews, desk reviews, case studies, and other means, which can be used to gather information about corruption. This information should support both quantitative and qualitative assessments. The quantitative assessments examine the extent of corruption in general and in specific sectors, allowing for comparisons and forming a base line against which future progress in each area can be assessed. Quantitative assessments focus more closely on the nature of corruption, examining typical cases in detail to determine how corruption actually works, who is involved, who benefits and who is victimised or adversely affected. Such assessments are used to develop and refine specific measures. Codes of conduct for particular public servants might be adjusted to take account of the particular history of corrupt practice or pressures to engage in corruption which are specific to the duties they perform, for example. They are also used as the basis for conclusions about the substantive effects of anti-corruption measures to adapt strategic elements. Employees who begin to resist attempts at bribery may find themselves confronted with more coercive or threatening advances, requiring measures for security and protection, for example. In dealing with corruption, both the perception and the reality are important, and are often (although not always) interdependent. For this reason, both qualitative and quantitative assessments should include both objective assessments, which draw together information from diverse sources in an attempt to compensate for biases and errors and develop an accurate picture of what is occurring, and subjective assessments, which examine the perception of those involved, those affected and the general population as to whether the measures are effective or not.

Tool #2 uses similar methods of assessment, but focuses on the assessment of institutions as opposed to corruption itself. This assessment is intended to provide information about the extent
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to which institutions are affected by corruption, the extent to which they may be employed in the implementation of anti-corruption measures, and the extent to which their participation in the anti-corruption strategy is needed and at what stage(s). At the developmental stage, this information can be used to set priorities, focusing early efforts on institutions where the problem is particularly serious, or where it can be addressed quickly in order to establish a precedent and the early credibility of the strategy, or where early reforms are needed as the basis for reforms in other areas which will follow at later stages. In many cases, this analysis will lead to an early focus on the judiciary. If it is assessed as being free of corruption, for example, other strategic elements can focus on the use of criminal prosecutions and civil litigation which require fair and independent judges to work. If a problem of corruption is identified, judicial reforms will usually be a top priority because many other strategic elements depend on the rule of law and independent judges to work, and because the high status of judges in most societies sets an important precedent if reforms succeed and are seen to be successful.

Who may use the tools

The various tools are drafted on the assumption that the primary users will be the public officials who are responsible for the development of national strategies and for the development, implementation, assessment and/or adjustment of individual elements of those strategies. Others will also find them useful, however. They identify, and in some cases provide, relevant international standards, and may be used by elements of civil society to hold governments and public officials accountable for meeting those standards, for example. They may also be used by academics or institutions concerned with the assessment of corruption from social, legal, economic or other standpoints.

Resources required

Specific resources will vary from tool to tool, and to some extent with the context in which the tool will be implemented and the seriousness of the problem at which it is directed. The overall resource requirements for anti-corruption strategies, however, are clearer. Generally, the scope of reforms will require the commitment of substantial resources, and the long durations will require the ongoing and stable commitment of adequate resources over time. Such allocations will in some cases require safeguards, as with anti-corruption agencies, where the need to seek and justify operational funding will often compromise essential independence and credibility. The commitment of resources includes not only financial resources, although these are critical, but also the commitment of human and technical resources. In developing countries, expertise in economics, law and other relevant specialties may be even more difficult to secure than the funding needed to pay the experts. The commitment and allocation of resources must also be an integrated part of the overall strategy: under-funding can result in the under-utilisation of human or other resources, but there have also been cases where over-funding from multiple donors or uncoordinated programmes has overloaded institutional capacities and resulted in wasted resources and less-than-favourable outcomes.

The dedication of the necessary resources can be seen as a form of investment, in which relatively small amounts can generate larger benefits, both in terms of economic efficiencies as corrupt influences are reduced and in more general benefits in social environments and the quality of life as public resources are allocated and used more effectively. As with other investments, however, it is necessary to convince the “investors” that the proposed dividends and profits are realistic goals which are likely to result if the initial commitment of resources is made.

The meaning of “corruption” and a survey of common forms of corruption
There is no single, universally accepted and comprehensive definition of corruption. Attempts to develop such a definition invariably encounter legal, criminological and, in many countries, political issues. As the negotiations of the United Nations Convention against Corruption began in early 2002, options under consideration included not defining corruption at all, as well as a number of proposals in which specific forms or acts of corruption would be listed. Proposals to require countries to criminalize corruption consisted primarily of specific offences or groups of offences which depended on factors such as the specific conduct involved, whether those involved were public officials or not, whether cross-border conduct or foreign officials were involved, and unlawful or improper enrichment. Issues relating to attempts to define corruption for purposes such as policy-development and legislative drafting are discussed in more detail the United Nations Manual on Anti-Corruption Policy, Part II.

Specific forms of corruption are clearly defined and understood, and are the subject of numerous legal or academic definitions. Many of these are also criminal offences, although in some cases governments consider that specific forms are better dealt with using regulatory or civil-law controls. Some of the more commonly encountered forms of corruption include the following.

**“Grand” and “Petty” corruption.** Corruption which pervades the highest levels of government, leading to the broad erosion of confidence in good governance, the rule of law and economic stability in the countries concerned is generally referred to as “grand corruption”. At the other extreme, corruption can involve the exchange of very small amounts of money or minor favours by those seeking preferential treatment, the employment of friends and relatives in minor positions, and the like. These cases are referred to as “petty corruption” cases. The most critical difference between “grand corruption” and “petty corruption” is that the former involves the distortion or corruption of central functions of government such as legal, economic or other policy-making, the development and enactment of legislation, or judicial independence, whereas the latter develops and exists within the context of established governance and social frameworks.

**“Active” and “passive” corruption.** The terms “active” and “passive” corruption are used in two distinct senses. Generally, in discussing transactional offences such as bribery, “active bribery” refers to the party who offers or actually pays the bribe, while “passive” bribery refers to the recipient. This is the commonest usage, and the one which will be employed in this Toolkit. In criminal law terminology, however, the terms may be used to distinguish between cases where a particular form of corrupt action was actually carried out as distinct from attempted or incomplete offences. In this sense, “active” corruption would include all cases where some positive conduct, such as the actual payment and/or acceptance of a bribe had taken place, but not cases where a bribe was offered but not accepted or solicited but not paid. Such distinctions are critical in the framing and prosecution of criminal offences, and national legal systems deal with criminal liability for attempts and incomplete offences in different ways. They are less critical in formulating comprehensive national strategies which combine criminal justice and other elements, but care should be taken to avoid confusion.

**Bribery.** The essence of bribery is the giving of some form of benefit to unduly influence some action or decision on the part of the recipient or beneficiary. Cases of bribery can be initiated either by a person who seeks or solicits bribes or a person who offers and then actually pays them. Bribery is probably the most commonly known form of corruption. Definitions or

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3 Initial proposals for the Convention were gathered at an informal preparatory meeting held in Buenos Aires from 4-7 December 2001 and compiled in documents A/AC/261/3, Parts I-IV. Proposals to define “corruption” are in Part I, and proposals to criminalize acts of corruption are found in Part II.


5 See, for example Articles 2 and 3 of the European Criminal Law Convention on Corruption, ETS #173.
General Introduction

descriptions appear in several international instruments as well as the domestic laws of most countries and numerous academic publications.

The “benefit” in bribery cases can be virtually anything which might induce the desired outcome, including money, valuables or other less-tangible benefits such as company shares, valuable inside information, sexual or other favours, entertainment, employment or the mere promise of any of these things. It may be passed directly to the beneficiary, or indirectly to, or through, some third party, such as a friend, family member, associate, favourite charity, private business or similar interest, or a political party or campaign. Similarly, the conduct or action for which the bribe is paid can include such things as a positive action or decision, the exertion of more general administrative or political influence or the overlooking of some offence or obligation. Bribes may be paid individually on a case-by-case basis or as part of an ongoing relationship in which officials are given regular benefits in exchange for ongoing results which favour the interests of the person paying the bribe. Bribery, once it occurs, can also lead to other forms of corruption. Once an official has accepted a bribe, for example, his or her further conduct can become open to influence by blackmail, if anyone aware of the bribe threatens to expose it.

In most international and national legal definitions, the purpose is to criminalize bribery, and further limits may be incorporated. The most common of these limit the meaning of “bribery” to cases where the recipient was a public official of some kind, or where some other public interest was triggered, leaving purely-private bribery to non-criminal or non-legal means of resolution. Where the recipient must be a “public official”, this is often defined broadly in order to include private individuals who are sometimes offered bribes to influence their conduct in some public function, such as voting or serving as jurors in legal proceedings. Public-sector bribery can target any individual with the power to make a decision or take some action which affects others who are willing to resort to bribery in order to influence the outcome. Common examples include politicians, regulators, law enforcement officials, judges, prosecutors, and inspectors.

Specific types of bribery include the following:

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6 Provisions which define or criminalize bribery include: article 8 of the U. N. Convention Against Transnational Organized Crime, GA/Res/55/25, Annex and article VI of the Inter-American Convention against Corruption of 29 March 1996 (OAS Convention), which require Parties to criminalize offering of or acceptance by a public official of an undue advantage in exchange for any act or omission in the performance of the official’s public functions. Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Article VIII of the OAS Convention require Parties to criminalize the offering of bribes by nationals of one state to a government official of another in conjunction with a business transaction. Articles 2 and 3 of the European Union Convention on the Fight Against Corruption Involving Officials of the European Communities or officials of Member States of the European Union, Journal C 195, 25/06/1997, pp.2-11 (1997), requires Parties to criminalize the request or receipt by a public official of any advantage or benefit in exchange for the official’s action or omission in the exercise of his functions (“passive bribery”), as well as the promise or giving of any such advantage or benefit to a public official (“active bribery”). The Council of Europe’s Criminal Law Convention on Corruption, ETS No. 173 (1998), goes further by criminalizing “active” and “passive” bribery of, inter alia, domestic public officials, foreign public officials, domestic and foreign public assemblies, as well as private sector bribery, trading in influence and account offences. See also United Nations Declaration against Corruption and Bribery in International Commercial Transactions, GA/Res/51/191, Annex (1996), calling for the criminalization of corruption in international commercial transactions and the bribery of foreign public officials; and Global Forum on Fighting Corruption, Washington, 24-26 February 1999, “Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials” document E/CN.15/1999/CRP.12, Principle #4. The working definition used in this Tool Kit and by the CICP’s Global Programme against Corruption (GPAC) is “the misuse of (public) power for private gain”. The United Nations Manual on Anti-Corruption Policy discusses models based on the idea that all forms of corruption involve either the creation of conflicting interests or the exploitation of such interests which already exist.
• “Influence-peddling”, in which public officials or other political or government insiders offer to exert influence not available to outsiders. This is distinct from legitimate political advocacy or “lobbying” in that the corrupt individual is selling access to or influence on government decision-making that he or she only has as a result of public status or office.

• Offering or receiving improper gifts, gratuities, favours or commissions. In some countries, it is common for public officials to accept tips or gratuities in exchange for their services. Even if the payment is not definitively linked to the interests of the applicant, such payments become difficult to distinguish from bribery or extortion, as links between payments and results will always develop.

• Bribery to avoid liability for taxes or other costs. Officials who work for or supervise revenue-collecting agencies, such as tax authorities or customs officers may be bribed to reduce or eliminate amounts of tax or other revenues to be collected; to conceal or overlook evidence of wrongdoing, including tax infractions or other crimes; to ignore illegal imports or exports; or to conceal, ignore or facilitate illicit transactions for purposes such as money-laundering.

• Bribery in support of fraud. Payroll officials may be bribed to participate in abuses such as listing and paying non-existent employees (“ghost-workers”).

• Bribery to avoid criminal liability. Law-enforcement officers, prosecutors, judges or other officials may be bribed to ensure that other criminal activities are not investigated or prosecuted, or if prosecuted, that a favourable outcome will result.

• Bribery in support of unfair competition for benefits or resources. Public or private-sector employees responsible for making contracts for goods or services may be bribed to ensure that contracts will be made with the party paying the bribe and on favourable terms. In some such cases, where the bribe is paid out of the contract-proceeds themselves, it may also be described as a “kickback” or secret commission.

• Private-sector bribery. The bribery of banking and finance officials has caused economic damage far exceeding the bribes themselves because corrupt officials have approved loans which do not meet basic criteria for security and which cannot later be collected.

• Bribery to obtain confidential or “inside” information. Employees who are privy to valuable confidential information are often the targets of bribery to induce them to disclose it. Actual cases include both public and private sectors (e.g., national security and industrial espionage), as well as such things as “inside” information used to trade unfairly in stocks or securities and trade secrets or other commercially valuable information.

Embezzlement, theft and fraud. In the context of corruption, these activities all involve the taking or conversion of money, property or other things of value by someone who is not entitled to them, but who has access or opportunities created by virtue of his or her position or employment. In the case of embezzlement and theft, the property is simply taken by someone to

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7 A number of recent international legal instruments have sought to ensure that Parties have offences addressing this type of conduct with varying degrees of specificity. These include the Organization of American States’ Inter-American Convention Against Corruption (1996) and the European Union’s Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests (1995). Article XI(1)(b) and (d) of the Inter-American Convention call upon Parties to consider criminalizing a government official’s improper use or diversion of government property, including money and securities, regardless of the person or entity to whom the property is diverted, while Article XI(1)(a) calls upon Parties to consider criminalizing the improper use of classified information by a government official. Article IX requires, subject to a Party’s Constitution and the fundamental principles of its legal system, criminalization of “illicit enrichment,” meaning “a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.” Addressing the narrow area of protection of the financial interests of the European Community from fraud and corruption, Article 1 of the European Union’s Convention requires Parties to criminalize the use or presentation of false or incorrect representations or non-disclosure of information the effect of which is the misappropriation or wrongful
whom it was entrusted, whereas fraud consists of the use of false or misleading information to induce whoever has the property to turn it over voluntarily. Thus, for example, an official who simply took part of a relief donation or a shipment of food or medical supplies and sold them would be committing theft or embezzlement, whereas an official who induced an aid agency to send more aid than was actually required by misrepresenting a material fact such as the number of people actually in need of the aid would be committing fraud.

As with bribery and other forms of corruption (see above), many domestic and international legal definitions are intended to form the basis of criminal offences, and therefore only include conduct which is either committed by a public official or which triggers some public interest important enough to warrant the application of the criminal law. “Theft”, per se, goes far beyond the scope of corruption, including the taking of any property or valuable by a person with no right to it. In the example above, a bystander or outsider who stole aid packages from a truck would be committing theft but not corruption. This is why the term “embezzlement”, which is essentially the theft of valuables or property by someone to whom they were entrusted in the first place, is commonly used to describe corruption cases. In some legal definitions “theft” is limited to the taking of tangible items such as property or cash, but non-legal definitions tend to include the taking of anything of value, including intangibles such as valuable information. In this Toolkit, the broader meaning of “theft” is intended.

Examples of corrupt theft, fraud and embezzlement abound. Virtually anyone who is responsible for storing or handling cash, valuables or other tangible property can steal it, or assist others in stealing it, particularly if adequate auditing or monitoring safeguards are not in place. Employees or officials with access to company or government operating accounts can make unauthorised withdrawals, or pass the information needed to do so to others. Those who handle property may simply take it. Elements of fraud are more complex. Officials may create artificial expenses, such as “ghost workers” added to payrolls or false bills for goods, services, or travel expenses, to induce the state or employer to pay them funds to which they are not entitled. The purchase or improvement of private real estate may be billed against public funds. Employment-related equipment such as motor vehicles may be used for private purposes. In one case, World Bank-funded vehicles were used for taking officials’ children to school, for example, consuming about 25% of their total use.

**Extortion.** Extortion is the negative equivalent of bribery: where bribery involves the use of payments or other positive incentives, extortion involves coercive incentives such as the use or threat of violence or the exposure of damaging information in order to induce cooperation. As with other forms of corruption, the “victim” is usually either the public interest in general or those individuals adversely affected by a corrupt act or decision. In extortion cases, however, a further “victim” – the person whose cooperation is coerced – is also created.

Extortion can be committed by government officials or insiders, but they can also be the victims of it. An official can extort corrupt payments in exchange for favourable consideration, for example, or a person seeking such consideration could extort it from the official by making threats. In some cases, extortion may only differ from bribery in the degree of coerciveness involved. A doctor may solicit bribes as a condition of seeing a patient quickly, for example, but if the appointment is a matter of medical necessity for the patient, the same case would be more properly characterised as one of extortion. In extreme cases, patients unable to pay suffer illness or even death because medical services are allocated by extortion rather than legitimate medical priority of cases. The threat of criminal prosecution or punishment is often used as the basis for extortion by officials in a position to initiate or conduct such prosecutions. In many countries, those involved in minor incidents such as traffic accidents may be threatened with more serious

retention of funds from the budget of the European Communities. For a more detailed analysis of these instruments, see UN document E/CN.15/2001/3 (Report of the Secretary General on Existing International Legal Instruments Addressing Corruption).”
charges, for example. In some cases, the condition the situation may be reversed, with an official who has committed acts of corruption or other wrongdoings threatened with exposure. Low-level extortion, such as the payment of “speed money” in order to ensure timely consideration and decision-making of minor matters by officials is widespread in many countries.

**Abuse of Discretion.** In some cases, corruption can simply consist of the abuse of a discretion vested in the corrupt individual for his or her personal gain, without other inducements or influences. For example, an official responsible for government contracting may exercise discretion to purchase goods or services from a company in which he or she holds an interest, or propose real estate developments which will increase the value of personally owned property. Patterns of such abuses are often associated with bureaucracies in which broad individual discretion is created, few oversight or accountability structures are present, as well as those in which decision-making rules are so complex as to neutralise the effectiveness of such structures even if they exist.

**Favouritism, nepotism and clientelism.** Generally these also involve abuses of discretion. What is different in cases of favouritism, nepotism and clientelism is that the choice is governed not by the direct self-interest of the corrupt individual but the preference of someone else linked to him or her by affiliations such as family ties or membership in a political party, tribe, religious group, or other groupings. If someone bribes a corrupt official to hire him, the official acts in order to obtain the bribe. If a corrupt official hires a relative (nepotism), he or she acts in exchange for the less-tangible benefit of advancing the interests of family or the specific relative involved. The favouring of (or discrimination against) individuals can be based on a wide range of group characteristics, including race, religion, geographical factors, political affiliation and other factors, or on personal or organisational relationships, such as friendship or membership in clubs or associations.

**Other conduct which creates or exploits conflicting interests.** As noted in the United Nations Manual on Anti-Corruption Policy, most forms of corruption involve either creating or exploiting some conflict between the official or professional responsibilities of a corrupt individual and his or her individual interests. The payment of a bribe creates such an interest, whereas most cases of embezzlement, theft or fraud involve an individual yielding to temptation and taking undue advantage of a conflict which already exists. The general category of exploiting a conflict of interest covers the remainder of the latter category. In both private business and in the public sector, employees and officials are routinely confronted with circumstances in which their personal interests conflict with those of their responsibility to act in the best interests of their employer or the state.

**Improper political contributions.** Distinguishing between legitimate contributions to political parties and organisations and payments made in an attempt to unduly influence present or future activities by a party or its members when they are in office is one of the most difficult challenges in developing anti-corruption measures. A donation made because the donor supports the party and wishes to increase its chances of being elected is not corrupt, may be an important part of the political system, and in some countries is a basic right of expression or political activity protected by the constitution. A donation made with the intention or expectation that the party will, once in office, favour the interests of the donor over the interests of the public in return is tantamount to the payment of a bribe, except there is no concrete link between the payment and any specific act on the part of the recipient or beneficiary.

Regulating political contributions has also proven difficult in practice. Donations may take the form of direct cash payments, low-interest loans, the giving of goods or services, or other intangible forms which favour the interests of the political party involved. One common approach is measures which seek to ensure transparency by requiring disclosure, ensuring that both the donor and recipient are politically accountable. Another is to limit the size of contributions in an effort to prevent any one donor from having too much influence.
Lessons learned and the construction of anti-corruption strategies

Lessons learned

It has been suggested that the most significant achievement in “governance” during the 1990s has been the shattering of a taboo that shrouded corruption from discussion, particularly in diplomatic circles and intergovernmental institutions. The topic is now out in the open, and the recognition that governments alone cannot contain corruption has led to new and powerful coalitions of interest groups and other stakeholders who had not previously collaborated. A number of specific lessons have been learned about corruption and efforts to control it:

• It takes integrity, political will, and the institutional ability to execute reforms to fight corruption. Curbing systemic corruption is a challenge that will require stronger measures, more resources and a longer time frame than most politicians and “corruption fighters” will admit or can afford. Without integrity and the perception of integrity, especially at the highest levels of government and in agencies or entities responsible for anti-corruption measures, such measures will lack credibility, both as positive examples of how public officials and institutions should function and as deterrents of negative behaviour. Political will is needed to develop and implement the strong measures needed, and to ensure that these will be sustained over the long periods of time required to identify and eliminate corrupt values and behaviour. Institutional ability is needed to ensure that the political commitments are actually carried out, often in the face of entrenched informal organisations within public institutions intent on blocking or limiting reforms.

• Combating corruption, building integrity and establishing credibility require time, determination and consistency. When anti-corruption strategies are first instituted, a long-term process whereby corrupt values and practices are gradually identified as such and eliminated begins. In most cases, this involves a complex process of inter-related elements such as reforms to individual institutions, which take place in successive stages as problems are identified, countermeasures developed and implemented and personnel re-oriented and re-trained. Often progress at one stage or in one area cannot be achieved until other elements of the strategy have become effective. Generally, the re-orientation of personnel, who must be persuaded to place the long-term interests of integrity ahead of the more immediate benefits of corruption, is a longer, more gradual process than more direct measures such as criminal prosecutions or specific administrative reforms. Lagging behind any actual progress in the fight against corruption is the establishment of popular expectations which favour integrity over corruption and the establishment of credibility for the reforms and public confidence in the integrity of the reformed institutions.

• The participation of civil society in assessing the problem and in formulating and implementing reforms is now seen as an important element of anti-corruption strategies. Anti-corruption measures and the commitment needed to make them work must ultimately be based on a full assessment of the extent of corruption and its harmful effects, which requires the participation of civil society in the assessment process. Similarly, policies and practical measures are most likely to succeed if they enjoy the full support, participation and “ownership” of civil society. Finally, while other accountability structures play an important role, ultimately only a well developed and aware civil society has the capacity to monitor anti-corruption efforts, expose and deter corrupt practices and credibly establish that institutions are not corrupt where measures have succeeded.

• Deterrence is only one element of anti-corruption strategies, but it is an important element. Corruption is almost by definition a calculated and pre-meditated activity which can be deterred. In this context, deterrence includes conventional crimes and punishments, but also

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administrative, regulatory and financial or economic forms of deterrence. Where personal or corporate risks, uncertainties and punishments are minimal, deterrence is lacking and corruption tends to increase. Conversely, reforms which increase uncertainties and the risk of criminal punishments or financial losses tend to reduce corruption. Generally these must be broad-based and systemic, however, or corrupt conduct may simply be displaced into other areas or other activities.

- It is important to involve the victims of corruption in any plan aimed at reduction. Anti-corruption initiatives, and the interest of donors who support such efforts tend to involve those who are paid to fight corruption rather than those who are victimised by it. Victims are often socially-marginalized individuals and groups who are harder to reach, but they have an important role to play, particularly in areas such as establishing and demonstrating the true nature and extent of the harm caused by corruption. Victims are often the strongest critics of anti-corruption efforts, and securing their approval can also greatly assist in establishing credibility.

- Identifying and recovering stolen assets is important, particularly in cases of “grand corruption”, where the amounts are very large and often needed by a new government seeking to quickly address problems arising from past corruption. Very senior officials involved in corruption generally find it necessary to disperse and transfer looted proceeds abroad in order to conceal the large amounts and put them out of reach of their successors, making identification and recovery a multi-national project in most cases. Apart from the legal and logistical difficulties inherent in pursuing large and complex investigative and legal proceedings while at the same time rebuilding national legal institutions and infrastructures, successor governments must usually face the challenge of establishing their own credibility and integrity in the international community in order to obtain legal assistance and other forms of cooperation in such cases.

- There are important links between corruption and money laundering. The availability of places to transfer and conceal funds are critical to corruption, and especially so for large-scale or “grand corruption”. At the same time, corruption itself creates opportunities for laundering the proceeds of both corruption and other criminal activities, as both public-sector employees and those working in key private-sector areas such as financial institutions are vulnerable to bribes, intimidation or other incentives to conceal illicit financial activities. Generally, this suggests that a high degree of coordination is needed between efforts to combat the two problems, and that effective measures can have an impact in both areas.

- Corruption tends to concentrate wealth, increasing gaps between wealthy and impoverished population groups and providing the wealthy with illicit means to protect their positions and interests. This in turn can contribute to social conditions which foster other forms of crime, social and political instability, and in extreme cases, terrorism and other major problems.

- Raising public awareness is an element of most anti-corruption strategies, but it must be accompanied by other measures which address, and are seen to address, corruption. Without such other measures, the increased awareness can lead to widespread cynicism and the loss of hope that corruption can be beaten. In some cases, this may actually contribute to further increases in corruption.

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9 The Government of Nigeria, for example, has been pursuing proceeds of corruption transferred during the 1980s and 1990s, estimated in the tens and even hundreds of billions of dollars. In April 2002, it announced a settlement with the family of former military ruler Sani Abacha under which $535 million would be returned to Nigeria, criminal charges against family members would be dropped, and $100 million would be kept by the family as estimated income from before the late Mr. Abacha assumed power in a military coup in 1993. The settlement involved only proceeds held, and at the time frozen, in bank accounts in Switzerland.
1 General Introduction

- Without proper vigilance and effective countermeasures, corruption can occur anywhere. Recent corruption cases exposed in the World Bank, the UN and other multilateral and bilateral organisations have shown that any society or organisation is susceptible, even where there are well-laid checks and balances.
- Systems which have excessive individual discretion, discretion-structuring rules which are overly-complex, or which lack structures which effectively monitor the exercise of discretion and hold decision-makers accountable tend to be more susceptible to corruption than those which do not.
- Systems in which individual offices, departments or agencies operate in isolation from one another tend to be more susceptible to corruption. One reason for this is that, in systems in which individual elements operate in a coordinated fashion and in regular communication with one another, each individual unit tends to monitor the activities of the other units and individuals with which it deals.
- Systems whose operations are transparent are less susceptible to corruption than those which operate in secrecy. Transparency created by such elements as access to information policies and the activities of a healthy independent mass-media is a powerful instrument for identifying and exposing corruption and holding those responsible legally and politically accountable, as well as for educating the public and instilling high expectations for integrity.
- Public trust in government, anti-corruption agencies and anti-corruption policies and measures is key when a country invites the public to take an active role in monitoring the performance of its government.

**The construction of anti-corruption strategies: an integrated approach**

Developing a national anti-corruption strategy requires the successful merger of universal elements which have been proven effective against corruption regardless of where it occurs and elements which take account of the circumstances which are particular to each individual country. National circumstances include both aspects of the problem of corruption which may be unique to the country involved and other national variables such as legal or constitutional constraints, the nature of political and legislative structures, the extent to which the mass media, academic sources and other elements of civil society are willing and able to participate, and the extent to which domestic or other resources are available. Often the early stages of planning involve a preliminary assessment of the nature and extent of corruption and the relative strengths and weaknesses of elements of government and society called upon to fight corruption, so that priorities can be set and efforts focused on those elements which are weakest or most vulnerable, or in which reforms are needed as a pre-condition for progress in other areas.

**Common basic elements of anti-corruption strategies**

Specific needs will vary from country to country, but experience suggests that the following elements will be needed before significant progress is likely to be achieved, and that early efforts must be focused on these elements if they are not already present and fully functional.

- Effective rule-of-law structures are needed at an early stage. These include both legislative and judicial elements. A professional, unbiased and independent judiciary is particularly critical to the development and implementation of law enforcement and criminal justice measures, but has also been identified as necessary in other areas such as the making and enforcement of legal contracts and the use of civil litigation as a means of identifying, exposing and obtaining redress for corrupt practices. A legislature which is open and transparent, which formulates policy and creates laws in the public interest, and which provides a suitable role model for other institutions is needed to form the both a legal and political basis for an anti-corruption strategy.
• Transparency in public institutions, both in the form of public communications efforts and in broad, straightforward and timely access to information mechanisms is needed, both to ensure that the public understands what its government is doing and to ensure that the actions of government are credible. This is true for public affairs in general, but it is particularly critical for anti-corruption efforts.

• A professional, politically neutral and uncorrupted public service serves both as a means whereby corruption can be addressed, and as one of the fundamental objectives of anti-corruption strategies. Generally, establishing professionalism and neutrality will require a combination of legal standards and cultural reforms. The cultural reforms are needed both within the public service, whose members should be encouraged to adopt high standards of professionalism and integrity, and among the general population, which should be encouraged to expect such high standards of its public servants and to complain or take action when the expected standards are not met.

• Strong and independent elements are needed in several areas of civil society. The most prominent of these are free, clean and independent mass media, which serve as a means of disseminating important public information and of providing criticism and commentary which is independent of both political and public service influences. Such media are important not only as a means of identifying and exposing corruption or other improper practices in government, but as a source of credibility and validation for measures which are not corrupt or improper.

• Periodic assessment of corruption and the effectiveness of anti-corruption strategies, and the flexibility to adjust strategies to take account of such assessment, is also important. Experience has shown that corruption is a pervasive and complex problem and that efforts to combat it often have unforeseen consequences. Actions against corruption in one sector may have the effect of displacing it into other areas, for example, requiring that this displacement be identified quickly and the strategy adjusted to incorporate countermeasures. Assessment and adjustment also entails identifying and replicating measures which have proven successful.

An integrated approach to developing and implementing strategies

The development and implementation of an effective anti-corruption strategy requires the integration and coordination of many disparate factors. Elements of a strategy must be internally integrated with one another to form a single, unified and coherent anti-corruption strategy. Strategies and their elements must also be integrated with external factors, such as the broader efforts within a country to bring about such things as the rule of law, sustainable development, political or constitutional reforms, major economic reforms, or major criminal justice reforms, and in some cases, with the efforts of aid donors, international organisations or other countries.

In most cases, national strategies will be complex, involving only a few basic goals, but many inter-related elements intended to achieve those goals. Individual reform efforts must be carefully sequenced over extended periods of time and coordinated with one another. Many sources of information and other inputs must be included and integrated during the process of developing a strategy, and at frequent intervals as the strategy is implemented, assessed and adjusted. Strategies also require the support and concerted effort of individuals and organisations in the public sector, civil society, and the general population. Some elements of national strategies must also be integrated with the strategies of other countries or regional or global standards or activities to deal effectively with forms of corruption which are transnational in nature and to meet the commitments of instruments such as the Conventions adopted by the OAS, OECD, and when it is finalised and in force, the United Nations Convention against Corruption. To ensure the necessary integration, the following approaches should be adopted, both in developing strategies and in implementing, assessing and adjusting them once they have been developed.
The need for inclusiveness. Including the broadest possible range of participants or stakeholders is important, both to ensure that all significant factors are considered and to instil a sense of “ownership” and support for the strategy. Elements of the strategy will work in virtually every sector of government and society and it is important to have information and assessments from each so that advantages or strengths can be used to the best advantage and that impediments or problems can be dealt with at an early stage. Broad consultation and participation also addresses the concerns and raises the expectations of those involved. This is true not only for senior officials, politicians and other policymakers, but also for general populations. Bringing otherwise-marginalized groups into the strategy empowers them by providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will have an effect on policy-making, and give a greater sense of ownership for the policies which are developed. In societies where corruption is endemic, it is these individuals who are most often affected by corruption, and who are most likely to be in a position to take action against it, both in their everyday lives, and by supporting political movements against it.

The need for transparency. Transparency in government is widely viewed as a necessary condition both to effectively control corruption, and more generally for good governance. Open information and understanding is also essential to public input and ownership of anti-corruption strategies. A lack of transparency with respect to anti-corruption strategies is likely to result in public ignorance when in fact broad enthusiasm and participation is needed. It can also lead to a loss of credibility and the perception that the programmes involved are corrupt or that they do not address elements of government which may have succeeded in avoiding or opting out of any safeguards. In societies where corruption is endemic, this will generally be assumed, effectively creating a presumption against anti-corruption programmes which can only be rebutted by their being clearly free of corruption and by publicly demonstrating this fact. Where transparency does not exist, moreover, popular suspicions may well be justified.

The need for non-partisan or multi-partisan support. The perception that the fight against corruption is a partisan political issue can impede both anti-corruption strategies and more general efforts to establish good governance, the rule of law and regular, stable political structures. The fight against corruption will generally be a long-term effort and is likely to span successive political administrations in most countries. This makes it critical that anti-corruption efforts remain politically neutral, both in their goals and in the way they are administered. Regardless of which political party or group is in power, reducing corruption and improving service delivery to the public should always be a priority. The partisan scrutiny of governments and political factions for corruption or other malfeasance is a valuable factor in combating corruption and vigilance is important, but excessive partisanship can lead to retaliatory cycles in which each faction corruptly rewards its supporters and punishes its opponents upon gaining office. This corrupts and politcises key functions such as the appointment of public servants and the awarding of public contracts. It also degrades the professionalism of the public service by replacing merit with political criteria in staffing, promotion and critical advisory and decision-making functions.

The need for development, implementation and adjustment based on assessment and evidence. It is important that strategies be based on concrete, valid evidence at all stages. Preliminary assessments of the nature and extent of corruption and the resources available to fight it are needed to develop a comprehensive strategy and to set priorities before it is implemented. As a strategy is implemented, further assessments should be undertaken, both of individual elements and overall performance, so that implementation can be periodically adjusted to take advantage of successes and to compensate for failures.

The need for flexibility. While strategies should set out clear goals and the means of achieving these goals, both the strategies and those charged with their implementation should embody sufficient flexibility to permit adaptation to take account of what is learned from assessments of progress. This entails striking a balance which allows for adaptation, but does not inadvertently
reduce compliance by suggesting to those affected by the strategy that opposing it might lead to adaptations which would be more favourable to their interests.

**The need for impact-oriented elements and strategies.** It is critical that clear and realistic goals be set and that all participants in the national strategy be aware of these goals and the status of progress made in achieving them. While elements of the strategy and the means of achieving specific goals may be adjusted or adapted as the strategy evolves, the basic goals themselves should not be changed if this can be avoided, with the occasional exception of included timelines.

**Conclusion**

This toolkit is based largely on what has been learned by the international community and its constituent countries in the struggle against corruption thus far. Perhaps the most important lesson has been that, because corruption is such a widespread and diverse phenomenon, anti-corruption measures must be carefully considered and tailored to the forms of corruption encountered and the societies and cultures in which they are expected to function. In this context, it is clear that there is much to be learned about the construction of viable anti-corruption strategies around the world.

It is also clear that anti-corruption measures must generally be broad ranging, addressing, if not all aspects of the problem, then as many aspects as possible in a particular society. The most viable strategies have tended to combine elements such as criminal justice and deterrence, the setting of standards and education of officials, transparency and monitoring functions, and the raising of public expectations, for example. Simply criminalizing bribery is unlikely to be effective unless accompanied by measures to deal with forms of corruption other than bribery, and without tackling the underlying social, cultural and economic factors which make those seeking action likely to offer bribes and the officials responsible more likely to accept them.

Fighting corruption is a major undertaking which cannot be accomplished quickly or cheaply. It requires an extensive commitment in political terms and the dedication of social and financial resources, which in turn only tend to materialise when the true nature and extent of the problem and the harm it causes to societies and populations are made apparent. Progress is difficult to achieve, and even if achieved, it may be difficult to measure. The creation of popular expectations about standards of public service and the right to be free of corrupt influences has been identified as an important element of many anti-corruption strategies, but the difficulties inherent in making progress also mean that those expectations must be carefully managed. Convincing populations that corruption must be extinguished may lead to cynicism and even worse corruption problems if the expectations are too high to be met in a realistic time frame.
Tool 1 – Assessment of the nature and extent of corruption

Purpose

This tool is used to provide both quantitative measures of the extent of corruption in a country or with specific sectors, and qualitative assessments of which types of corruption are prevalent, how they occur, and what other factors may be causing or contributing to corruption. It will generally be used prior to the development of a national strategy to advise on elements of the strategy, to assist in setting priorities, and to provide “base-line” data for comparison to assess progress as the strategy is implemented. To some extent, emphasis may be determined by what is already known about corruption, particularly in follow-up assessments to measure progress, but to ensure that nothing is overlooked, the preliminary stages of assessment should cover all sectors of public administration, and if necessary the private sector, with follow-up stages focusing on specific problems or sectors depending on what has been learned at the preliminary stage.

Once collected, assessment data will generally be used for a number of different purposes, including the following.

- To advise on the development of a national strategy, the development of specific strategic elements of the strategy, the setting of priorities within the strategy, and for a preliminary assessment of the duration of the strategy and the resources which will be needed to implement it.
- To provide “base-line” data for use in measuring progress as the strategy is implemented and to advise the adjustment or adaptation of strategic elements or priorities to take account of successes or failures as they are identified.
- To provide periodic data about the implementation of strategic elements and their effects on corruption, to form the basis for assessing progress against the “base line” data gathered at the outset of the process. Data should generally also support other forms of assessment and comparison, such as comparing the relative effectiveness of different elements of the strategy or the progress of different public service institutions or sectors against one another.
- To raise the awareness of key stakeholders and the public of the true nature, extent and impact of corruption in order to foster understanding of the anti-corruption strategy, mobilize support for anti-corruption measures and encourage and empower populations to expect and insist on high standards of public service integrity and performance.
- To help in setting clear and reasonable objectives for the strategy and each of its elements, and measurable performance indicators for those objectives.
- To provide the basis of assistance to other countries in the fight against corruption.

Description

Types of data or information to be sought

As noted above, efforts will usually consist of general research to form a preliminary assessment and identify specific problems or areas which should be the focus of further, more detailed examination. Researchers should have confidence that the general data are accurate and that no area has been overlooked before turning to more specific efforts. The data sought at the intensive stage will often include additional areas identified by the more general research, and researchers should always be prepared to identify additional information needs in order to “follow up” avenues on inquiry which emerge as the research proceeds. At the general stage, the following data should be sought.
• **Information about where corruption is occurring.** Including the identification of particular public or private sector activities, institutions or relationships. Data is often gathered about particular government agencies, for example, or about relationships or processes such as public service employment or the making of contracts for goods or services.

• **Information about what types of corruption are occurring.** This may include an overall assessment of which types are prevalent, but will usually involve a more detailed focus on which types of corruption tend to occur in each specific agency, relationship or process for which corruption has been identified as a problem. Research might show that bribery is a major problem in government contracting, for example, while public employment is more affected by nepotism.

• **Information about the costs and effects of corruption.** Understanding the relative effects of corruption is critical in setting priorities and in mobilizing support for anti-corruption efforts. Generally, information should include both direct, economic costs, and some assessment of indirect and intangible, human effects.

• **Factors which contribute to or are associated with corruption.** There will seldom be a single identifiable “cause” of a particular occurrence of corruption, but a number of contributing factors will usually be identifiable. These often include factors such as poverty or low social and economic status of officials which make them more susceptible to bribery, the presence of specific corrupting influences such as organized crime, or structural factors such as over-broad discretion and a general lack of monitoring and accountability. Information about such factors is critical to understanding the nature of the corruption itself and to formulating counter-measures. The presence of known contributing factors may also lead researchers or investigators to previously unsuspected occurrences of corruption.

• **The subjective perception of corruption by those involved or affected by it.** All assessments of corruption should include both objective measurements (of what is actually occurring) and subjective assessments (of how those involved perceive or understand what is occurring). Generally, this information is needed because the reactions of people to anti-corruption efforts will be governed by their own perceptions. Information about the following specific areas should be sought:
  • The impressions of those involved (offenders, victims and others) about the types of corruption occurring;
  • The impressions of those involved about relevant rules and standards of conduct and whether corruption is wrong or in breach of these standards;
  • The impressions of those involved about the actual impact or effects of the corruption; and the views of those involved about what should be done about corruption and which of the available remedies might prove effective or ineffective in their particular circumstances.

**Methods of gathering data or information**

Corruption is by its nature a covert activity, which makes accurate information hard to obtain and provides many of those involved with a motive to distort or falsify any information they provide. To obtain an accurate assessment, therefore, it is essential to obtain information from as many sources as possible and to ensure diversity in the sources and methods employed so that biases or errors due to falsification, sampling or other problems can be identified, and either eliminated or taken into account. The major techniques for gathering information include the following.

**Desk Review.** Usually one early or initial step is to gather as much information as possible from pre-existing sources. These include previous research or assessments from sources such as
academics, interest groups, and public officials such as auditors-general or ombudsmen, and other sources such as media reports.

**Surveys.** Surveys gather information using response to written questionnaires or verbal interviews. They may be directed at general populations or samples chosen for purposes of gathering specific data or as the basis for comparison with other samples. They may be used to gather both objective data (about the actual frequency or nature of occurrences known to the respondents) or subjective data (the views, perceptions or opinions of the respondents). A wide range of data can be obtained about the types, nature, extent and locations of corruption, the effectiveness of efforts to combat it, and the public perceptions of all of these. Considerable expertise is needed to gather valid data and to interpret it correctly, however.

Representative samples of the population must be chosen and the nature of the sample is a major factor in assessing the results. A general public survey may show that only a small portion of the population has experienced public sector corruption, for example, while a sample selected on the basis of having had some contact with the government or a particular area or process, such as employment or contracting might produce a different result. Samples from within government may also show different results than those of outsiders. The comparison of data taken from different samples is one valuable element of such research, but such comparisons can only be validly made if the samples were correctly selected and identified in the first place. For general public surveys, care must be taken to sample all sectors of the population. A common error is to over-sample urban areas where people are more accessible at a lower cost and to under-sample rural or remote populations, which will not yield valid results if the reality or perception of corruption is different in urban and rural areas. Samples selected more narrowly, for example by asking the users of a particular service to comment on that service, must also ensure that a full range of service-users is approached. Anonymity and confidentiality are also important: corrupt officials will not provide information if they fear disciplinary or criminal sanctions, and many victims may also fear retaliation if they provide information.

The formulation of survey instruments is also critical. Questions must be drafted in a way which can be understood by all of those to be surveyed, regardless of background or educational level, and which will be understood in the same way by all survey respondents. In cases where many respondents are illiterate or deemed unlikely to respond to a written questionnaire, telephone or personal interviews are often used, and in such cases it is essential to train interviewers to ensure that all of them are asking the same questions using the same terminology.

**Focus Groups.** Another diagnosis technique used in country assessments is focus groups, whereby targeted interest groups in government and society hold in-depth discussion sessions. This technique generally produces qualitative rather than quantitative assessments, including detailed information concerning views on corruption, precipitating causes, and valuable ideas on how governments can fight it. Specific agendas for focus groups can either be set in general on an advance basis, which allows more direct comparison of the results from a series of groups, or developed individually, either as the group starts its work, or by advance consultation with the participants. Focus groups can also be used to generate preliminary assessments as the basis of further research, but should not be the only method used for such assessments. A focus group of judges might well be useful in developing research into corruption in the legal or criminal justice system, for example, but others, such as law enforcement personnel, prosecutors or court officials may well provide different results.

**Case Studies.** Following basic quantitative and qualitative assessments which identify the extent of corruption and where it is occurring, case studies can be used to provide more detailed qualitative information. Specific occurrences are identified and examined in detail to identify the type of corruption involved, exactly how it occurred, who was involved and in what manner, what impact the occurrence had, what was done as a result, and the impact of any action taken. Information is usually gathered by interviewing those involved, although other sources, such as court documents or reports, may also be used if reliable. Case studies are particularly useful in
assessing the process of corruption and the relationships which exist between participants, observers and others and between causal or contributing factors. They are also useful in the education of officials and members of the public about corruption. As with other areas of research, care in the selection or sampling of cases is important. Cases may be chosen as “typical” examples of a particular problem, for example, or attempts may be made to identify a series of cases which exemplify the full range of a particular problem or of corruption in general.

**Field observation.** Observers can be sent to monitor specific activities directly. If the observers are well trained, this provides very detailed information, but it is too expensive and time-consuming to permit widespread use, which usually limits it to the following up of other, more general methods and to the conduct of detailed examinations of particularly problematic areas. Observers can be directed to gather and report information about any aspect of the activity being observed, which can generate data not available using most other methods, such as the speed, efficiency or courtesy with which public servants interact with the public. In one recent example, observers were used by Nigeria as part of a comprehensive assessment of judicial integrity and capacity to attend court and report on whether the courts were adjourning on time and how many hours a day they were actually sitting.

In many cases it can be difficult to distinguish between investigative operations, whose function is to identify wrongdoers and gather the evidence needed for prosecution or discipline and the use of observers, whose function is simply to gather data for research purposes. This is particularly true where the observers are covert or anonymous, which will often be the case to ensure that their presence does not influence the conduct they are observing. Officials working in countries where constitutional or legal constraints apply to criminal investigations should bear in mind that these may apply to covert or anonymous observers, or may operate to prevent the use of any information obtained against offenders in any subsequent prosecution. Observers should also be given appropriate rules or guidelines governing whether or when to notify law enforcement agencies if serious wrongdoing is observed.

**Professional assessment of legal and other provisions and practices.** In most countries, criminal and administrative law provisions intended to prevent, deter or control corruption already exist, ranging from criminal offences to professional codes or conduct or standards of practice. The most important of these will usually include criminal offences such as bribery, public service rules such as those governing disclosure and conflicts of interest and the regulations and practices of key professionals such as practitioners in law and accounting. Other sectors, such as the medical or engineering professions and the insurance industry may have codes or standards directed at other problems but which contain elements relevant to the fight against corruption. An assessment of these, conducted and compiled by researchers who are professionally qualified but independent of the sectors or bodies under review, can be conducted. Where appropriate, professional bodies can also be requested to review and report.

Generally, reviews should be compiled to generate a complete inventory of anti-corruption measures. This can then be used for the following purposes.

- Each individual sector can be compared with the inventory in order to determine whether elements present in other sectors are absent, and if so whether they should be added.
- Parallel or similar rules adopted by different sectors can be compared to determine which is the most effective, to advise improvements to the others.
- Once the measures have been identified, members of the relevant profession and clients of that profession can be surveyed (see above) to assess their views about whether each measure was effective, and if not, why not.
- Gaps and inconsistencies can be identified and closed or reconciled.

The entire legislative anti-corruption framework should be assessed, which will require some initial consideration of which laws could or might be used against corruption and how.
• Criminal laws include relevant offences, elements of criminal procedure, laws governing the liability of public officials, and laws governing the tracing, seizure and forfeiture of proceeds derived from corruption offences and where applicable other property used to commit or in connection with such offences.

• Elements treated as regulatory or administrative law by most countries would include relevant public service standards and practices and regulations which govern key functions such as the operation of the financial services sector (e.g., banking and the public trading of stocks, securities and commodities), the employment of public servants and the making of government contracts for goods and services.

• Other areas of law include laws governing court procedures and the substantive and procedural rules which govern the use of civil litigation as a means of seeking redress for malfeasance or negligence attributable to corruption.

• Any area of professional practice which is governed by established rules, whether enacted by the State or adopted by the profession itself may also be open to internal or external review. Critical areas include the legal and accounting professions and subgroups such as judges and prosecutors, but other self-governing professional or quasi-professional bodies may also be worth examining. It should be noted that the primary purpose of such examination is not necessarily to identify corruption, but to assess what measures have been developed against corruption, so that they can be used as the basis for reforms for other professions, or of inconsistencies or gaps are identified, so that these can be dealt with.

Assessment of institutions and institutional relationships. Most of the assessment of institutions and institutional relationships will involve consideration of their capacity or potential capacity to fight corruption (Tool #2). They should also be assessed to determine the nature and extent of corruption within each, as well as in the context of the relationships between them. The other methods set out in this tool can be used for this purpose. This assessment should include both public agencies and institutions and relevant elements of civil society, including the mass media, academia, professional bodies and relevant interest groups.

Preconditions and Risks

The major risks associated with assessment are that data obtained will be inaccurate, or that they will be mis-interpreted, leading to the development of inappropriate anti-corruption strategies, or to incorrect conclusions about the state of progress in combating corruption. These represent a serious threat. If initial strategies are too conservative, a country can fall short of its potential in dealing with corruption, and if they are too ambitious, they are likely to fail. If populations are convinced that the national strategy is not working, either because it was too ambitious or because the data used to assess progress are not valid, compliance with anti-corruption measures will decline, leading to further erosion of the strategy.

The methods for gathering, analysing and reporting data and conclusions must therefore be rigorous and transparent. It is necessary to ensure not only that the assessments are valid, but also that they are correctly perceived to be valid by independent experts and by the population as a whole.
Tool 2- Assessment of institutional capabilities and responses to corruption

**Purpose**

In developing effective anti-corruption strategies, two major forms of assessment are needed. The assessment of the nature and extent of corruption in order to identify basic needs and priorities and to measure progress in combating corruption is the subject of Tool #1. This Tool deals with the assessment of institutions in order to determine what potential each has to play a role in the anti-corruption strategy at the outset, and to measure the degree of success achieved at each stage in order to determine what role each institution could or should be called upon to play in subsequent stages. This form of institutional assessment is also important for the development of strategies and setting of priorities, and in many areas will overlap with the assessment described in Tool #1. For example, an assessment of judges or courts that showed high levels of institutional corruption using Tool #1, would also in most cases lead to the assessment of judges as having relatively low potential in fighting corruption. This might in turn lead to making the reform of the judiciary a high priority in early stages of the strategy, with elements of the strategy which depend heavily on the rule of law and impartial judges and courts deferred until an a later assessment of judges showed the development of sufficient capability among judges as an institution.

**Description**

**Determining which institutions require assessment and setting priorities**

The broad and pervasive nature of corruption may require that virtually every public institution, as well as many elements of civil society and the private sector, will have to be assessed at some point, but to conserve resources and maintain a relatively focused national strategy, priorities should be set. In many cases, determining which institutions should be given priority will depend on factors which are individual to the country involved and which may well vary over time, particularly if the strategy is relatively successful. Periodic reassessment may show that institutions have progressed from being part of the problem of corruption to the point where they can become part of the solution, or raise warnings that previously corruption-free institutions are coming under pressure from corrupt influences displaced from other areas in which anti-corruption efforts have been successful. In assessing the potential roles which could be played by various institutions, their existing or potential roles in the major social, political, economic, legal and other areas in which anti-corruption efforts are generally required should be considered. In most countries, this will include the following areas.

**Assessment**

Reliable assessment as set out in tools #1 and #2 will be needed at the beginning and at various points in the anti-corruption process. This requires the involvement of public and private sector institutions which gather statistical and other information from original sources, as well as those who compile and analyse information obtained by other sources. Where the assessment suggests that these are unreliable, specific, dedicated agencies, such as elements of national anti-corruption agencies, may have to be established.

**Prevention**

Many institutions will generally be called upon to play a role in preventing corruption. Some criminal justice elements can be classified as preventive in the sense that they are intended to deter corruption, and in a sense, prevent future corruption by prosecuting and incapacitating (by imprisoning or removing from office) those convicted of corruption. More generally, institutions such as schools, universities and religious institutions could play a role in awareness-raising and mobilising moral and utilitarian arguments...
against corruption. Social and economic institutions can play a similar role, as well as a role in developing and implementing institutional, structural and cultural measures to combat corruption in their own dealings.

**Reaction**

Reactive roles are generally those assigned to the criminal justice system as well as parallel or analogous civil functions. The institutions involved are those who detect, investigate, prosecute and punish corruption, and which recover proceeds of corruption. In many countries, parallel, non-criminal justice institutions deal with such things as the setting of integrity and other relevant standards, the discharge or discipline of those who fail to meet them, and the recovery of proceeds or damages through civil litigation.

The focus of assessment and reforms, as a matter of priority, will generally be on public-sector institutions and their functions. Given the nature of corruption and the reluctance of populations to fully trust public officials and institutions in environments where corruption represents a serious problem, however, elements of civil society also play an important role, both in monitoring public affairs and anti-corruption efforts, and in providing accurate and credible information which can validate or invalidate those efforts, as appropriate. Therefore, a similar process of assessment should be conducted in respect of relevant civil society elements or institutions. Particular attention should be paid to the mass media, academia, professional bodies and relevant interest groups, but other elements of civil society may also prove relevant. Generally, the assessment of each element will include consideration of what roles that element is playing or could be playing in fighting corruption, the capacity of that element to fulfil those roles, and the relationship between each element and other elements of government and civil society. Consideration of the mass-media, for example, might include an assessment of the types of media (computer networks video, radio, print media) present and their availability to segments of the society (literacy rates, access to radios, televisions and computers); the role being played by each in identifying corruption; the capacity of each to expand that role; and other relevant factors, such as the ability of the media to gain access to the information needed to review and assess government activities.

Generally, the institutions or agencies which perform one or more of these functions in the context of anti-corruption strategies will include the following:

- Political institutions, such as political parties (whether in power or not), and the partisan political elements of government;
- Legislative institutions, including elements of the legislature and public service which develop, adopt or enact and implement constitutional, statutory, regulatory and other rules or standards of a legislative nature;
- Judicial institutions, including judges at all levels, quasi-judicial officials and those who provide input or support to judicial proceedings, such as prosecutors and other lawyers, court personnel, and in their functions as witnesses, law-enforcement and other investigative personnel;
- Criminal justice institutions, including those responsible for investigation, prosecution, punishment and the assessment of crime;
- Other institutions with specific anti-corruption responsibilities, such as auditors, inspectors and ombudsmen;
- Civil society institutions, and in particular those involved in transparency, such as the mass-media, standard-setting, such as professional bodies, and assessment or analysis, such as academic institutions; and,
- Private-sector institutions, and in particular those identified as susceptible to corruption, such as government contractors, and those who provide oversight, such as private auditors.
Assessment of institutions and institutional relationships.

Once specific institutions have been identified, they should be assessed both individually and in the context of their relationships with other institutions and other relevant extrinsic factors. The overall assessment of the potential roles of judges, for example, might be affected not only by the degree of professional competence and freedom from corruption of the judges themselves, but the competence and integrity of prosecutors and court personnel, and the state of the legislation which the judges will be called upon to apply in corruption cases. While the primary purpose of assessment using this Tool is to determine the potential capacity each institution has to act against corruption, this will inevitably be linked to the assessment of the nature and extent of corruption within that institution or in other linked institutions, using Tool #1. Judges cannot be relied upon to fight corruption if they themselves, or those they depend upon, such as court officials or prosecutors, are corrupt. In such cases, a finding under Tool #1 that corruption is present would normally suggest that reforming that particular institution should be made a priority and that until reforms were in place, the potential use of that institution to fight corruption elsewhere would be relatively limited.

The major objectives of assessment include the following.

- Within each institution, an analysis of strengths and weaknesses can form the basis of a strategy and action plan for fighting corruption within the institution, and these individual plans can be compared and harmonized across the full range of institutions.
- Within each institution specific areas of corruption and/or areas at risk of corruption can be identified.
- A complete inventory of institutions and agencies can be developed, with a brief outline of the establishment and mandate of each institution and the responsibilities it has in fighting corruption or other relevant areas.
- The inventory can be used to make each institution aware of the existence and roles of all of the others, to facilitate cooperation and the coordination of mandates and activities.
- The mandates and activities of each institution can be assessed to identify and address gaps or inconsistencies.
- Consideration can be given to enhancing mandates or resources in areas of the overall framework identified as weak or under-resourced.

Methods of gathering data or information for use in assessing institutions

The methods which can be used to obtain data are essentially the same for assessing the potential roles of institutions as for assessing the extent of corruption (Tool #1), and many of the same caveats apply. To obtain an accurate assessment, it is essential to obtain information from as many sources as possible and to ensure diversity in the sources and methods employed so that biases or errors due to falsification, sampling or other problems can be identified, and either eliminated or taken into account. The fact that institutions and not individuals are being assessed may result in a greater reliance on the subjective assessments, or opinions of those served by the institution, those who work in it, and other interested observers, as to whether if functions effectively or not. Procedural mechanisms, such as requirements that statistics or other records be kept or specific incidents or occurrences be reported, can be incorporated into institutional rules, although in many cases this amounts to asking the institution to compile and assess data about itself, and safeguards against manipulation or falsification might be required in some cases.

The major techniques for gathering information include the following.
General Introduction

**Desk Review.** Usually one early or initial step is to gather as much information as possible from pre-existing sources. These include previous research or assessments from sources such as academics, interest groups, and public officials such as auditors-general or ombudsmen, and other sources such as media reports.

**Surveys.** Surveys gather information using response to written questionnaires or verbal interviews. They may be directed at general populations or samples chosen for purposes of gathering specific data or as the basis for comparison with other samples. They may be used to gather both objective data (about the actual frequency or nature of occurrences known to the respondents) or subjective data (the views, perceptions or opinions of the respondents). A wide range of data can be obtained about the types, nature, extent and locations of corruption, the effectiveness of efforts to combat it, and the public perceptions of all of these. Considerable expertise is needed to gather valid data and to interpret it correctly, however.

Representative samples of the population must be chosen and the nature of the sample is a major factor in assessing the results. Where a particular institution is assessed, those surveyed must first be selected on the basis that they will have the information which is sought about that particular institution, which will in many cases raise questions or doubts about the size of the sample and possible bias factors. If only a small number of people have the information, the sample becomes less reliable, since analysis can be affected by an even smaller number of results, and those results could more easily be influenced or biased by some extrinsic factor unrelated to the assessment. The fact that all four accused convicted of homicide by a particular judge in a particular year have a negative opinion of the judge, for example, may have more to do with the fact of the convictions than the competence of the judge. If, on the other hand, a very large number of offenders convicted over a long period of time make allegations of corruption, and these are corroborated by survey results from other groups, such as accused offenders who were acquitted, defence lawyers and prosecutors, they would provide a much more reliable indicator of actual occurrences.

The comparison of data taken from different samples is one valuable element of such research, but such comparisons can only be validly made if the samples were correctly selected and identified in the first place. For surveys used to compare institutions, care must be taken to sample similar or equivalent sectors of the population for each institution. The two most common groups will be those who work within each institution, and those served by it, but others may also be surveyed where available. Samples of the users of a particular service, must also ensure that a full range of service-users is approached. Anonymity and confidentiality are also important: corrupt officials will not provide information if they fear disciplinary or criminal sanctions, and many victims may also fear retaliation if they provide information.

The formulation of survey instruments is also critical. Questions must be drafted in a way which can be understood by all of those to be surveyed, regardless of background or educational level, and which will be understood in the same way by all survey respondents. In cases where many respondents are illiterate or deemed unlikely to respond to a written questionnaire, telephone or personal interviews are often used, and in such cases it is essential to train interviewers to ensure that all of them are asking the same questions using the same terminology.

**Focus Groups.** Another diagnosis technique used in country assessments is focus groups, whereby targeted interest groups in government and society hold in-depth discussion sessions. This technique generally produces qualitative rather than quantitative assessments, including detailed information concerning views on corruption, precipitating causes, and valuable ideas on how the institutions concerned can fight it. Specific agendas for focus groups can either be set in general on an advance basis, which allows more direct comparison of the results from a series of groups, or developed individually, either as the group starts its work, or by advance consultation with the participants.

**Case Studies.** Case studies involve the close examination of actual or typical cases of corruption, and are therefore more useful in surveying the nature and extent of corruption (Tool #1) than the
real or potential capabilities of institutions to fight it. Finished case studies are, however, useful tools in conjunction with other methods, such as focus groups, to illustrate to participants the true nature of corruption and stimulate creative discussion and ideas about how participants and the institutions they represent could contribute to the fight against it.

**Field observation.** Field observation is also primarily used to assess the nature and extent of actual corruption (Tool #1) but it can also be used to assess institutional capability, if trained observers are used to present problems calculated to test such things as the knowledge and resourcefulness of officials or the adequacy of technical facilities. In extreme forms, this can become “integrity testing”, in which officials are offered corrupt opportunities to ascertain whether they will accept, but here the purpose is to assess the overall quality of the institution rather than to identify and prosecute or discipline corrupt individuals. In many cases it can be difficult to distinguish between investigative operations, whose function is to identify wrongdoers and gather the evidence needed for prosecution or discipline and the use of observers, whose function is simply to gather data for research purposes. This is particularly true where the observers are covert or anonymous, which will often be the case to ensure that their presence does not influence the conduct they are observing. Officials working in countries where constitutional or legal constraints apply to criminal investigations should bear in mind that these may apply to covert or anonymous observers, or may operate to prevent the use of any information obtained against offenders in any subsequent prosecution. Observers should also be given appropriate rules or guidelines governing whether or when to notify law enforcement agencies if serious wrongdoing is observed.

**Professional assessment of legal and other provisions and procedures.** In most countries, criminal and administrative law provisions intended to prevent, deter or control corruption already exist, ranging from criminal offences to professional codes or conduct or standards of practice. These are not “institutions”, per se, but will often have to be assessed where they are the product of institutions, such as the laws made by a particular legislature or regulatory body, or where substantive laws, procedural laws and institutional practices are so closely linked to make combined assessment necessary.

Thus, for example, an assessment of the courts would have to include an assessment of the legal procedures for establishing courts, appointing judges, and for the administration of court on a daily basis. It would also generally include the assessment of the laws establishing criminal procedure, and to the extent they were used to identify and seek redress for corruption, civil procedure and administrative law rules as well. Apart from law-making and law-enforcement rules and institutions, the external or self-regulatory elements of some key professions, such as those governing the practice of law and accounting, should be assessed, and certain elements, such as the codes of conduct governing other professions, could be assessed insofar as they deal with corruption and other relevant areas.

From a legislative standpoint, the entire legislative anti-corruption framework should be assessed, which will require some initial consideration of which laws could or might be used against corruption and how.

- **Criminal laws** include relevant offences, elements of criminal procedure, laws governing the liability of public officials, and laws governing the tracing, seizure and forfeiture of proceeds derived from corruption offences and where applicable other property used to commit or in connection with such offences.
- **Elements treated as regulatory or administrative law** by most countries would include relevant public service standards and practices and regulations which govern key functions

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10 Integrity testing is an effective way to determine whether targeted individuals are corrupt, but raises some concerns about selectivity and potential abuses of power, as well as legal concerns about entrapment in systems where this imposes a limit on investigation or prosecution. For details, see “Integrity testing”, Tool #30.
such as the operation of the financial services sector (e.g., banking and the public trading of stocks, securities and commodities), the employment of public servants and the making of government contracts for goods and services.

- Other areas of law include laws governing court procedures and the substantive and procedural rules which govern the use of civil litigation as a means of seeking redress for malfeasance or negligence attributable to corruption.

Any area of professional practice which is governed by established rules, whether enacted by the State or adopted by the profession itself may also be open to internal or external review. Critical areas include the legal and accounting professions and subgroups such as judges and prosecutors, but other self-governing professional or quasi-professional bodies may also be worth examining. It should be noted that the primary purpose of such examination is not necessarily to identify corruption, but to assess what measures have been developed against corruption, so that they can be used as the basis for reforms for other professions, or of inconsistencies or gaps are identified, so that these can be dealt with.

Generally, reviews of specific laws, institutions and the measures taken by each institution should be compiled to generate a complete inventory. This can then be used for the following purposes.

- Legislation can be comprehensively reviewed to identify provisions are areas which can be used effectively as part of the initial anti-corruption strategy and to identify areas which are deficient and require amendment or the addition of new measures. The use of international legal instruments, model laws and the enactments of other countries may provide assistance in identifying deficiencies and suggesting areas and means of law reform.

- Each individual institution or sector can be compared with the inventory in order to determine whether elements present in other sectors are absent, and if so whether they should be added.

- Parallel or similar rules adopted by different sectors can be compared to determine which is the most effective, to advise improvements to the others.

- Once the measures have been identified, members of the relevant profession and clients of that profession can be surveyed (see above) to assess their views about whether each measure was effective, and if not, why not.

- Gaps and inconsistencies can be identified and closed or reconciled.

**Recommended Reading**

Transparency International (TI) Source Book, 2001,


Anti Corruption Case Studies, Vienna 2002,

International Legal Instruments, Vienna 2002,

**Relevant Internet Sources**

[http://www.odccp.org/odecp/corruption.html](http://www.odccp.org/odecp/corruption.html)

[http://www.transparency.org](http://www.transparency.org)
2

Institution Building
II. INSTITUTION BUILDING

Introduction

A broad concept of “institution building”

It is generally accepted that institutional changes will form an important part of most national anti-corruption strategies. Since many factors related to institutional cultures and structures also exert influences on levels of corruption and the types of corruption which tend to occur, institutional reforms may be used in an attempt to counteract or reduce these influences. These may include changes such as the incorporation of accountability elements into organizations, the de-layering or simplification of operations to reduce error and the opportunities to conceal corruption, or more fundamental reforms seeking to change the attitudes and beliefs of those who work in an institution. In some cases, institutions may be completely eliminated or restructured in order to obtain a “fresh start”, or completely new institutions can be created.

In the past, institution building has focused on the creation or expansion of institutions and the technical skills needed to operate them. In many cases, results have fallen short of expectations because sub-cultural or conventional attitudes and behaviours that supported or condoned corruption were simply carried forward into the new institutions. It is now accepted that reforms must deal not only with institutions, but with the individuals who work in those institutions as well. Leadership that promotes and applies integrity, accountability, transparency and a focus on objectives and results, as well as the general acceptance of a mind-set, beliefs and customs, which flavour integrity over corruption, are also needed.

A broader concept of institution building has now been adopted by many donors and organizations. Donors now work as facilitators with clients to establish standards and ground rules for public service leaders. Integrity has become a critical consideration for administrators when appointed civil-service positions are filled, and for voters when comparing candidates for elected or political offices. Integrity is now promoted through any means possible, including such things as the introduction of leadership codes, codes of conduct, declarations and monitoring of assets and transparency in political administration.

The realization that institutions are inter-related and that reforms must often be coordinated has also led to an expansion of the meaning of “institution” and of the list of institutions commonly included in anti-corruption strategies. While much of the focus remains on key elements of public administration such as financial agencies, the court system, prosecutorial law-enforcement and other criminal justice agencies and structures for public service staffing and the procurement of goods and services, it is now understood that other institutions of government and civil society require attention as well. It is also apparent that many of the same fundamental principles apply to institutions of all sizes and at all levels of government.

Figure 2: Institution Building

Mechanisms for greater transparency in public administration become much more effective if accompanied by the development of an independent, vigilant, media sector equipped with sufficient expertise and resources to review and assess the information made available and

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11 With respect to recent relevant international initiatives addressing this issue, see e.g., the United Nations Convention Against Transnational Organized Crime (2000), Article 9 (requiring Parties to provide anti-corruption authorities with adequate independence to deter inappropriate influence on their actions); the Council of Europe Criminal Law Convention on Corruption (1998), Article 20 (establishing specialised anti-corruption authorities); the Organisation of American States’s Inter-American Convention Against Corruption (1996), Article III (preventative measures); the Global Forum on Fighting Corruption’s Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials (1999)
ensure that it is disseminated among the population. Similarly, rule of law and legal accountability reforms require not only reforms to legislation and the institutional practices of government, but also the development of an independent and capable private legal profession to provide legal advice and conduct litigation.

The audience to which institution-building reforms are directed has also broadened to include all parts of society interested in creating and maintaining national integrity. Where the traditional focus of donor attention was public administration institutions, the new approach requires coordinated elements to address stakeholders who are extrinsic to those institutions, but whose participation and support is nevertheless necessary if reforms are to be effective. In constructing overall strategies, institutional reforms can be grouped into “pillars of integrity” which are mutually supportive and include elements from both government and other elements of civil society. Key public-sector groups which must usually be included in such strategies are the executive and legislative branches of government at the national, regional and local levels; the judicial branch and its supporting institutions; key “watchdog” agencies such as auditors or inspectors, as well as law enforcement agencies and other elements of criminal justice systems. In the private sector, the media, relevant academic individuals and institutions, and other organizations such as relevant trade unions, professional associations and general or specific interest groups play a vital role in promoting integrity and ensuring transparency and accountability, and should therefore also be included. The final pillar is the general population itself: public awareness of reforms and expectations of the standards set by those reforms ultimately holds both the reformers and the institutions accountable for the success or failure of programmes.

The following diagram (Fig.2) illustrates some of the key “pillars” which may need to be incorporated into institution-building projects.

![Diagram of pillars of integrity](image)

**Figure 2: Pillars of Integrity**

As with the pillars of a physical building, the pillars of integrity are interdependent. A weakening of any one pillar results in an increased load being shifted onto the others, and the success or failure of the overall structure will depend on the ability of each element to support the loads expected of it. If several pillars weaken collectively, or if any single pillar weakens to an extent that cannot be compensated for by the others, the entire structure will fail. Developing a successful structure requires an assessment of the demands made on each of the elements, the

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strengths and weaknesses of each element, and how these relate to the strengths and weaknesses of other elements. Attention may then be focused on setting priorities and addressing significant weaknesses. In the fifteen countries that have thus far embraced the reform efforts of the U.N. Global Programme against Corruption, inadequate rule of law elements have been seen as a critical area which has limited the effectiveness of other reforms. Rule of law reforms are also viewed by most as a major priority because the necessary legal and judicial skills and expertise cannot simply be imported and take time – in most cases ten to fifteen years – to produce.

The mechanics of institution building

A number of measures may be applied to establish new structures or to reform existing ones. As noted in the previous section, it will generally be necessary to bring about not only formal structural changes, but also changes in attitude and support for reforms on the part of the individuals who make up those institutions, and in many cases, those who do business with them as well.

Formal structural changes may require legislative changes to statutes or delegated legislation, and will virtually always require administrative reforms. In some areas, such as the independence of judicial offices, even reforms to constitutions or fundamental laws might be required. Legislation may be used to create, staff and fund new institutions, and existing institutions established by statute will generally require amendments to abolish them or implement fairly fundamental reforms. The administrative rules and procedures under which an institution operates on a daily basis may be based on delegated legislation, in which the ultimate legislative power delegates the authority to make and amend operational rules to permit to some individual or body established for that purpose, within established constraints. This allows a greater degree of expertise and specialization in rule making, and provides flexibility for making amendments, since the legislature itself need not participate.

Both types of legislation are relatively amenable to anti-corruption reforms. Political party structures and legislatures must be supportive of anti-corruption initiatives in general and educated with respect to the specific amendments being proposed. Given the long-term nature of such initiatives, multi-partisan support is important. Delegated legislative authorities can be appointed to operate under the oversight of the legislature where more detailed technical knowledge of corruption is needed. Essentially, the legislature is called upon to decide to combat corruption, to set general principles, and to enact key provisions, such as statutes creating anti-corruption authorities or establishing criminal offences and punishments. Delegated authorities are then called upon, in the context of each institution to consider how best to implement reforms in each institution, to create the necessary rules, and to periodically review and amend those rules.

In many cases, the greater problem will be obtaining the necessary degree of understanding, support and commitment for the reforms on the part of those who work in the institutions, and the outsiders with whom they deal. Legislative anti-corruption reforms must be accompanied by campaigns to train and educate workers about the nature of corruption, the harm it causes and need for reform, and the mechanics of the reforms being proposed. Since those who profit from corruption lack positive incentives to change their behaviour, elements of surveillance and deterrence will also generally be needed.

It will also be important to ensure that any restructuring is kept as simple and straightforward as possible. Overly complex structures tend to create further opportunities for corruption. Complexity also makes new procedures more difficult to learn, and may provoke resistance from officials who see them as an obstacle to the performance of their duties. Reforming institutional cultures also requires sufficient time for those accustomed to old values to understand and adopt new ones.
Reform programmes must seek to accomplish change as quickly as possible, and incorporate as many incentives for change as possible, but it will also be important to incorporate reasonable objectives and expectations and not to force the pace of change to the point where it triggers a backlash from those involved. This may conflict with political agendas, particularly in cases where anti-corruption reforms are developed in reaction to high-profile corruption, scandals or other major public events which generate political pressure to act quickly.

**Judicial Institutions**

The reform or rebuilding of judicial institutions is often identified as a major priority in anti-corruption strategies because the courts play a critical role in ensuring that other elements are effective. Judicial independence is identified as a necessary condition for the effective rule of law. Commonly judicial independence is understood to require independence from undue influence by non-judicial elements of government or the state, but in practice, judicial independence requires the insulation of judicial affairs from all extrinsic influences. The process of interpreting law and resolving disputes before the courts involves a carefully structured process in which evidence is screened for reliability and probative value and presented in a forum in which it can be tested through such means as the cross-examination of witnesses, and in which it can be used in support of transparent legal arguments from all parties with an interest in the issue or dispute. This ensures basic diligence, quality and consistency in judicial decision-making, and inspires public confidence in the outcomes.

The corruption of judicial institutions frustrates all of these mechanisms, allowing judicial decisions made based on improper influences and untested assertions. It also denies litigants basic fairness and the right to equality before the law. The ultimate result is inconsistent, ad hoc decision-making, a lack of public credibility, and in systems which employ judge-made law, poor legal precedents. Judicial corruption also greatly reduces the usefulness of judicial institutions in combating corruption itself. The courts are not only essential to the prosecution and punishment of corruption offenders, but also to other accountability structures such as civil litigation (e.g., by unsuccessful contract or job applicants) and the judicial review of anti-corruption measures and agencies themselves, and these are rendered ineffective or even counter-productive if the judges themselves or their supporting institutions are corrupt.

The reform of judicial institutions is made more difficult and complex by many of the very structures that are intended to ensure the independence of judges from corrupt or other undue influences. Judicial independence and security of judicial tenure generally makes the discharge or discipline of corrupt judges very difficult, if not impossible. Many countries also extend some degree of legal immunity to judges in order to prevent domination or intimidation from law-enforcement officials or prosecutors, and these privileges may also shield corrupt judges. Criminal prosecution of judges may also find it difficult to ensure that the accused judge is tried fairly.

Any strategy for the reform of judicial institutions in a specific country should be carefully considered in light of the state of judicial independence in that country and the specific constitutional, legal and conventional measures used to protect it. Before anti-corruption reforms are instituted, it may be necessary to ensure that basic judicial independence from other elements of the State is in place and operating effectively. In many cases, the dominant elements will

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Institution Building involve the selection, training and appointment of judges because these do not interfere with judicial independence protections. Judicial candidates should be carefully investigated and screened to identify any incidents of past corruption, and judicial training both before elevation to the bench and for serving judges should emphasize anti-corruption elements. Ongoing freedom from any sign of corruption should also be an essential criterion for promotion to senior judicial positions, in order to ensure the integrity of the appeal process and that senior appellate courts are in a position to pass judgement on corruption cases involving more junior judges.

The extensive autonomy enjoyed by judges also makes efforts to change their mind-set or culture a critical element of judicial institution building. Truly independent judges are virtually immune from most of the anti-corruption safeguards that the State can develop, leaving only the internalization of anti-corruption attitudes and values as an effective control. Conversely, a well-trained, competent and corruption-free judiciary, once established, makes possible a high degree of judicial independence, which can be critical to the promotion of other rule of law reforms and to the use of the law as an instrument for implementing not only anti-corruption measures, but reforms in all areas of public administration. Finally, the high status of judges within public administration makes them critical as an example for other officials. Judges who cannot be corrupted both inspire and compel corruption-free conduct.

Institution Building in Local and Regional Governments

In most countries, reforms at different levels of government will have to be developed and integrated to be effective against corruption. Virtually all countries have separate structures for the administration of central government and local communities, and those with federal constitutional structures also have regional, provincial or state governments. These have varying degrees of autonomy or even sovereignty with respect to the central government, and in many cases are based on distinct formal or informal political structures. This can pose challenges for the development and implementation of anti-corruption strategies. “Top down” reforms developed for central government institutions take longest to reach local governments which in many cases contain the institutions in which reforms will make the greatest difference for average people in the delivery of basic services. To secure participation and cooperation, political agendas which might be quite different from those which apply to the central government have to be taken into account, and in many cases these agendas will also differ from one local community to the next. Adapting and promoting anti-corruption measures will often have to be done village-by-village, preferably with the participation of local people and taking into account local values.

Failure to deal with corruption at all levels in a coordinated manner will at best result in reforms which are only partly effective and at worst simply result in the displacement of corrupt activity away from levels where effective controls and countermeasures are in place and towards levels where they are not. A corrupt company which finds itself unable to bribe legislative officials to produce legislation it wants may simply resort to the bribery of local officials to ensure the legislation it opposes is not enforced, for example.

Local governments in developing countries are increasingly governed by elected officials. Greater decentralization has also opened up opportunities for citizen participation in decision making at the local level. As a result, this "first generation" of democratic leadership is being required to carry out key government functions such as construction and maintenance of basic infrastructure, delivery of basic services, and social services. In this context, access to additional resources for local governments that are compatible with an increased level of responsibility do
require institutional safeguards to assure integrity. As this occurs, it is important that good governance practices are deepened and strengthened through transparent decision-making mechanisms that are open to citizen participation.
Institution Building

Tool 3 - Specialized anti-corruption agencies

Should a specialized anti-corruption agency be established?

Anti-corruption strategies will generally have to consider whether to establish separate institutions to deal exclusively with corruption problems, to modify or adapt existing institutions for this purpose, or some combination of both. A number of legal, policy, resource and other factors should be considered in this regard.

The major advantages of separate institutions include the high degree of specialization and expertise that can be achieved; the possibility of establishing a high degree of autonomy to insulate the institution itself from corruption and other undue influences; the separation of the institution from other agencies and departments which it will be responsible for investigating; the fact that a completely new institution enjoys a “fresh start” free from corruption and other problems which may be present in existing institutions, greater public credibility, better security protections; greater political, legal and public accountability; and greater clarity in the assessment of its progress, successes and failures. The creation of separate institutions may also allow for faster action against corruption, using resources dedicated to the task and officials who are not subject to the competing priorities of general law-enforcement, audit and similar agencies.

The major disadvantages include greater administrative costs, isolation, barriers and rivalries between the institution and those with which it will be called upon to cooperate, such as law enforcement and prosecution officials, auditors and inspectors; and the possible reduction in perceived status of existing structures excluded from the new institutions.

From a political standpoint, the establishment of specialized institutions or agencies sends a signal that the government takes anti-corruption efforts seriously, but may generate competing political pressures from factions seeking similar priority for other crime-related subjects. Separate agencies may also be vulnerable to attempts to marginalize them or reduce their effectiveness by underfunding or inadequate reporting structures. Generally, the division or fragmentation of law-enforcement and other functions will reduce efficiency, but incorporate an additional safeguard against corruption and similar problems, as it will put the anti-corruption agency in a position to monitor the conventional law-enforcement community, and should the agency itself be corrupted, vice versa. The legislative and managerial challenge in this area is to allow just enough redundancy, and even rivalry, to expose corruption if the primary anti-corruption authority fails to do so, but not to permit so much duplication that the flow of intelligence, or of investigative and prosecutive opportunities available to the primary authority is unduly reduced.

Dedicated anti-corruption institutions are more likely to be established where corruption is so widespread, or is perceived as being so widespread, that existing institutions cannot be adapted to develop and implement the necessary reforms. In most cases, if the established criminal justice system is able to handle the problem of corruption, the disadvantages of creating a specialized agency will outweigh the advantages. Many of the advantages, such as specialization, expertise and even the necessary degree of autonomy can be achieved by establishing dedicated units within existing law enforcement agencies, with fewer disadvantages in the coordination of anti-corruption efforts with other law enforcement cases.

Ensuring the independence of specialized agencies

Where it is necessary to establish a completely independent agency, the necessary degree of autonomy can usually only be achieved by statutory enactment, and in some cases, constitutional reforms may even be needed. Fundamental rule of law principles such as judicial independence are often constitutionally-based, although in many countries reforms are more likely to consist of
obtaining satisfactory interpretation and application of existing constitutional rules than the adoption of new ones. While anti-corruption agencies may not be considered as judicial in nature, where corruption is sufficiently serious and pervasive to require the establishment of a specialized institution, something approaching accepted standards for the independence of judicial or prosecutorial functions may be required. These may include:

- Constitutional, statutory or other entrenched mandates;  
- Security of tenure for senior officials;  
- Multipartisan and public review of key appointments, reports and other affairs of the agency;  
- Security and independence of budgets and adequate resources;  
- Exclusivity or priority of jurisdiction or powers to investigate and prosecute corruption cases, and the power, subject only to appropriate judicial review, to determine which cases involve sufficient elements of corruption to invoke this jurisdiction; and,  
- Appropriate immunity against civil litigation.

**Mandates of specialized anti-corruption agencies**

The exact mandate of a specialized anti-corruption agency will depend on many factors, not the least of which include the nature and extent of the corruption problem; whether the agency is intended as a permanent or temporary measure; the mandates of other relevant entities involved in areas such as policy-making, legislative change, law enforcement and prosecution; the management and regulation of the public service; and whether the mandate is intended to deal with corruption at all levels (i.e., central, regional and municipal or local) of government Substantive elements could include the following.

- **An investigative and initial prosecutorial function.** When a country is emerging from a systemically corrupt environment or where high-level officials are implicated, the ACA might be the only agency willing to investigate and prosecute, or it may be the only entity with sufficient independence to do so successfully. Where the existing prosecution service is functioning properly, a separate prosecution mandate may not be required, although the ACA should be able to refer or recommend cases for prosecution where appropriate. The exercise of prosecutorial discretion is itself susceptible to corruption and will require safeguards wherever it is vested.

- **An educational and awareness-raising function.** An established ACA has the information needed to play an important role in educating the public about corruption. Transparency with respect to specific cases is essential to establishing the basic credibility of anti-corruption efforts both as a deterrent and as a measure of success. More general education about the true costs and extent of corruption is needed to mobilize popular support for the anti-corruption strategy itself.

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15 An “entrenched” mandate is one which is established by law and protected by amending procedures which are more difficult than for ordinary legislation, such as time-delays, special majority (e.g., 2/3) votes or additional legislative deliberations.
• **An analysis, policy-making and legislative function.** A major element of anti-corruption strategies is the ability to take account of lessons learned and use them to modify the strategy as it proceeds. The ACA will have the necessary information, and should have the necessary expertise to analyse it and recommend reforms. It should be authorized to make such recommendations to both administrative and legislative bodies, publicly if necessary.

• **A preventive function.** Apart from basic deterrence and education measures, the ACA should be in a position to develop, propose, and where appropriate, implement preventive measures. One example could be the power to review and comment on preventive measures developed by other departments or agencies.
Tool 4 – Auditors and audit institutions

Purpose

The fundamental purpose of auditing is to provide verification of records, processes or functions from some source which is sufficiently independent of the process and subject-matter being audited that it cannot be biased or unduly influenced. The degree of thoroughness and level of detail vary, but generally, audits should examine the accuracy and integrity of actions taken and records kept, and any other factor which would contribute to the accuracy or validity of those actions or records. Corporate audits, for example, consider not only the substantive position of the company, but decisions made by its officials, whether the process was such as to produce a valid result, and the accuracy of the evidence or information on which decisions or actions were based, because any of these, if flawed, would result in an inaccurate or misleading conclusion.

Audits work primarily through transparency: while some auditors may have powers to act on their own findings, generally their responsibilities are merely to investigate, report on matters of fact, and in some cases make recommendations or refer findings to other bodies for action. While auditors may report to inside bodies such as governments or boards of directors, their real power usually lies in the fact that their reports are made public.

Once carried out, audits serve the following specific purposes:

- They independently verify information which is essential to developing an overall picture of the institution or function being audited, establishing the accuracy of information and analysis, thereby permitting an accurate picture to be drawn;
- They identify evidentiary weaknesses, administrative flaws, malfeasance or other problems which insiders may be unable or unwilling to identify;
- They identify strengths and weaknesses in administrative structures, assisting decisions about which elements should be retained and which require reform;
- They provide a base-line against which reforms can later be assessed, and in some cases propose or impose substantive or temporal goals for reforms which insiders would not have done;
- In public systems, they place credible information before the public, generating political pressure to act in response to problems identified; and,
- Where malfeasance is identified, auditors form a mechanism whereby problems can be referred to law-enforcement or disciplinary authorities independently of the institution being audited. 16

Description

Different types of audit

16 Article 14(3)(g) of the International Covenant on Civil and Political Rights provides the right of any person charged with an offence “Not to be compelled to testify against himself or to confess guilt”, and some domestic constitutional guarantees extend this principle to those who may be suspected, whether or not they have been formally charged. In such cases conflicts between the roles of auditors and prosecutors may have to be reconciled. Generally legislation can compel those being audited to positively assist auditors, providing records and written or verbal explanations of actions taken, which in cases of malfeasance, may later lead to or support criminal charges. Some systems deal with this by allowing those audited to refuse to cooperate, while others may require cooperation but exclude information given to auditors from being used in a later criminal proceeding against the individual or legal person which was compelled to provide it.
Audits vary widely in scope, subject-matter, the powers of auditors and their separation or independence from the institutions or persons being audited, what is done with reports or findings and other characteristics. They range in size from minor contractual arrangements in which an auditor may be asked to examine a specific segment or aspect of a private company’s business activities to institutions employing hundreds of experts and responsible for auditing the entire range of activities of large governments. Auditors may be mandated to carry out specific tasks, although this can compromise their independence, or they may be given general powers, not only to conduct audits, but also to decide which aspects of a business or public service they will examine each year. Public sector auditors are generally in the latter category due to the large volumes of information to be examined, the expertise required, the sensitivity of much of the information reviewed, and the need for a high degree of autonomy and resistance to any attempt at undue influence. Much of the content of this tool reflects the experience of such national audit institutions and the need to establish or strengthen them in governments where they are absent or ineffective, but many of the specific principles can also be applied to smaller-scale audits applied to specific projects or programmes. Specific types of audit include the following.

- **Pre-audit/post-audit.** Audits of specific activities may be carried out before or after the activity itself takes place, or both. Public audit institutions may be called upon to examine proposals for projects, draft contracts or similar materials with a view to making recommendations to protect the activity from corruption or other malfeasance. They may also be called upon, or choose of their own accord, to review the activity in detail after it has taken place. It is important to bear in mind that, while pre-audits may be useful for preventing corruption, the factual information needed for a complete and verifiable audit only exists after the fact. As a result, the fact that an activity was reviewed before it took place should not exempt it from scrutiny afterward.

- **Internal/external audits.** Depending on the magnitude of the audit and the degree of independence needed, audits may be carried out by specialized units acting from within government departments or companies, or by fully independent government institutions or private contractors. Inside audits are useful for fast, efficient review of internal activities, and in some cases for auditing which requires access to sensitive information, but they are usually under the control of the head of the unit being audited, and may not be made public or reported outside of the organization involved. External audits offer much greater independence and guarantees of transparency or public access to findings.

- **Non-public audits.** While a general principle of auditing is that the findings or conclusions reached should be publicly reported, in the public sector, this principle can conflict with the need for official secrecy. Governments protect official secrets ranging from national security matters to sensitive economic or commercial information, and it is important that matters which involve such information should not be exempted from auditing. If auditors are precluded from examining departments or agencies which handle sensitive information, these can be used to shield corruption or other improper activities from scrutiny. In such cases, it is preferable to subject the activities involved to audit, if necessary by auditors who have been subjected to background checks and cleared under official secrets legislation, and to require that reports only be transmitted to senior officials empowered to act on them, or to allow editing of reports to prevent the disclosure of sensitive information. In such cases, the determination of what information is too sensitive to disclose should be made as independently as possible. One option is to permit auditors dissatisfied with such decisions to appeal to the courts, with the requirement that proceedings be closed and any judicial decisions edited or kept secret. Another is to create a structure in which internal audits of sensitive departments are reported directly from the auditors to external civilian or political oversight bodies established and cleared to review the information they contain.

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17 One of the larger such institutions, the United States General Accounting Office, presently lists 3,275 employees.
Audit subject-matter: legal, financial, regularity and performance audits. Auditors may be mandated to examine legal matters, financial matters, the regularity or adherence of internal procedures to prescribed or common standards, or the performance of individuals or institutions. In the case of major public-sector institutions, auditors are generally mandated to examine all of these aspects of the operation of a department or agency, and to decide whether to audit, and if so which of these aspects to audit. Such decisions can be made on a random basis to ensure general deterrence, and/or on the basis of information received. Tips from insiders may generate an audit, for example, and information gathered on a preliminary audit may well cause the auditors to choose to examine specific areas or activities of an institution more closely.

Ensuring the independence of audit institutions

The degree of independence enjoyed by auditors may vary. However, the validity and reliability of the audit depends on some basic degree of autonomy, and major public-sector auditors generally require and are given a degree of independence roughly equivalent to that of judges or national anti-corruption agencies. As is the case with those institutions, public audit agencies are ultimately subordinate to and employed by the State, making complete independence impossible, but a high degree of autonomy in matters such as mandate and governance, budgets, staffing, the conduct of investigations, the making of decisions about what to audit and how, and the drafting and release of reports is essential.

Independence of auditors and staff. The independence of audit institutions is linked to the independence of its members, and in particular those with senior responsibilities or decision-making powers. Ensure competence, credibility and neutrality requires careful review of candidates before hiring and the protection of staff members from outside influences once they are employed. As with judges, this may require security of tenure and safeguards to prevent abuses of discharge and disciplinary procedures, performance assessments and similar matters.

Financial and budgetary independence. Audit institutions must be provided with the financial means to enable them to accomplish their tasks, and security against the possibility that budgets might be reduced in order to limit or prevent an audit from taking place, or in retaliation for one which has already taken place. Since government auditors commonly review the activities of finance ministries and other budgetary agencies, this may require direct access to the legislature or a multipartisan legislative committee in budgetary matters.

Independence and transparency of reporting. As noted, the primary effectiveness of public-sector audits lies in transparency and public disclosure. A report will generally provide information and recommendations for action by inside experts, but the political pressure for those experts to act on the recommendations usually stems from the reaction to the report by the general public. Systems which require public disclosure of audit reports generally either do so explicitly in legislation, or indirectly by requiring reports to be made to a body, such as the legislature or a legislative committee, whose proceedings are required to be conducted in public. To ensure independence, those to whom the report is made should not be permitted to alter or withhold it. Where it is necessary to create an exception to this principle, as in the case of sensitive information there should be a legal presumption or preference for transparency, with exceptions requiring a justification, and the withholding only of such information as can be justified.

Relationship between audit institutions and other public bodies

Relationship with the legislature and political elements of government. Legislatures are by their nature political bodies whose members will not always welcome the independent oversight of auditors and other watchdog agencies. In the case of national audit institutions, this makes it
important that a significant degree of functional independence and separation from the legislature and political elements of executive government be assured. One means of accomplishing this is to constitutionally entrench the basic existence and status of the institution and office, thereby making interference impossible without a constitutional amendment. Where this is not practicable, what are essentially political constraints can be applied by establishing the institute by an enacted statute which sets out basic functions and independence in terms which make it clear that any amendment which did not enjoy broad multipartisan support would be seen as interference and therefore generate political consequences for the political faction which sponsored it.

The mandate of an audit institution should also deal with the difficult question of whether it should have the power and responsibility to audit the legislature and its members. This is a difficult issue. If an auditor has strong powers, the possibility of interference with the legitimate functions of the legislature and the immunities of its members must be considered. If, on the other hand, the legislature is not subject to audit, a valuable safeguard may be lost. One factor which should be considered in making such a decision is the extent to which transparency and political accountability function as controls on legislative members. Another is the extent to which internal monitoring and disciplinary bodies of the legislature act as effective controls. A third factor is the degree of immunity members enjoy. If immunities are limited and members are subject to criminal investigation and prosecution for misconduct, then there may be less need for auditing. Where immunities are strong, on the other hand, exposing members to strict audit requirements may compensate for this, creating a mechanism whereby political and even legal accountability can be ensured, while allowing this to be tailored so as not to compromise legislative functions\(^\text{18}\).

The third aspect of the relationship between the legislature and an audit institution lies in the process for dealing with the reports or recommendations of auditors once they have been produced. Auditors which have been established by the legislature are generally required to report to it at regular intervals. As an additional safeguard, reporting to either the entire legislature or a committee or other body on which all political factions are represented ensures multipartisan review of the report, and constitutional, legislative or conventional requirements that proceedings and documents of the legislature be made public ensures transparency, a process further assisted by the close attention paid to most national legislatures by the mass-media. Auditors may also be empowered to make specific reports, recommendations or referrals to other bodies or officials in some circumstances, such as the referral of some cases of apparent malfeasance directly to law enforcement or public prosecutors.

\(\text{Relationship to government and the administration.} \) The relationship between auditors and non-political elements of government and public administration must balance the need for independent and objective safeguards with the efficient functions of government. Auditors should be free to establish facts, draw conclusions and make recommendations, but not to interfere in the actual operations of government. Such interference would compromise the political accountability of the government, effectively replacing the political decision-making function with that of a professional, but unelected, auditor. Over time, such interference would

\(^{18}\) It is worth noting in this context that the function of legislative privileges or immunities is not the protection of members, but the protection of the legislature and the integrity of its proceedings. Thus, for example, the freedom of members to speak without fear of prosecution or action for libel is established, but often limited to speech in the course of legislative proceedings. Similarly, immunities from arrest or detention are often restricted to periods where the legislature is actually sitting or may be called into session. In some countries, privileges and immunities are also extended to participants who are not members, such as witnesses who testify before legislative committees. On the long historical development of immunities in the Parliamentary common-law system of the United Kingdom, see Erskine May’s *Treatise on the Law, Privileges and Usage of Parliament*, chapt.5-8 and Wade, E.C.S. and Bradley, A.W., *Constitutional and Administrative Law*, 10th ed., chapt.12. For the application of this principle in Canada, see *New Brunswick Broadcasting Co. v. Province of Nova Scotia* [1993] 1 S.C.R. 319.
also compromise the basic independence of the office of the auditor, which would ultimately find itself auditing the consequences of its own previous decisions. These are the principle reasons why most auditors are not given powers to implement their own recommendations. Regarding reporting, the primary reporting obligation of auditors is to legislatures and the public. Specific elements of a report or specific recommendations may be referred directly to the agency or department most affected, but this should be done in addition to the public reporting and not as an alternative, subject to the possible exceptions set out under “non-public audits”, above.

**Powers of auditors**

**Powers of Investigation.** The employees of audit institutions should have access to all records and documents relating to the subject-matter and processes they are called upon to examine. Subject to rights against self-incrimination, those involved should also be required to cooperate in a timely manner in locating documents, records and other materials, providing formal, recorded interviews and any other forms of assistance needed to allow auditors to form a full and accurate picture. The duty to cooperate can be applied to public servants as a condition of employment and to companies who deal with the government and their employees as a general condition or term of government contracts for goods and services. Auditors will generally acquire staffs which are competent in basic investigative, auditing and accounting practices, but may require additional expertise in areas such as law or forensic or other sciences in dealing with some agencies or departments, and should have the power to engage appropriate experts where needed without interference.

Expert opinions and consultations. Apart from their objective investigative functions, audit agencies may also be used as a source of expert advice for governments in relevant areas, including the drafting of legislation or regulatory materials dealing with corruption. If this is permitted, it should be used on a strictly limited basis, however, as it could compromise the basic independence of the auditor\(^\text{19}\).

**Audit methods, audit staff, international exchange of experiences**

**Audit staff.** The audit staff should have the professional and expert qualifications, and the moral integrity required to completely carry out their tasks and maintain public credibility in the audit institution. Professional qualifications and on-the-job development should include both traditional areas such as legal, economic and accounting knowledge, and other expertise such as business management, electronic data processing, forensic science and criminal investigative skills. As with other critical public servants, ensuring that status and compensation are adequate reduces the likelihood that auditors will become corrupted by reducing their need for additional income and ensuring that they have a great deal to lose if caught and disciplined or prosecuted. While involvement in corruption may not be cause for dismissal for ordinary public servants, it should generally result in exclusion from any audit agency or function.

**Audit methods and procedures.** The standardization of audit procedures where possible provides an additional safeguard against oversights or abuses in which some functions of the department or agency being audited are overlooked. For the same reason, to the extent that procedures must be adapted to the circumstances at hand, it is preferable that this be done beforehand, to avoid any question of interference once the nature and direction of enquiries have become apparent to those being audited. One exception to this, and a fundamental principle of procedure, is that auditors should be both authorized and required to direct additional attention to any area in

\(^{19}\) The situation is similar with respect to the use of supreme courts to provide what are effectively binding legal opinions on matters referred to them directly by governments, as opposed to having been raised by litigants. Some countries allow this practice, while others consider it an impermissible mixing of the judicial and executive branches of government.
which initial inquiries fail to completely explain and account for processes and outcomes. Essentially, the audit process takes the shape of initial inquiries to gain a basic understanding of what the department or agency does and how it is organized; more detailed inquiries to generate and validate basic information for the report; and even more detailed inquiries to examine areas identified as potential problems. Audits can rarely be all-inclusive, which will generally make it necessary to use either a random sampling approach of to target specific areas identified as problematic by other sources.

Audit of public authorities and other institutions abroad and joint audits. National auditors should be given powers to audit every aspect of the public sector, including elements which take place on a transnational basis or which occur in other countries. Where the affairs of other countries are involved, joint audits carried out by officials of both countries could prove useful. In such cases a clear working arrangement will be needed, however, governing the nature and extent of cooperation between auditors, and the extent to which mutual agreement might be required with respect to findings of fact, conclusions and recommendations. Generally, while cooperation may prove useful, the national auditors of each country should preserve their independence and the right to draw any conclusions they see fit.

Tax audits. In many countries, domestic revenue or tax authorities have established internal agencies to audit individual and corporate taxpayers. The functions of national audit institutions will usually include auditing of these auditors as part of a more general examination of the taxation system and its administration. Given the substantial economic interests and the degree of tax evasion, corruption and other problems in tax systems, such agencies will frequently be audited. When this occurs, national audit agencies must of necessity have the power to re-audit the files of individual taxpayers. The purpose is to verify the work of the auditors, however, and not to re-investigate the taxpayer(s) involved. When malfeasance or error is discovered, however, this should generally not prejudice the interests of a taxpayer who has been previously audited and has made a settlement of the tax account. National auditors should also have the powers to audit individual taxpayers under some circumstances. These include cases where there is no specialized tax audit function, where tax auditors are unwilling or unable to audit a particular taxpayer, and cases where an audit of the tax administration suggests collusion between the taxpayer and an auditor.

Public contracts and public works. The considerable funds expended by public authorities on contracts and public works justify a particularly exhaustive audit of this area. The public sector elements will already generally be subject to audit, and required to assist and cooperate by law, but the private sector elements may not be, and in such cases should be required to submit to audit on request, and to assist and cooperate, as a term of their basic contracts. Audits of public works should cover not only the regularity of payments, but also the efficiency and quality of the goods or services delivered.

Audit of electronic data processing facilities. The increasing use of electronic data storage and processing facilities also calls for appropriate auditing. Such audits should cover the entire system and cover aspects such as planning for requirements; economical use of data processing equipment; use of staff with appropriate expertise, preferably from within the administration of the audited organization; privacy protection and information security; prevention of misuse; and the ability of the system to store and retrieve information in accordance with the demands made on it.

Audit of subsidized institutions. Auditors should also be empowered to examine enterprises or institutions which are subsidized by public funds. At a minimum, this would entail the review of specific projects or programmes which were publicly funded or subsidized, and in many cases, it would require a complete audit of the institution. As with contractors, the requirement to submit to auditing and to assist and cooperate with auditors, should be made a condition of the funding or a related contract.
Audit of international and supranational organizations. International and supranational organizations whose expenditures are covered by contributions from member countries should also be subject to auditing. The manner in which this is done may be problematic, however, if the institution receives funds from many countries and each insists on a national audit. In the case of major agencies, it may be preferable to establish an internal agency to conduct a single, unified audit, with sufficient oversight by participating countries to ensure validity and satisfaction with the results.

Preconditions and Risks

Inadequate enforcement or implementation of findings or recommendations. As noted, auditors generally have only the power to report, not to implement or follow-up on reports. This means that their recommendations are usually in the hands of the legislature, or occasionally other bodies such as public prosecutors, whose own functions necessarily entail discretion about whether to act on them or not. The reluctance of those affected to implement recommendations can only be addressed by bringing political pressures to bear through the transparent reporting of recommendations by the mass media. Additional attention may be focused by supplementary reports directly to agencies concerned. Auditors can also report on whether past recommendations have been implemented by using follow-up reports or dedicating parts of subsequent regular reports to the question of whether earlier ones were implemented, and if not, why not.

Inadequate reporting and investigations. A lack of qualified professional staff and resources make it difficult for auditors to successfully complete rigorous audits, and frequently make it difficult for those being audited to render the necessary cooperation, since this may divert personnel away from critical functions.

Unrealistic Aims and Expectations. The belief that corruption can be eradicated and that this can be done in a short time inevitably leads to false expectations, resulting in disappointment, distrust and cynicism. In the case of auditors, the establishment of such institutions may generate the mistaken impression that there are powers to implement or enforce recommendations.

Competition and relationships with other agencies. Audit institutions often operate in an environment in which anti-corruption agencies, law enforcement agencies, and in some cases other auditors are also active. Roles should be clearly defined, and confidential communications established to avoid cases where audit and law enforcement investigations conflict. The leading role in this regard may lie with the auditors, whose investigations are generally public, as opposed to law enforcement, whose efforts are generally kept secret until charges are laid.

Lack of Political Commitment and/or Political Interference. Political will is essential to the impact of an audit institution. As with other anti-corruption initiatives, it is important that as broad a range of political support as possible be present, that oversight be of a multipartisan nature, and that mandates and operational matters be put beyond the easy reach of political governments. Transparency and the competence of auditors will also help to ensure popular support for its efforts, and as a result, ongoing political commitment.

Other Related Tools

Tools which may be required before an audit institution can be successfully established include the following.

- Tools, usually in the form of legislation, which establish the mandate, powers and independence of the institution.
- Policy and legislative provisions governing the relationship between the audit institution and other related institutions, especially law-enforcement, prosecution and specialized anti-corruption agencies.
• Tools which establish legal or ethical standards for public servants or other employees, such as codes of conduct, both for general classes of workers and for those employed within the audit institution itself.

• Tools which help raise public awareness and expectations with respect to the role of the audit institution and its independence of other elements of government.

• The establishment of a parent body, such as a strong and committed legislative committee to receive and follow-up on reports.

Tools which should not be used if audit institutions are in place are generally those which involve officials, agencies or organizations whose mandates would be redundant or even inconsistent with the mandates or work of dedicated auditors. Mandates of law-enforcement agencies, anti corruption commissions, independent anti corruption agencies, prosecutors, ombudsmen and other officials and agencies should be configured or adjusted as necessary to take account of the work of the auditors. It may also be advisable to require mechanisms such as liaison personnel or regular meetings to coordinate activities.
Tool 5 - Ombudsmen

Purpose

Ombudsmen fulfill several important functions. They provide a means for obtaining an impartial and independent investigation of complaints against government agencies and their employees. Usually, informal procedures are used to avoid the limitations of other mechanisms such as legal proceedings, which are out of reach for some complainants and impracticable for relatively minor complaints. They educate government insiders about appropriate standards of conduct and serve as a mechanism whereby the appropriateness of established codes or service standards can be considered and if necessary, adjusted. They also raise awareness among the citizenry about their rights to prompt, efficient and honest public services, provide remedies in some cases, and help to identify more appropriate fora in others.

Description

The term “ombudsman” derives from the office of the Justitieombudsmannen, created by the Swedish Parliament in 1809 to "supervise the observance of statutes and regulations by the courts and by public officials and employees". The concept has since been taken up by many countries and has been adapted to national or local requirements. Generally, the ombudsmen consist of individuals or agencies with very general powers which allow them to receive and consider a wide range of complaints which do not clearly fall within the jurisdiction of other more structured fora such as law courts or administrative bodies.

Role of ombudsmen in anti-corruption programmes

The general nature of the office and the variations established in different countries raise a wide variety of possible roles for the ombudsman. These may depend on the extent to which other bodies of officials exist and are already playing an effective role. The existence of more structured administrative bodies to which unfavourable decisions can be appealed will divert a portion of the caseload away from the ombudsman, for example. Generally, in countries with effective rule of law frameworks and well-developed alternatives, the ombudsman will focus on cases which fall between the jurisdictions of other bodies or cases which are too small to warrant the costs of making more formal complaints. In countries where these are lacking or inadequate, on the other hand, the ombudsman may well play a much broader role, dealing with more serious cases and larger volumes. Ombudsmen should not be seen as an alternative to more formal proceedings, but they may function as a “stop-gap”, dealing with corruption cases in the early stages of anti-corruption programmes, while other fora are being established.

The mandates of ombudsmen generally go beyond corruption cases, including incidents of mal-administration attributable to incompetence, bias, error or indifference which are not necessarily corrupt. This can be an advantage, since the complainant in many cases will not know of or suspect the presence of corruption, and the ombudsman can determine this and if necessary refer the matter to an anti-corruption agency or prosecutor for further action. As noted, the informality of ombudsman structures also permits them to be used in relatively minor cases where legal proceedings would not be feasible. Ombudsmen also generally have powers to fashion a suitable remedy for the complainant, which is often not the case with criminal proceedings. The ombudsman process is usually complaint-driven, however, which limits its usefulness in tackling corruption in general and in generating research or policy-related information, although some ombudsmen compile reports analyzing their caseloads or have powers to make general recommendations to governments where complaint patterns suggest that there is some deeper institutional, structural or other problem.
In some countries, ombudsmen have taken a more proactive role in studying the efficiency and operational policies of public institutions in an effort to prevent injustice, incivility or inefficiency in the first place. As with other functions, the breadth of their role in each country may depend on whether other agencies, such as Auditors- or Inspectors-General have been established to monitor various aspects of governance and make recommendations for reform. Where this is not done by other agencies, ombudsmen may perform functions such as making recommendations or proposals to government departments or making public reports and recommendations. Their functions can also include monitoring observance of leadership codes and investigating complaints of corruption. In some countries, rather than a single national Ombudsman, several specialized Ombudsman exist each being responsible for different private and governmental operations and such as health and legal services, police, defence forces, societies, insurance, pensions and investments.

**Mandates and functions.**

As with other watchdog bodies, ombudsmen require a sufficient degree of independence and autonomy to ensure that their inquiries and findings cannot be compromised and that they will enjoy public credibility. Key mandates and functions include the following.

- **Mandates** should be broad enough to ensure that ombudsmen can consider complaints which are not within the purview of other fora such as law courts or administrative tribunals. At the same time, overlap with other fora should be avoided as much as possible. Ombudsmen should not be empowered to consider major cases within the jurisdiction of other bodies. In minor cases, complainants should have a choice between the ombudsman and other proceedings. Mandates should also prevent the ombudsman from being used as an unofficial appeal or reconsideration of matters already dealt with by other bodies. Since ombudsmen will receive a wide range of cases, they should also be mandated and trained to refer cases to other fora where appropriate.

- **Ombudsmen** should have the power to fashion remedies for complainants where possible, especially in cases where alternative fora lack such powers. Such remedies could include such things as overturning decisions or referring them back to the original decision-maker for reconsideration.

- **The extent to which ombudsmen may also generate policy or make general recommendations for reform may depend on the mandates of other bodies in each country, but could be considered.**

**Jurisdiction.** Ombudsmen should have relatively broad jurisdiction in terms of the types of mal-administration (including corruption) which they may investigate and in terms of the institutions of government that may be investigated.

**Adequate investigative powers.** Ombudsmen require adequate investigative powers and access to all institutions, persons and documents they consider necessary for the performance of their functions.

**Transparency.** Ombudsmen should conduct investigations informally, openly, and in a non-adversarial manner. They must expeditiously publish findings from investigations and corrective recommendations in addition to reporting to parliament.

**Integrity.** The Ombudsman and members of his or her office have essentially the same integrity requirements as are applicable to anti-corruption agencies (above). A high level of integrity for both individual staff members and procedures is needed both to ensure the validity of results and the credibility of the office.

**Accessibility.** The public must have free, direct and informal access to the Ombudsman without introduction or assistance.
**Resources.** Ombudsmen must be provided with adequate staff and resources to ensure that their functions can be discharged competently, with due diligence and within a reasonable period of time, and that this will be apparent to the general population. One problem which often confronts ombudsmen and the governments which establish their offices is unexpectedly large caseloads due to the general nature of the mandate, combined with inadequate resources and staff. In such cases, even if the office is seen as having integrity, it will not be seen as credible, either as a complaint mechanism or an element of the national anti-corruption programme.

**Preconditions and Risks**

*Lack of Co-ordination with other agencies.* A country may recognize that fighting corruption requires more than merely enforcing the laws and may adopt a strategy that involves elements of prevention and public education, and still not be successful in its efforts if elements of the strategy are not bound together in a coordinated effort. The relatively broad, general mandates of ombudsmen and the tendency to use them to fill gaps between other mechanisms which perform monitoring and accountability functions or fashion remedies makes coordination particularly important in this area.

*Unrealistic Aims and Expectations.* The broad mandates and easy accessibility of ombudsmen generally limit them to relatively minor matters, with more serious inquiries assigned to better resourced and more powerful entities such as law-enforcement or specialized anti-corruption agencies. Public expectations about the extent of inquiries that ombudsmen can conduct and the types of remedies they can create and enforce must be carefully managed. Information and mandate materials should set a high standard for ombudsmen but not create unrealistic expectations.

**The establishment and use of Ombudsmen and similar institutions in international organizations or activities**

Examples of cases of corruption or mal-administration in international projects such as the movement and housing of refugees, the delivery of food aid and the management of major international aid projects have become, unfortunately, all too common. The international aspects of the organizations and activities involved represent unique challenges, and Ombudsmen can be effective as an element of anti-corruption strategies in such cases for several reasons. While efforts have been made to establish appropriate legal and regulatory frameworks for the administration of organizations such as the United Nations, these are seldom as extensive and well equipped as the legislative and enforcement structures of individual countries. The nature of international organizations and programmes also often results in a complex web of interlocking and overlapping jurisdictions with respect to corruption-related subject matter, which can reduce the effectiveness of countermeasures. The extremely broad range of subject-matter and the interplay of different languages, cultures, legal traditions and other factors can also pose challenges for anti-corruption efforts. The impact of all of these factors may be reduced to some degree by the use of ombudsmen or similar officials, who usually have very broad jurisdiction to hear complaints, fashion remedies or refer matters to other, more appropriate bodies.

Broadly-speaking, international ombudsmen could be established in two situations. They could be established and mandated by international organizations such as the United Nations as part of their internal management and governance structures. In such cases, an ombudsman would receive complaints from both employees and outsiders, potentially dealing with subject-matter ranging from internal management issues such as staffing or the promotion of employees to complaints or concerns with respect to how the organization executes its various mandates. A key function of an ombudsman in this position would be to receive and account for a very wide range of complaints, referring many of them to more appropriate bodies or officials. Ombudsmen could also be established by individual agencies or organizations which are
involved in specific projects or programmes of an international nature. In this case, the subject-matter jurisdiction of the ombudsman can be much more narrowly focused. The aid agency of a donor government, for example, would probably have existing structures for complaints or concerns at home and rely on an ombudsman only as a means of dealing with complaints generated in the countries where it is active. Such an ombudsman might be established as an ongoing operation, or established on a project-by-project basis as needed. Further mandates for a project ombudsman might well arise from the specific nature of the project itself and knowledge of the exact country or countries where the project was to be conducted.

Ombudsmen in international organizations

Generally, Ombudsmen in international organizations would have the following characteristics, in addition to those applicable to all Ombudsmen (above).

- Offices would be established and mandated by the international equivalent of legislation, preferably with some degree of entrenchment. In the case of the United Nations, for example, a treaty provision, adopted by the General Assembly, but ratified by Member States and only amendable by the action of States Parties to the treaty, might be preferable to an ordinary resolution of the General Assembly.
- Mandates would generally focus on areas of external complaint about the functions of the organisation itself, although individual complaints would be received both from insiders concerned about the delivery of services and outsiders affected by mal-administration or other problems as recipients of the services or as observers from civil society.
- Mandates could also include the review of complaints about internal matters such as staffing and other management practices, depending on the extent of previously established internal accountability and oversight structures. Where such structures exist, their mandates and procedures, and those of the Ombudsman, should be reconciled to avoid duplication of effort and the potential for inconsistencies.
- As with other investigative or “watchdog” functions, Ombudsmen would require some investigative powers, such as powers to interview staff and others and to gain access to documents, and employees should be required to cooperate with them.
- To help ensure credibility and independence, Ombudsmen or their oversight bodies should involve some degree of participation by outsiders, such as representatives of the civil societies of countries in which the organisation is active.
- Basic transparency should be preserved by requiring open, public reports to the political governing body (e.g., in the case of the United Nations, the General Assembly) at regular intervals.
- The selection mechanism for the Ombudsman would be crucial and require careful consideration. The office-holder would need to enjoy widespread trust and respect and be known internationally for his or her personal integrity and professional competence. Sufficient understanding of the inside workings of the organization involved is needed to ensure effectiveness, but sufficient distance from every-day operations is also needed to ensure objectivity, credibility and independence.
- The establishment of ombudsmen in international organisations should generally be accompanied by efforts to inform those who deal with the organisation about its existence, mandates and how to raise issues or make complaints, as well as by standard-setting instruments such as codes of conduct.

Ombudsmen in national organizations conducting international activities

The requirements and considerations for such ombudsmen are essentially the same as those for ombudsmen in international organizations, with the difference that their geographical and
subject-matter jurisdiction will often be asymmetrical. An officer called upon to function as ombudsman with respect to a particular aid project, for example, may have a split mandate which is tailored to the respective laws and administrative procedures of the donor and recipient countries. Where the donor country already has an ombudsman or similar institution, for example, it would not be advisable to create a second, parallel office. In such cases, the mandate of the ombudsman might be limited to complaints or cases arising in the recipient country or countries. Another possibility might be to amend the mandate of the existing ombudsman to encompass complaints arising in recipient countries and ensuring that the office is resourced and equipped (e.g., by the hiring of local staffs in the recipient country) to receive and deal with such cases.

Related tools

Tools which may be required before an Ombudsman institution can be successfully established include:

- Legislation to establish the mandate of the Ombudsman, to create powers to investigate cases, conduct proceedings and implement remedies, and to establish procedures to be followed;
- Legislative, judicial and administrative measures needed to ensure the autonomy or independence of the institution in respect of its mandates, personnel, budgets and other matters;
- Depending on the mandates of the Ombudsman, the establishment or upgrading of other institutions with which it is expected to work; and,
- Tools which establish legal or ethical standards for public servants or other employees, such as codes of conduct, both for general classes of workers and for those employed by the Ombudsman, as well as tools which help raise public awareness and expectations with respect to those standards, such as public information campaigns and “citizens’charters” or similar documents.

Tools which may be required before an Ombudsman can function properly include:

- Legislation and/or administrative measures which ensure that the Ombudsman will have access to information, such as access to information laws and procedures, and effective protections for complainants, “whistleblowers” and others who assist in investigations or proceedings;
- Measures which raise public trust and awareness regarding the institution and its mandate and which manage public expectations; and,
- Legislative or other measures which establish an effective and credible oversight and monitoring mechanism, such as bodies which involve elements of civil society.

Given the general nature of most Ombudsmen’s functions, there are probably no tools which cannot be used or which should generally be avoided if an Ombudsman is established. For the same reason, however, multiple areas of overlap will generally require careful consideration of the mandates and powers of both the Ombudsman and of overlapping institutions to minimize inefficiencies, redundancy, and the potential for parallel proceedings and inconsistent decisions.

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20 Tool 5.
21 Tools 6 and 22.
Tool 6 - Strengthening Judicial Institutions

Purpose

The competence, professionalism and integrity of judges are critical to the success of anti-corruption. In general, the judiciary as an institution is essential to the rule of law, which in turn influences efforts to control and eradicate corruption in many ways. Judicial decisions which are fair, consistent with one another, and based on law support an environment in which legitimate economic activities can flourish and in which corruption can be detected, deterred and punished. The high status and independence accorded judges in most societies makes them a powerful example for the conduct of others. Judges will be called upon to adjudicate corruption cases, establishing case-law and punishing offenders, and will themselves become targets of corruption, particularly where efforts to corrupt lesser criminal justice officials have failed. In some cases, judges may be called upon to perform other critical functions, such as reviewing the appointments or status of anti-corruption officials or passing judgment on governance matters such as the validity of elections or the constitutionality of laws or procedures.

The independence of judges and their functions makes them a powerful anti-corruption force, but it also represents unique challenges. Training in areas such as integrity must be done in a way, which does not compromise independence. Accountability structures must be able to monitor judicial activities, detect and deal with corruption and other conduct inconsistent with judicial office, while at the same time incorporating safeguards which ensure that they cannot be used to threaten or intimidate judges or otherwise influence judicial decision-making.

Description

Measures affecting judges

The major focus of anti-corruption efforts should be on efforts to strengthen basic integrity, educate judges about the nature and extent of corruption, and establish adequate accountability structures. This could include the following activities or factors.

Assessment of the problem. As with other anti-corruption measures, efforts to combat judicial corruption should be based on an assessment of the nature and scope of the problem. Since many of the measures which apply to judges must be developed, maintained and applied by the judges themselves, the assessment should also consider the capacity of the judiciary to play such a role. An objective assessment of the full range of forms of corruption and the level and locations of courts in which they occur should be examined. Those involved should also be asked about possible remedies (see consultation, below). Data should be assembled and recorded in an appropriate format and made widely available for research, analysis and response.

Consultations. Judicial independence precludes imposing reforms from without, which means that any proposals for judicial training and accountability must be developed in consultation with judges, or even developed by the judges themselves, with whatever assistance they may require. In addition, consultations with other key groups, such as the bar associations, prosecutors, justice ministries, legislatures, and court users are recommended. Lawyers, for example, are a source of information about problems which judges may not be aware of, and in many countries, future judges are drawn from the ranks of the legal profession, as well as in consultation with the practicing bar. In some cases bringing together different groups to discuss issues informally may

prove productive. Based on the consultation process, a specific plan of action could be drafted to set out the proposed reforms in detail, set priorities and implementation sequence, and set targets for full implementation. 23

**Judicially-established measures.** To protect judicial independence, self-regulation structures should be developed wherever possible. This requires that, based on consultations and other sources of information, judges should be encouraged and assisted in the development and maintenance of their own accountability structures. This requires the establishment of bodies such as judicial councils, in which judges themselves hear complaints and impose disciplinary measures and remedies and develop preventive policies. Views about the extent to which training can be required without compromising judicial independence vary, but it is also preferable that training programmes in anti-corruption and other areas be developed by, or in consultation with, judges to the greatest extent possible. This avoids the debate about independence and is likely to increase the effectiveness of the training.

**Judicial training.** The subject-matter of judicial training should be directed both at assisting judges in maintaining a high degree of professional competence as judges and a high degree of integrity. Possible subject-matter could include the review of codes of conduct for judges and lawyers24, particularly if these have been revised or re-interpreted, and a review of statute and case law in key areas such as judicial bias, judicial discipline, the substantive and procedural rights of litigants and corruption-related criminal offences. Less-structured options, such as informal discussions, could be used to explore difficult ethical issues among judges.

**A judicial code of conduct.** 25 Codes of conduct for judges could be developed and applied. Judicial independence does not require that such codes be developed by judges themselves, provided that specific provisions do not compromise independence. Judicial participation is important both to the development of suitable provisions and the subsequent adherence of judges to them, however. The application of a judicial code of conduct to individual judges alleged to have breached its provisions does raise independence concerns, however, and the power to apply such codes should be vested in the judges themselves. For this reason, key provisions of such codes would include that judges connected in any way with a complaint or the judge(s) involved not participate in any disciplinary or related proceedings. Once a code is established, judges should be trained on its provisions at the time they are appointed, and if necessary, at regular intervals thereafter. Transparency and the publication of a code are also important, to ensure that those who appear before judges, the mass-media and the general population is educated about the standards of conduct they are entitled to expect from their judges. As part of the consultation process, representatives of bar associations, prosecutors, justice ministries, legislatures and civil society in general should be involved in setting standards. Those involved in court proceedings also play an important role in identifying complaints and assisting the adjudication of those complaints.

**The quality of judicial appointments.** The objective in selecting new judges should be to ensure a high standard of integrity, fairness and competence in the law, and processes should focus on selecting for these characteristics. Several measures can assist in ensuring that the best possible candidates are elevated to the Bench. Transparency with respect to the nomination and appointment process and to the qualifications of proposed candidates will allow close scrutiny and make improper procedures difficult. Consultations with the practicing bar can be used to

23 For an example of this, see Petter Langseth and Oliver Stolpe, “Strengthening Judicial Integrity Against Corruption”, *CILJ Yearbook*, 2000.

24 In jurisdictions where judges are chosen from the practicing bar, codes of professional conduct for lawyers often continue to apply. Judges should also be aware of the standards expected of the legal counsel who appear before them.

25 More detailed information about codes of conduct for judges are set out in the following segment, “codes of conduct”.

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assess competence and integrity where the candidates are lawyers. The appointment process should be isolated from partisan politics or other extrinsic factors such as ethnicity or religion as much as possible. As a group, judges should generally represent the population at large, which means that appointments to senior or national courts may have to take into account factors such as ethnicity or geographic background, but these should not be allowed to interfere with the search for integrity and competence.

The assignment of cases and judges. Experience with judicial corruption has shown that, to improperly influence the outcomes of court cases, offenders must ensure not only that judges are corrupted in some way, but that the corrupt judge is assigned the case in which the outcome has been fixed. To combat this problem, procedures should be established to make it difficult for outsiders to predict or influence decisions about which judges will hear which cases. Features such as randomness and transparency can be incorporated into the assignment process can be used to ensure that it is not corrupt, although this will inform outsiders which judge will hear which case. This also occurs on major or appeal cases, where judges may hear preliminary matters or be asked to review written evidence and arguments well in advance of hearing the case.

The establishment of local or regional courts or judicial districts and the regular rotation or reassignment of judges among these courts or districts can also be used to help prevent corrupt relationships from developing. Factors such as gender, race, tribe, religion, minority involvement and other features of the judicial office-holder may also have to be considered in such cases.

Transparency of legal proceedings. Wherever possible, legal proceedings should be conducted in open court, a forum to which not only the interested parties, but also the mass-media, elements of civil society, have access. Public commentary on matters such as the efficacy, integrity and fairness of proceedings and outcomes is important and should not be unduly restricted by legislation, judicial orders or the application of contempt-of-court offences. The exclusion of the media or constraints on their commentary should be limited to matters on which this is demonstrably justifiable, for example the protection of vulnerable litigants, such as children, from undue public attention, and only to the extent that this interest is served. Media might be permitted to attend proceedings and report on the facts and outcome of a case, but not to identify those involved, for example. Ex parte proceedings, which exclude one or more of the litigants, should only be permitted where such secrecy is essential, and should always be a matter of record. Neither litigants nor legal counsel should have any communication with a judge unless representatives of all parties are present.

The review of judicial decisions. The primary forum for reviewing judicial decisions are the appellate courts, and appeal judges should have the power to comment on decisions which depart from legislation or case law so radically as to suggest bias or corruption. They should also be able to refer such cases to judicial councils or other disciplinary bodies where appropriate. Such bodies should also have the power to review (but not overturn) judgements where a complaint is made, or on their own initiative (e.g., where concerns are raised through other channels such as media reports).

Transparency and the disclosure of assets and incomes. As with other key officials, the potential corruption of judges can be approached on the basis of unaccounted-for enrichment while in office, using requirements that relevant information be disclosed and providing for investigations and disciplinary measures where impropriety is discovered. Powers to audit or investigate judges affect judicial independence if they are specific to a particular judge or inquiry. This means that, while other officials could perform routine or random audits, provided that true randomness can be assured, any follow-up investigations should generally be a matter for fellow judges.

Judicial immunity. By virtue of the nature of their offices, judges generally enjoy some degree of legal immunity. This should not extend to any form of immunity from criminal investigations or proceedings, but at the same time, improper criminal proceedings or even the threat of
criminal charges can be used to compromise the independence of individual judges. Where criminal suspicions or allegations emerge, it may be advisable to ensure that these are reviewed, not only by independent prosecutors, but also by judicial councils or similar bodies. Where an investigation or criminal proceedings are underway, the judge concerned should be suspended until the matter has been resolved. A criminal acquittal should not necessarily lead to reinstatement as a judge, particularly where the burden of proof is higher in criminal proceedings than disciplinary ones. A judge might be dismissed where there was substantial evidence of wrongdoing, but not enough for a criminal conviction, for example, or in a case where misconduct was established which was not a crime but which was inconsistent with continued office as a judge (e.g., the failure to disclose income or conflicting interests).

The protection of judges. Experience suggests that, as judges become more resistant to positive corruption incentives such as bribe offers, they are more likely to be the targets of negative incentives such as threats, intimidation or attacks. To resist such incentives protection of judges and members of their families may be necessary, particularly in cases involving corruption by organized criminal groups, senior officials or other powerful and well-resourced interests.

Dealing with judicial resistance to reforms. Resistance from judges can arise from several factors. Legitimate concerns about judicial independence can – and should – make judges resistant to reforms which are imposed from non-judicial sources. In such cases, there is the risk that efforts to combat judicial corruption, even if successful, may set precedents which reduce independence and erode basic rule of law safeguards. Resistance of this nature can best be addressed by ensuring that reforms are developed and implemented from within the judicial community, and that judges themselves are made aware of this fact and of the need to support reform efforts. Resistance may also come from judges who are corrupt, and fear the loss of income or other benefits, such as professional status, which derive from corruption or the influence it enables them to exert. Those involved in past acts of corruption may also face criminal liability if this is exposed. The benefits of reform to such judges, if any, tend to be long-term and indirect and therefore not seen as compensation for the shorter-term costs of ceasing corrupt activity and embracing reforms. To redress this imbalance, it may be possible in some cases to ensure that early stages of judicial reform programmes incorporate elements which provide positive incentives for the judges involved. For example, reforms which promote transparency, and accountability in judicial functions can be accompanied by improvements in training, professional status and compensation and tangible incentives such as early retirement packages, promotions for judges and support staff, new buildings, and expanded budgets. Another factor which may diminish judicial resistance is the public perception of the judiciary and resulting pressure on courts and judges. Where corruption is too pervasive, the basic utility of the courts tends to be eroded, leading members of the public to seek other means of resolving disputes, and the popular credibility and status of judges diminishes. Crises of this nature can graphically demonstrate the extent of corruption and the harm it causes, reduce institutional resistance, and generally provide a catalyst for reforms.

The reform of courts and judicial administration

Court reforms intended to address corruption problems will often coincide with more general measures intended to promote the rule of law and general efficiency and effectiveness.

Adequate resources and salaries. Ensuring that courts are adequately staffed with judges and other personnel can help to reduce the potential for corruption. Officials who are adequately paid are less susceptible to bribery and other undue influences, and systems which deal with cases

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quickly minimize the opportunities for corrupt interference or for officials to sell preferential treatment or charge “speed money”.

Court management structures. Management structures can set standards for performance, and ensure transparency and accountability through means such as the keeping of proper records and tracking of cases through the system. Where feasible, computerization or the use of other information technologies may provide cost-effective means to implement such reforms.

**Statistical analysis of cases.** The analysis of statistical patterns with respect to how cases arise, how they are managed and assigned to judges and the outcomes of cases can help to establish norms or averages, and to identify unusual patterns which may be indicative of corruption or other biases. Where misconduct is suspected, the records of specific judges could be subjected to the same analysis.

**Public awareness and education.** Efforts should be made to educate the public about the proper functioning of judges and courts to raise awareness of the standards to be expected. This usually generates other benefits such as increasing the credibility and legitimacy of the courts and increasing the willingness of outsiders to participate in or cooperate with judicial proceedings.

**Alternative dispute resolution.** Alternatives such as mediation between litigants can be used to divert cases from the courts. This may allow litigants to avoid a forum suspected of corruption, although the alternative means may be just as vulnerable if not more so. These options do reduce court workloads and conserve resources, and are often available for impoverished litigants or small cases where a judicial trial is out of reach.

**Preconditions and Risks**

**Implementation issues**

In taking actions to strengthen judicial institutions, measures directed at the judges themselves should generally be implemented first, for several reasons.

- Many other anti-corruption measures require an effective rule of law framework, which in turn requires competent and independent judges.
- Criminal court judges will be called upon to deal with corruption cases as a national anti-corruption programme is applied. Early cases will set important precedents in areas such as the definition of corruption or acts of corruption and in deterring corruption.
- As corruption-related cases increase, judges themselves will become targets of corruption. If they succumb, many other elements of the strategy will fail.
- The judiciary is usually the most senior and respected element of the justice system, and the extent to which it pursues and achieves a high standard of integrity will set a precedent for other officials and institutions.
- The judiciary is also likely to be the smallest criminal justice system institution, which makes it relatively accessible by early, small-scale efforts.
- The independence of the judiciary imposes exceptional requirements which do not apply to the reform of other institutions and which may take time to achieve. Judges will require time to develop their own codes of conduct, for example.
- Judges exercise the widest discretion and have the most powerful positions in both civil and criminal justice systems. While reforms to other institutions such as the legal profession, prosecution services and law enforcement agencies are also critical, it is at the judicial level that corruption does the greatest harm, and where reforms have the greatest potential to improve the situation.
- To ensure lasting anticorruption reforms, short-term benefits must be channeled through permanent institutional mechanisms capable of sustaining reform. The best institutional
scenario is one in which public sector reforms are the by-product of a consensus involving the legislatures, the judiciary, bar associations, and civil society.

Related tools

Tools which may be required before initiating the strengthening judicial institutions include:

- An independent and comprehensive assessment of the judiciary (usually on the request of the Chief Justice);
- The development, and establishment of a Code of Conduct for the Judiciary;
- The establishment of an independent and credible complaints mechanism for judicial matters; and,
- The establishment of a judicial council or similar body with the capability to investigate complaints and enforce disciplinary action when necessary;

Tools which may be needed in conjunction with anti-corruption agencies include:

- An integrity and action planning meeting among all key judicial players to agree on an action plan (usually on initiative of the Chief Justice);
- The agreement of measurable performance indicators for the judiciary;
- The conduct of an independent comprehensive assessment of judicial capacity, efficiency and integrity, and of the degree of public confidence and trust in judges and judicial institutions; and,
- The dissemination and enforcement of a Code of Conduct for the Judiciary.

Due to the need for judicial independence, measures against judicial corruption are generally isolated from other elements of the national anti-corruption strategy. For this reason, there are no other tools which are inconsistent with judicial anti-corruption measures. For reasons of confidence and credibility in both judicial institutions and anti-corruption efforts, however, some degree of coordination may be advisable, so that judicial efforts are seen as part of a broader national anti-corruption effort where possible.

Implementation of the tool

Who are the users of the tools

The typical user of this tool will be the Chief Justice and or the Judiciary Service Commission. Having launched a reform programme at the national level, one would expect the Chief Justice to delegate the implementation of the reform to the Chief Judges at the state/district level.

Resources needed

To assure the successful implementation of the reform of the judiciary, it is critical that the necessary resources are in place. Specific resources will vary according to the scope and duration of judicial reform programmes and cost factors associated with specific elements. Generally, costs may arise from elements associated with training, the support of judicial councils and specialized anti-corruption bodies better compensation, facilities and equipment, and the costs of retiring judges.

Timeline

Most judicial reforms will be medium to long term in nature.

Impact and/or monitoring indicators
Tool 7; Civil service reform to strengthen service delivery

Purpose

The main purpose of a civil service reform is to improve the quality, timeliness, cost and coverage of service delivery. Critical to improved service delivery is the integrity, capacity and management of the civil servants. In many countries the inadequate management and remuneration of the civil servants are among the main causes of corruption resulting in inadequate delivery of services. As a result, another purpose of the civil service reform is to curb corruption in the civil service.

Description

What is civil service reform and did it work?

Recognizing the importance of governments capacity in achieving economic and social objectives, the donor community has invested significantly in civil service reform since 1990. Few observers doubt the centrality of civil service performance to the development agenda – but some question the effectiveness of past programs to strengthen civil service in developing countries. In most countries one has to conclude that the civil service is more likely to be seen as part of the problem rather part of the solution when it comes to corruption. Numerous service delivery and/or corruption perception surveys have found the civil service to be corrupt, inefficient untrustworthy when it comes to curbing corruption. A World Bank paper 27 raising the question “have World Bank interventions helped make governments work better?” answers with probably not. With more than 169 civil service reform projects between 1987 and 1999 in 80 countries, this is a serious setback and demands a serious re-thinking of the current approach to civil service reform.

The World Bank did a number of things in the name of civil service reform. The focus has been and remains with the rather narrow scope of addressing fiscal concerns- bringing balance to government pay and employment practices. Despite this effort most civil servants would not earn what is defined as a living wage which again is one of the major causes of petty and administrative corruption. Civil service reform projects also involves streamlining government functions and organizational structures, improving human resources policies in central and local governments, revising the legal and regulatory framework for the public administration, providing institutional support for government decentralization, and managing the process through which these changes are implemented. Internal analysis at the World Bank suggests that civil service reform operations often even missed its main fiscal target and they seldom were designed to address the corruption issue. According to Nunberg through the early 1990s less than half of the Bank’s civil service reform operations reduced the wage bills or compressed salaries (a questionable objective in the first place) and “right-sizing” of the public service were modest –5-10% and often subject to reversal soon after accomplished. Fiscal savings from these cuts were rarely sufficient to finance salary increases for higher-level staff28.

Typical issues in the civil service

Assessments of civil services around the world all conclude that civil service is not only marked by its bloated structures, but also by inefficiency and poor performance. The key symptoms observed include: (i) abuse of office and government property; (ii) conflict of interest, (iii)

27 Barabara Nunberg (1999) Rethinking Civil Service Reform, World Bank PREM Notes, number 31
28 Nunberg and Nellis (1995)
The key causes of the problem has also been identified in numerous reports as: (i) inadequate pay and benefits (remuneration), (ii) insufficient focus on process aspects with inadequate attention to aspects such as transparency, non-partisanship, inclusion of key stakeholders and impact orientation, (iii) inadequate human resource management; (iv) dysfunctional civil service organization, (v) insufficient management and supervisory training; (vi) inadequate facilities, assets and maintenance culture, (vii) unnecessary procedural complexity; (viii) abuse of procedural discretion, (ix) lack of accountability, (x) inadequate performance management and measurable performance indicators (xi) project focus rather than program focus (xii) ; one dimensional rather than multidisciplinary, (xiii) insufficient focus on process aspects with inadequate attention to aspects such as transparency, non-partisanship, inclusion of key stakeholders and impact orientation, (xiv) lack of leadership ethic and code of conduct of civil servants.

Elements of a new approach

There is broad agreement that a new approach is needed. Helping countries reform their civil services should also include helping build integrity to curb corruption and thereby improve service delivery. This requires a broad range of integrated, long-term and sustainable policies, legislation and measures. In partnership, the government, the private sector and the public need to define, maintain and promote performance standards that includes decency, transparency, accountability, and ethical practice in addition to the timeliness, cost, coverage and quality of general service delivery.

Education and awareness raising that foster law-abiding conduct and reduce public tolerance for corruption are central to reducing the breeding ground for corruption. The criminal justice system and its professionals must themselves be free of corruption and must play a major role in defining, stigmatizing, deterring and punishing corruption.

Vision of functioning civil service

Example of a vision of a well performing civil service could be:

1. In five years the civil service in Country X will be smaller and it will have better-paid, honest, better trained, more motivated and therefore more efficient, and more effective public servants. Its main focus will be to improve general security (rule of law) and quality, timeliness, cost and coverage of service delivery to the public.

2. The Civil Service of Country X will have the following characteristics:

   - **The shared values** of the civil service will be based on the following principles: (i) consultation, (ii) service standards, (iii) access, (iv) courtesy, (v) access to information, (vi) openness and transparency, (vii) redress and (viii) value for money.

   - **Code of conduct**. This shared values will be established with the public servants through a code of conduct, made available to the public through a citizen charter and monitored through public complaints systems and enforced through disciplinary boards.

   - **Evidence based management**. A transparent evidence based management system with measurable impact indicators will be monitored against an already established baseline focusing on quality, timeliness, cost and coverage of services and public
trust in and satisfaction with the public service. Ministries, departments, groups and individuals will all have measurable performance indicators and targets.

- **Decentralization of resources and tasks.** Since most of the direct interface between the government and the public takes place at the local level, a functional budgeting system of priorities and resource allocation to local government needs to be implemented. Again evidence based management will assure accountability based on identified priorities monitored with measurable performance indicator and performance targets monitored against a baseline. Value for money and public satisfaction with the services will be monitored across local governments.

- **Rationalization and “right-sizing”.** Conducting a rationalization based on the principle that the government should only undertake those functions that it can effectively and efficiently perform and cannot be privatized. There is a need for evidence based establishment control and monitoring.

- reduced levels of corruption enforced by (i) empowering the victims of corruption to report any irregularities, (ii) increased disciplinary follow up to complaints (enforcement of code of conduct), (iii) criminalizing corruption.

3. The civil service in Country X

- will be paid a minimum living wage and be given evidence based performance increase.
- have clear and measurable organizational objectives and demonstrate commitment to such goals and objectives
- be fully accountable and responsible for the outputs of their jobs and committed to achieving clearly defined individual objectives
- will be regularly monitored by an empowered civil society who know their rights, have access to information and a credible complaints mechanisms and who trust the criminal justice system and are regularly surveyed about quality, cost and timeliness of services received and security situation.

**Strategic framework to reform the civil service**

The strategic framework and action plan needed to implement this vision would have at least six major components, inherent in each the importance of paying minimum living wage and of implementing evidence based or results oriented management:

- Strengthening the ministry in charge of the civil service reform and establish a close relationship with other anti corruption agencies (see tool 3) and institutions representing the civil society.
- Introduce an “affordable civil service ” through “right-sizing” and rationalization of ministries and local government structures; based on independent institutional assessments recommend simplification of procedures, reduction of structural discretion and introduce evidence based or result oriented (see tool).
- Enforce payroll monitoring and establishment control and use the rationalization effort combined with a job grading exercise to “right-size” the civil service including elimination of “ghost workers”.
- Pay the civil servants in the rationalized and “right-sized” civil service a minimum living wage with out delays on a monthly bases. Based on assessment and result oriented management implement monetization of benefits and pay.
- Reduced corruption and improved service delivery by increasing accountability through: (i) enforced code of conducts (see tool) (ii) increased supervision (iii) enforce results oriented management based measurable performance indicators, (iv) empower the public through
citizen charters (see tool), credible public complaints system (see tool), access to information (see tool) and whistle blower protection (see tool).

- Managing public expectations and winning their trust through a credible communication strategy (see tool 3)

In order for this new strategic framework to work, there is a need for a fundamental change in handling of public affairs moving towards an integrated approach paying more attention to that the process is: evidence based, transparent, inclusive, broad based, comprehensive, non-partisan and impact oriented.

The development of an integrated, holistic strategy involves a clear commitment by political leaders to combat corruption wherever it occurs (and submitting themselves to scrutiny). Primary attention should be given to prevention of future corruption introducing system changes such as simplifying procedures, (see tool.) reduce discretion (see tool ), and by increasing accountability through increased transparency by opening up the government to the public(see tool ). Areas of government activity most prone to corruption should be identified and relevant procedures should be reviewed as a matter of priority. It should also be ensured that the salaries of civil servants and political leaders adequately reflect the responsibility of the post and as comparable as possible with those in the private sector (both to reduce the “need” for corruption and to ensure that the best human resources “can afford” to serve the state. Legal and administrative remedies should provide adequate deterrence. For example: (i) corruption induced contracts rendered void and unenforceable, (ii) introduce close monitoring of government activities involving large transactions; (iii) random intensive audits; and/or (iv) rendering licenses and permits obtained through corruption void. A creative partnership should be forged between the public service and the civil society, including the private sector, the professions, religious organizations and relevant pressure groups. One important outcome of the partnership is to allow a systematic dialogue between the public service and the public who should be served regarding types, quality, cost, timeliness and coverage of services received. Through systematic service delivery surveys (see tool), citizen charters making the public understand their rights (see tool), credible complaints systems (see tool), service delivery should be monitored systematically against a pre-established base line using measurable performance indicators. In countries with systemic corruption, such service delivery surveys are often turning into “corruption surveys “ as one of the main reasons why the public is not being served is due to petty, administrative and grand corruption.

Elements of a new approach

Pay and employment reform. There is a need for adopting a deeper and slower pay and employment reform. Many civil service reform operations have focused on reforming government pay and employment policies. The objectives have been to reduce the aggregate wage bill, right size and streamline the civil service, and rationalize remuneration structures. Some would argue that these reforms have been driven by narrow fiscal determinants, have been political difficult, and have had minimal impact both fiscal and otherwise. What was missing was an integrated approach addressing the reform in an integrated and evidence based manner. With a more serious, systematic and holistic impact assessment, would one have realized that the traditional approach to civil service reform did not work. Some observers argue that pay and employment reforms should be abandoned altogether. Others argue that when public servants cannot afford to stay away from corruption, pay reforms need to be deepened, broadened and lengthened.

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29 The elements listed here are the ones that are covered by other tools in the Tool Kit
Pay and employment reforms are often needed to restore fiscal balance- a necessary but insufficient condition for curbing corruption or for performance and capacity improvements that will lead to improved service delivery to the public. The civil service reforms in the past have generally been too narrow and too modest to achieve any of its key objectives. Most “right-sizing” programs have sought reductions of 5-15 % while much bolder cuts are needed to render most government affordable. In Uganda, for example, the public service and the army were both in 1993-94 reduced with 50% in order for the government to afford to pay the civil servants and the soldiers a living wage. Even if Uganda31 was in an excellent fiscal position spending less than 30 % of the recurrent expenditures on the wage bill (other African countries spent as much as 75% of its recurrent expenditures on the wage bill), the cut had to be as deep as 50% to implement a living wage (with a compression rate of 1-10) 5 years later32. The expected “pain” of a retrenchment of close to 150000 civil servants was reduced by: (i) a well managed and well received voluntary redundancy programme (ii) the fact that more than 60000 ghost workers were removed between 1992-1994, (iii) good support for the retrenched staff who received an acceptable compensation package33 and, (iv) availability of farming land, due to the civil war, making it possible for retrenched staff to make a living from the land.

As proven in the case of Uganda, downsizing programmes, if well managed, have not proved to be politically destabilizing. Conducting focus groups at the village level in Uganda in 1994, it was discovered that the 95% of population who did not profit directly or indirectly from working in the civil service, could care less with what happened to what they called “the fact cats” in the public service. “They never served us so why should we be concerned if they loose their job?” was the typical response given. Even without elaborate schemes for redundant staff as in Uganda, severance (where it existed) and “moonlighting” and/or “daylighting” have provided transitional cushion for displaced civil servants, and informal and agricultural sectors have been able to absorb more workers than expected. One of the lessons learned from these “right-sizing” exercises is that where civil servants are paid less than a living wage, they are still making enough to feed their families either the “half honest” way were they have multiple jobs (only stealing time from the service) or through the more dishonest way where they through corruption are making many times their wage or salary. Thus reforms can perhaps be pushed further on political grounds as well.

Donor supported pay and employment reforms have continued to focus on short term and narrow goals- such as one-shot employment cuts- rather than the holistic and multidisciplinary approaches addressing: (i) affordability of the civil service by "right-sizing" the service, (ii) accountability through evidence based monitoring of impact indicators and followed up by improved supervision and discipline; (iii) capacity through strengthen human resource management; and (iv) incentives through the implementation of code of conduct, complaints systems, support of whistleblowers, and empowerment of the civil society.

Thus even where civil service has been “right-sized”, other key reform areas have not been addressed and it is not uncommon that successful retrenchment exercises are followed by re-


32 The policy decision by cabinet was to keep the wage bill under 45% of the recurrent expenditures

33 Retrenched staff received a compensation package consisting of three months basic salary in lieu of notice, one month’s salary in lieu of leave entitlements, transportation money from workplace to home district by the most direct route (the approved formula was in 1994 the equivalent of US$ 200 plus US$ 2 per kilometer to help the retrenched staff reach their hometown or village) and a severance package of equivalent to three months basic salary for each completed year of pensionable service up to a maximum of twenty years. This package did not apply to people who had yet not been confirmed in their appointment. Such officers were entitled to only one month’s basic salary in lieu of leave entitlement, and transport from the place of work to home district. Group employees, who could be hired by the ministerial management without the approval of the Public Service Commission, received a flat rate of US$ 150.
hiring exercises. In Uganda, for example, a decentralization reform ran in parallel with the civil service reform and many of the retrenched civil servants found new jobs at the district level.

Towards an integrated approach where civil service reforms are linked to other reforms. Because the focus on pay reform and employment was too narrow to achieve necessary institutional changes that again would reduce corruption and improve service delivery to the public, the emphasize needs to be broadened to include result oriented management, human resource management and decentralization. Yet an even broader but highly selective approach is called for – one that addresses the role of the state, with important implications for the functions, structure, organization, and process of government.

At least five more dimensions of government reorientation need to be considered in the more integrated reform model. The first is the by-now widely recognized connection between civil service management and the framework of controls and incentives embodied in governments’ financial management systems. Strong link between personnel and budgets functions are essential to sound government management. The second is the empowerment of the public to increase the accountability of the civil servants. As already mentioned, there is a need to pass legislation and introduce measures that will increase public access to information and thereby open up the government to public. The empowerment of the public should also be increased through citizen charters that make them aware of their rights and with improved confidence in the state, the public should, if they are not served according to their rights, be encouraged to complain through complaints systems and/or service delivery or integrity surveys. The third dimension is the extensive administrative reform occurring throughout developing countries at decentralized sub national level of government. Decisions about devolution and deconcentration of staff, functions, and resources must be linked to policies on central civil service reform. It is also critical that the decentralization effort is coupled with an evidenced based approach where service delivery baselines are established and monitored by measurable performance indicators across sub national and national units. It is critical that a partnership is being established between with civil society and the private sector that allows a periodic and independent monitoring of the state.

The fourth dimension is the link between central government civil service reform and institutional reforms in individual sectors- especially health, education and the anti corruption bodies including the criminal justice system. Health and education because they are critical to the well being of the public and at the same time the largest government employers. The link to the anti corruption bodies are critical especially for countries with systemic corruption as often corruption is the main reason why the public are not being served quality service in a timely and cost effective manner. The link to the reforms in the criminal justice system is critical to re-establish rule of law and security. Although corruption within the civil service can be dealt with already reintroducing already existing disciplinary bodies and measures, there is also a need to criminalize the serious types of administrative and grand corruption. The coordination with independent anti corruption agencies and the judiciary are both critical for the success of the overall reform but at the same time a challenge as the executive have to respect the independence of their partners.

Moving from a project to an integrated approach. The new agenda for civil service reform requires a capacity for flexible donor responses- including the ability to intervene quickly but also to stay the course through the frequent redesign needed in integrated institutional reforms. Moreover, links among different reform initiatives under the wider umbrella of state transformation will require support mechanisms with more permeable boundaries.

Donors conventional project approach is not well suited to this new constructs of government reconstruction and reorientation. Most projects are based on an engineering model that emphasizes tight timeframes and deemphasizes human variables. Institutional reforms requires adaptability and participant commitment to reform goals both among national and international civil servants. Such reforms are subject to a myriad of unpredictable variables, making blueprints
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disingenuous at best. Since corruption is everywhere and cross cutting, the issue of integrity of both national and international “players” becomes an important new variable that needs to be addressed in a credible manner both in the donor institutions and the government itself. In other words, in order to help client countries implement an integrated approach, there is a need for many donors organizations to reform themselves in order to be credible.

The process is already ongoing and many donor agencies have begun to move away from the earlier project focus applying a more integrated approach. Various high-impact non-lending operations and a new range of operational instruments provide for looser, more country-driven approach to reform. In addition, thought is being given by for example by the World Bank, to new types of program loans, which could develop the programmatic approach more systematically. Such loans might support medium term reforms within a broad policy framework agreed by the World Bank, the government, the judiciary, the independent anti corruption agencies and the civil society. Establishing overall program criteria and governance mechanisms for the reform process, conditioned on the development of evidence based and result oriented reform packages, is key to the success of an integrated programme approach.

The integrated programme approach allows for more tailored, realistic timeframe for governments and other national pillars of integrity to prepare and pursue activities following an internally, inclusive, non-partisan and broad based schedule of reform. It is not a one-size-fits-all approach that is determined by the executive alone. The critical pillars of integrity are different in every country and as a result the key supporters of real reform are going to be different from country to country. Only some countries possess sufficient institutional capacity and integrity to pursue this more autonomous and integrated approach; others would need to move away from the traditional project approach more gradually.

Learning from best practice. Since 1990 the world has seen dramatic changes in administrative practices in industrial countries both when it comes to build integrity to curb corruption and to improve the timeliness, quality, value for money and coverage of service delivery. Governments have reshaped rigid, hierarchical unresponsive, closed, un-accountable, bloated and corrupt bureaucracies into flexible, affordable, evidence based, impact oriented, accountable, citizen-responsive organization with corruption under control. Reforms have been sweeping in some countries, representing radical, systemic transformation based on new public management reforms – reforms that emphasize narrower government functions and structures, demands for value for money, courtesy, transparency, consultation service standards, access, information, redress and impact orientation. Other countries have pursued more incremental improvements in civil service management while retaining basic administrative structures in place.

The range of new approaches and models available to member states can be overwhelming. This Tool Kit might be an example of the variety and complexity involved in moving a government towards an integrated approach that introduces improved affordability, integrity, security and service delivery.

Preconditions and Risks

Basic principles must be explicit in this new integrated approach. One is that a more integrated approach to government reforms must guard against overloading governments’ already burdensome requirements for reform. Another is that guidance on the design and implementation of carefully sequenced reforms cannot be provided through a universal blueprint. Reforms must be tailored to regional and country circumstance.

Moreover, most industrial country innovations are only now being tested. According to Nunberg\textsuperscript{34}, debates run high on these reforms, and the jury is still out with respect to some of

the more controversial elements of the new public management- including the use of market mechanisms (such as performance pay or widespread contractual employment) in core civil services. For three reasons, adapting elements of competing administrative models to member state contexts will be complex.

First, countries must be allowed to choose mechanisms that are appropriate for their circumstances, selecting from a menu like this Tool Kit that neutrally demonstrates the pros and cons for each option. In the midst of powerful advocacy by true believers in one or another approach, the donors can play an objective role for the developing counties interested in sampling elements of governance reform rather than importing blueprints from other countries.

Second, this neutral presentation of options must be balanced with the need to ensure that reforming governments do not install obsolete systems that, instead of putting the state in the mainstream of 21st century modernizing trends, undermine the efforts to move governments towards the cutting edge of governance reform.

Finally, countries should embark on a course towards the integrated approach. More than simply reinforcing new public management slogans, the integrated, means finding the best strategy to carry out essential tasks by leveraging scarce resources – possibly through creative technology applications or inventive management solutions applying a process that is evidence based, comprehensive inclusive, transparent and impact oriented. Fresh approaches could result in a “third way” for member states that not bypasses traditional administrative approaches but also leapfrogs the new development and public management models addressing important issues such as affordability, accountability, incentives and strategic partnership across public and private sector.

Implementing the tool

The user of these tools would typically be the ministry in charge of civil service reform but also departments in line ministries and/or ministries in charge of local government in charge sector reforms and local government reforms.

Resources needed to implement reform will vary from country depending on the type of reform they are implementing. Retrenchment of staff demands large resources if it.
Tool 8- Codes and standards of Conduct

Purpose

The setting of concrete standards of conduct serves several basic purposes.

- It clearly establishes what is expected of a specific employee or group of employees, helping to instil fundamental values which curb corruption.
- It forms the basis for the training of employees and the discussion and where necessary, modification of standards.
- It forms the basis of disciplinary action, including dismissal, in cases where an employee breaches or fails to meet a prescribed standard. In many cases, codes include both descriptions of conduct which is expected or prohibited and procedural rules and penalties for dealing with breaches of the code.
- Codification, in which all of the applicable standards are assembled into a comprehensive code for a specified group of employees, makes it difficult to abuse the disciplinary process for corrupt or other improper purposes. Employees are entitled to know in advance what the standards are, making it impossible to fabricate disciplinary matters as a way of improperly intimidating or removing employees.

Codes of conduct may be used to set any standard relevant to the duties and functions of the employees to which they apply. This often includes anti-corruption elements, but basic performance standards governing areas such as fairness, impartiality, independence, integrity, loyalty towards the organization, diligence, propriety of personal conduct, transparency, accountability, responsible use of the organization’s resources and, where appropriate, standards of conduct towards the public are also common. Countries developing codes of conduct exclusively for anti-corruption purposes should consider the possibility of integrating these within more general public service reforms, and vice-versa.

Codes that support disciplinary structures may also set out procedures and sanctions for non-compliance. Codes may be developed for the entire public service, specific sectors of the public service, or in the private sector, for specific companies or professional bodies such as those governing doctors, lawyers or public accountants. Several models have been developed to assist those developing such codes. 35

Description

One of the many challenges setting standards or establishing codes of conduct is to address the legal, behavioural, administrative and managerial aspects consistent with basic principles of justice, impartiality, independence, integrity, loyalty towards the organization, diligence, propriety of personal conduct, transparency, accountability, and responsible use of the organization’s resources.

Means of setting standards or establishing codes of conduct

Standards of conduct for officials and other employees are generally governed by several sources.

- **Legislation**, usually criminal and/or administrative law, is used to set general standards which apply to everyone or to large categories of people. The criminal offence of bribery, for example, applies to anyone who commits the offence, and generally covers either all bribery or all bribery which involves a public interest or public official. In some countries, more specific legislation is used to set additional standards which apply to all public officials, or in some cases even private-sector workers.  

- **Delegated legislation or regulations**, in which the legislature delegates the power to create specific technical rules, may also be used for this purpose. Regulations may be used to set standards for specific categories of officials such as prosecutors, members of the legislature or officials responsible for financial accounting or contracting matters.

- **Contract law**. This is the other major source of standards. Using the contracts which govern employment or the delivery of goods or services, standards may be set for a specific employee or contractor as part of his or her individual contract. Alternatively, an agency or department may set general standards for all of its employees or contractors, to which they are required to agree as a condition of employment, or use some combination of both.

Generally, higher standards can be set for smaller, more specific groups based on what is reasonable to expect of that group. Private citizens are only subject to basic criminal offences such as bribery, for example, whereas judges can reasonably be prohibited from accepting gifts of any kind or having any financial or property interests which might conflict with their neutrality.

The source of a particular standard has procedural implications. Breaches of criminal law standards result in prosecution and punishment, which requires a high standard of proof and a narrow range of prohibited conduct. Breaches of an employment contract, on the other hand, generally lead to disciplinary measures or dismissal subject to a lower standard of proof. Employees could be dismissed for failing to declare conflicting interests or accepting gifts, for example, even if bribery could not be proved.

More than one standard or code of conduct will often apply to a particular official or employee. A prosecutor, for example, may be required to meet specific standards for prosecutors, professional standards set by the bar association or professional governing body for lawyers, general standards applicable to all public servants, and ultimately, standards set by the criminal law. One key issue which must often be dealt with in setting specific standards is ensuring that these are not inconsistent with more general standards which already apply, unless an exception is intended. The concept of “double jeopardy” usually does not apply to disciplinary proceedings. A prosecutor convicted of accepting a bribe would generally be subject to separate proceedings leading to a criminal penalty, professional disbarment, and dismissal for breach of contractual standards, for example.

Elements of Codes of Conduct

**General content and format**

Codes of conduct usually establish general standards of behavior consistent with basic ethical principles of justice, impartiality, independence, integrity, loyalty towards the organization,

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36 Some countries directly license and regulate those involved in trading stocks and securities or who have access to substances seen as sufficiently dangerous to warrant specific standards and enforcement, such as explosives or nuclear materials for example.
diligence, propriety of personal conduct, transparency, accountability, and responsible use of the organization’s resources. They may then contain more specific standards applicable to specific (and clearly-defined) groups of employees, as well as procedures and sanctions to be applied in cases of non-compliance. Compliance mechanisms should also include less-drastic options to reduce the use of disciplinary measures. One common way of administering ethical standards is to establish a consultant individual or body, so that individuals can inquire whether a particular activity would be in breach of the rules before engaging in it. Judicial councils or committees could be consulted by a judge uncertain as to whether he or she should hear a particular case, for example, and public servants can inquire whether a proposed gift can be accepted or must be refused. This approach reduces the costs and harm caused by disciplinary actions, and since no liability is involved, allows the application of standards which might otherwise be too general to enforce.

Specific standards may include both positive obligations, such as requirements to disclose assets or potentially conflicting private interests, and prohibitions, such as bans on accepting gifts. Standards which apply to the public sector usually prohibit not only conduct which is seen as inconsistent with the office involved, but also conduct which would give outsiders the perception of impropriety or damage the credibility or legitimacy of that office. Clarity is advisable to ensure that the rules will be understood and to support enforcement, but rules set by employment contracts are not criminal law, which allows the setting of more general standards. Codes, or in some cases the parent legislation or regulations, may also contain self-implementing elements, such as requirements that employees be trained or that codes be read and understood prior to hiring.

Codes of conduct may be used in both the public and private sectors, but there are several key distinctions.

- Public sector codes can be established either by legislative or contractual means, or some combination of the two. In most cases, private sector codes do not raise sufficient public interest to warrant legislation and are implemented exclusively by contract.
- Public sector codes pursue only the public interest, and generally involve provisions which balance the public interest against the rights of the officials to whom they apply. Disclosure requirements must balance the public interest in transparency with individual privacy rights, for example. Private sector codes on the other hand often protect the private interests of the employer, which may or may not coincide with the public interest. Confidentiality may take precedence over transparency, for example. Private sector organizations will sometimes find it necessary or desirable to include elements of the public interest. Codes for medical doctors and lawyers are intended to protect patients and clients, for example, because this is seen as essential to the delivery of the services involved and to the credibility of the profession. In many cases private sector organizations will try to protect the public interest to preserve self-regulation in preference to being regulated by the State.

Elements of codes of conduct for public officials

General elements

Anti-corruption elements can and should be supported by more general standards of ethics and conduct which promote high standards of public service, good relations between public officials and those they serve, productivity, motivation and morale. These can promote a culture of professionalisation within the public service, while at the same time fostering the expectation of high standards among the general population. Specific elements could include the following.

- Rules setting standards for the treatment of members of the public which promote respect and courtesy.
• Rules setting standards of competence which ensure that public servants are able to actively assist those who require assistance, such as knowledge of relevant laws, procedures and related areas to which members of the public may have to be referred.

• Rules establishing performance criteria and assessment procedures which take into consideration both productivity and the quality of service or assistance rendered.

• Rules requiring managers to promote and implement service-oriented values and practices and requiring that their success in doing so be taken into account when assessing their performance.

Impartiality and Conflicts of Interest

Impartiality in discharging public duties is essential both to the correct and consistent performance of the duties themselves and to ensuring popular confidence that this will be done. Such requirements will generally apply to any public official who makes decisions, with higher or more specific standards applicable to more powerful or influential decision-makers such as senior public servants, judges and holders of legislative or executive office. Essentially, impartiality requires that decisions be made exclusively based on whatever factors are prescribed and that extraneous considerations which would influence the outcome are avoided. Extraneous considerations can arise from individual characteristics of the official involved, such as ethnic custom or religious beliefs or they can arise from external circumstances in which some private interest of the official comes into conflict with his or her public duty. Codes of conduct should seek to deal with the problem at both of these levels. They should contain requirements such as the disclosure and avoidance of conflicts of interest, for example, but they should also prohibit officials from taking into account extraneous factors where they cannot be prevented from arising in the first place. Specific requirements could include the following.

• General requirements to make decisions based exclusively on whatever considerations are prescribed for making the decision in question. In some circumstances these could be accompanied by specific rules prohibiting the consideration of specified factors, such as measures to prevent discrimination based on characteristics such as race, ethnicity, gender, religion, or political affiliation.

• Requirements that senior officials charged with setting the criteria for decision-making limit the criteria to those relevant to the decision in question, and that all criteria be set out in writing and made available to those affected by the decision.

• Requirements that written reasons be given for decisions, to permit subsequent review.

• Requirements that specified officials avoid conflicts of interest by avoiding activities seen as likely to bring them into conflict. Senior public servants may be precluded from playing active roles in partisan politics, for example. Those responsible for decisions which affect financial markets are often precluded from having investments, or are required to place them in “blind trusts” in such a way that the official has no way of knowing whether a decision will affect his or her personal interests, or if so, how.

• Requirements that officials avoid conflicts by altering their duties. A judge who represented a particular individual prior to his appointment as a judge should not later hear a case involving the former client, for example. Such cases can be dealt with simply by disclosing the conflict and having the case assigned to another judge. Officials on public boards or commissions are often precluded from debating or voting on specific issues which could affect their personal interests but not from participating in other business.

• Requirements that officials declare interests which may raise conflicts. Such requirements often include provisions for general disclosure at the time of employment and at regular

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intervals thereafter, as well as provisions which require the official to disclose any specific interest which does raise a conflict as soon as this becomes apparent. This ensures basic transparency, and alerts those involved that some action may have to be taken to eliminate the conflict.

- Requirements that officials not accept gifts, favours or other benefits. Where a direct link between a benefit and a decision can be proved, offences related to bribery may apply, but in many cases the link, if any is more general. To prevent this and ensure that there is no perception of bias, rules can either prohibit the acceptance of benefits entirely, or from those affected by, or likely to be affected by any past or future decision of the official involved. Depending on custom or the nature of the office, exceptions may be made for very small gifts. Where officials are allowed to accept gifts under some circumstances, the rules can also require the disclosure of information about the nature and value of the gift and the identity of the donor so that appropriateness can be judged independently.

Rules for the Administration of Public Resources.

Officials responsible for administering public resources may be subjected to specific rules intended to maximize the public benefit from expenditures, minimize waste and inefficiency and combat corruption. Such officials represent a relatively high risk of corruption because they generally have the power to confer financial or economic benefits and to subvert mechanisms intended to prevent or detect improper dealings in public funds or assets. Generally, these will include officials who make decisions governing the expenditure of funds, contracting for goods or services, dealings in property or other assets and similar matters, as well as those responsible for the auditing or oversight of such officials. Specific rules could include the following.

- Rules requiring all decisions to be made in the best interest of the public, with such interests expressed in terms of maximizing the benefits of any expenditures while minimizing costs, waste or inefficiencies.
- Rules requiring the avoidance and disclosure of actual or potential conflicts of interest similar to those for public officials in general (above). In application, these rules might require an official awarding a government contract to make full disclosure and step aside if one of the applicants proved to be a friend, relative or former associate, for example.
- Rules requiring that proper accounting procedures be followed at all times and appropriate records be kept to permit subsequent review of decisions.
- Rules requiring officials to disclose information about decisions. Winning bidders may be required to connect to the disclosure of the terms of the bid to permit review by the losers, for example.
- Rules requiring officials to disclose assets and income in order to permit scrutiny of sources and amounts not derived from public employment.

Confidentiality rules

Public officials frequently have access to a wide range of sensitive information and are usually subject to rules prohibiting and regulating disclosure. These may range from criminal offences for offences such as espionage and the disclosure of official secrets to lesser sanctions for the disclosure of information such as trade secrets or personal information about citizens. They commonly combine positive obligations to keep secrets and take precautions to avoid the loss or disclosure of information with sanctions for intentional disclosure and in some cases, negligence. Secrecy requirements can be used to shield official wrongdoing from disclosure, and modern legislative and administrative codes have begun to include provisions to protect “whistleblowers” in cases where the public interest ultimately proves to have favoured disclosure and not retention of the information.
Specific rules could include the following.

- Secrecy oaths requiring that information gained in confidence are kept confidential unless official duty requires otherwise.
- Classification systems to assist officials in determining what information should be kept confidential or secret and what degree of secrecy or protection is appropriate for each category of information. Information which could, if disclosed, endanger lives or safety, national security or the ability of major public agencies to function is usually subject to a relatively high standard, for example.
- Rules prohibiting officials from profiting from the disclosure of confidential information. In some countries, such rules include civil liability for such profits as appearance fees or book publication royalties if generated in part by inside information.
- Rules prohibiting the use of inside or confidential information to gain financial or other benefits. Insiders with advance access to government budgets are usually prohibited from making investment deals that would constitute “insider trading” in the private sector, for example. Such rules should be broad enough to preclude direct use of the information as well as the disclosure of the information, or advice based on the information to others who may then profit.
- Rules prohibiting the disclosure or use of confidential information for an appropriate period after leaving the public service. The period will generally depend on the sensitivity of the information and how quickly it becomes obsolete. Obligations regarding inside knowledge of pending policy statements or legislation generally expire when these are made public, whereas obligations relating to some national-security interests may well be permanent. Officials with broad inside knowledge may be entirely prohibited from taking any employment, in which that information could be used, possibly with some provision for compensation. In drafting requirements for post-employment cases, care should be taken to distinguish between the use of skills and expertise gained in the public service, which may be used freely, and confidential information, which may not.

**Additional Rules for Police and Law Enforcement Officials**

The nature of law enforcement and the powers and discretion exercised in the course of their duties have led many law enforcement agencies to develop specific codes of conduct to supplement those which apply to public officials in general. Law enforcement personnel become particularly likely to be exposed to corrupt influences when dealing with crimes which generate large proceeds, such as drug trafficking, organized crime, which often has both the motivation and the resources to corrupt those responsible for investigating it, and major corruption cases, where the subjects are being investigated on the suspicion that they have already engaged in corruption. For this reason, specific anti-corruption rules and internal enforcement mechanisms are sometimes directed at elements within a law enforcement agency, which commonly engage in these activities. Specific rules may include the following. 38

- Prohibitions on acting or claiming to act as an official when not on duty or in areas of geographic or subject-matter jurisdiction beyond the mandate of the official concerned.
- General prohibitions on abuse of power.
- Requirements that some sensitive duties, such as interrogating suspects only be done with witnesses present or where feasible, where and audio or video recording is being made.

• Requirements that records be kept both by the agency and individual officers with respect to
genral enforcement policies and priorities and the exercise of discretion by individual
officers, so that conduct which is at variance with these will become apparent.

Additional Rules for Members of Legislative Bodies and other Elected Officials

Rules governing elected officials tend to vary those for other public servants for several reasons. Where many countries maintain professional and politically neutral public service institutions and may restrict partisan political activity on the part of their officials, partisan activity is a central part of seeking and holding elective office. Those who hold such office, moreover, are held politically accountable for their actions, which may lead to rules which emphasize transparency over legal or administrative sanctions. Elected officials also have inherent conflicts of interest. Where the duty of a neutral public servant to the general public interest is usually unequivocal and paramount, the elected politician must often face the difficult task of reconciling this with conflicting obligations to constituents whose interests favour one region over another, and to a political party or policy platform. Rules which may apply in such cases include the following.

• Rules governing legislative or parliamentary immunities. Legislators are given some legal immunities to ensure that they cannot be prevented from attending sittings and to ensure that threats of civil or criminal action cannot be used to influence their participation or voting. The immunities should be narrowly drafted, to ensure that they cannot be used to shield the subject from ordinary criminal liability beyond what is strictly necessary.
• Rules requiring the disclosure of assets and financial dealings may be essentially the same as for other senior public officials, administered to ensure that elected officials cannot conceal corruption proceeds.
• In addition to ordinary disclosure, elected officials can be required to disclose the sources and amounts of political donations and to account for election expenditures. Such rules may be imposed as a means of ensuring election fairness in addition to combating corruption.
• Rules prohibiting the use of legislative privileges or facilities for private gain or other non-legislative purposes. Such restrictions often prohibit the use of legislative facilities for partisan political purposes in order to ensure that incumbents do not gain any unfair political advantage.
• Rules prohibiting the payment of legislative members for anything done in the course of their duties, apart from prescribed salaries or allowances.

Rules for Cabinet Ministers or other senior political officials

Ministers and similar officials are generally also hold partisan political offices, having been appointed by reason of affiliation or selected from among elected members of a legislative body on the same basis. Whether elected or not, many of the foregoing rules will also apply in such cases. Ministers occupy positions of sufficient power, influence and seniority that additional rules are usually also applied, however. These may include the following.

• More extensive rules for the disclosure of assets and incomes and for the avoidance of conflicts of interest, and closer surveillance to ensure that actual or potential conflicts are avoided or dealt with.
• Accountability to the legislature. The relationship between executive and legislative offices varies from one country to another, but in the interests of transparency and political accountability, the ministers who formulate and implement government policy are generally required to appear before legislative bodies to provide information and account for the actions of their departments. Sanctions for failing to appear or misleading legislatures range may apply.
• Post-employment constraints. These are similar to those which may be applied to public servants in general, but are more stringent and in some cases of longer duration because of the extent and sensitivity of the information commonly held by ministers, and because of the potential for linking post-ministerial advantages to undue influence on ministerial decision-making. Taking employment with a company affected by the minister’s previous duties raises the prospect of clandestine employment offers while in office, for example. Such employment may also cause concern due to the possibility that the former minister will have inside information, or that he or she may have some undue influence on a successor or former colleague who remains in office. At the same time, former ministerial office may have involved such broad-ranging powers and interests as to constitute a virtual prohibition on post-ministerial employment for some time after leaving office, and pensions, severance packages or other post-employment compensation may have to take this fact into consideration.

• Confidential information. Rules governing the disclosure of confidential information are similar to those that apply to other public servants or former public servants, although closer monitoring may be warranted due to the sensitivity of the information to which ministers generally have access.

• Transitional requirements. Unlike ordinary members of elected legislatures, political ministers and elected heads of state have both political and executive responsibilities. These may come into conflict during transitional periods such as during election campaigns and periods between the decision of the electorate and the actual handing over of office. Generally, political ministers should be prohibited from using executive powers in ways which confer partisan political advantage, although the major accountability for this may be political as opposed to legal in nature. Some rules which may be applied include prohibitions on the awarding of contracts, employment or the conferring of other benefits beyond what is necessary for the maintenance of government; prohibitions on the use of public servants for partisan purposes, accompanied by measures prohibiting public servants from engaging in such conduct and measures protecting those who refuse to do so; rules limiting the destruction of files or electronic or other records to records of a political nature; and rules prohibiting public servants from disclosing official records which are of a political nature to members of subsequent elected governments.

Rules for Judicial Officers

As noted in the segment dealing with building judicial institutions (above), judges should be subject to many of the same rules as other public servants, with two significant differences. The compliance with basic standards of conduct is more important for judges because of the high degree of authority and discretion which their work entails, and the formulation and application of codes of conduct for judges must take into consideration the importance of basic judicial independence. The senior and critical function of judicial officers will often mean that they will be the focus of anti-corruption efforts at an early stage of anti-corruption strategies. This means that the measures developed for judges and the reaction of judges to those measures will serve as a significant precedent for the success or failure of elements applied to other officials. Possible rules include the following.

• Rules intended to ensure both neutrality and the appearance of neutrality. These may include restrictions on participation in some activities, such as partisan politics, taken for granted by other segments of the population, as well as some restrictions on the public

expression of views or opinions. Such restrictions may depend on the level of the judicial office held, and the subject matter which may reasonably be expected to come before a particular judge. Generally, these restrictions must be balanced against the basic rights of free expression and free association, and such limitations as are imposed on judges must be reasonable and justified by the nature of their employment. Judges may also be restricted in their ability to deal in assets or property, particularly if their jurisdiction frequently raises the possibility of conflicting interests. Where such conflicts are less likely, a more practicable approach may be that of disclosure and avoidance.

- **Rules intended to set standards for general propriety of conduct.** Judges are generally expected to adopt high moral and ethical standards, and conduct which does not meet such standards may call the fitness of a judge into reasonable question even if not crime or clear breach of a legal standard. Conduct seen as inappropriate may vary with cultural or national characteristics, and it is important that reasonably clear guidelines, standards or examples are set out. Usually judges will do this themselves. Examples of inappropriate conduct may include such things as serious addiction or substance-abuse problems, public behaviour which displays a lack of judgment or appreciation of the role of judges, indications of bias or prejudice based on race, religion, gender, culture or other irrelevant characteristics, or patterns of association with inappropriate individuals, such as members of organized criminal groups or persons engaged in corrupt activities.

- **Rules which prohibit association with interested parties.** The integrity of legal proceedings depends on the basic principle that all elements of a case be laid out in open court, ensuring basic transparency and the fact that all interested parties are given an opportunity to understand all elements of a case and to respond to those with which they may disagree. The appearance of such integrity is also critical. Judges are therefore usually prohibited from having contact with any interested party under any other circumstances, with any exceptions set out in detail in procedural rules. Judges should also be prohibited from discussing matters before them and required to take measures to ensure that others do not discuss them in their presence. Rules governing other public servants, and especially those in high professional or political offices, should also prevent them from contacting judges or discussing matters before the courts.

- **Rules which govern public appearances or statements.** Judges are often called upon to make public comment on the court system or contemporary legal or policy issues. The integrity of proceedings and any case law which results depends on the inclusion of all judicial interpretation and reasoning in a judgment, and rules should generally prohibit a judge from commenting publicly on any matter which has come before him or her in the past or is likely to do so in the future. Rules may also require judges to consult or seek the approval of judicial colleagues or a judicial council prior to making any comment, particularly if they are the holders of senior judicial office and therefore likely to hear a wide range of cases.

- **Rules which limit or prohibit other employment.** Codes of judicial conduct often either prohibit alternative employment entirely, limit the nature and scope of such employment, or require disclosure and consultations with chief judges or judicial councils before other employment is taken up. Both the nature of the employment and the remuneration paid can give rise to conflicts of interest, and such limitations prohibitions usually extend to unpaid (pro bono) work.

- **Rules requiring disclosure and disqualification.** Rules which are intended to prevent conflicts of interest are often supplemented by rules which require judges to identify and disclose potential conflicts, and to refrain from hearing cases in which such conflicts may arise. Rules should also provide a mechanism whereby a judge can alert colleagues to an unforeseen conflict which arises while a case is ongoing. These may require disclosure and consultation with the parties, and in extreme cases, self-disqualification, and termination of

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the proceedings and their re-commencement before another judge. Mechanisms should also be in place for parties, witnesses other participants or any other member of the public to identify possible conflicts of interest in judicial matters, and for the discipline of any judge who fails to disclose a known conflict.

More generally, rules should require judges to disqualify themselves in proceedings in any circumstance in which their impartiality might reasonably be questioned. Examples include:

- The presence of a personal bias or prejudice concerning a party or issue in contention;
- Personal knowledge of any facts in contention or likely to be in contention;
- The involvement of personal friends, associates or former associates or former clients⁴¹; or,
- The existence of a significant material financial or other personal interest on the part of the judge or a close friend or relative which could be substantially affected by the outcome.

Codes of Conduct for the Private Sector

The extent to which private sector codes will be a factor in national anti-corruption programmes will depend to some degree on political and policy assessments of the extent to which activities in the private sector affect the public interest. Areas in which significant public interests are triggered include organizations which deal frequently with the government, providing goods or services for example, or those whose basic functions affect the public interest or public policy, such as the commercial mass media. Governments often choose to go beyond this, regulating activities which are essentially private, where the collective or long-term effects of private activities raise significant public interests, and those involved in such activities could also be required or encouraged to adopt and enforce codes of conduct as part of a larger regulatory strategy. One example of this is the area of trading in stocks or securities, where individual trades are private, but rules are established to ensure transparency and public confidence in the market because this is seen as necessary to a country’s economic prosperity and stability.

The underlying values of private sector codes of conduct are much the same as for the public sector, particularly in respect of provisions intended to combat corruption, but specific provisions will vary according to the nature of the organization and the functions of its employees. A major distinction is the fact that, while public servants are expected to act exclusively in the public interest, those in the private sector are generally obliged to act in the interests of their employer, and may be faced with ambiguities or conflicts in cases where those interests and the public interest do not coincide. This commonly occurs with journalists with information the publication of which may be in the interest of their employer but not in the public interest. An added complexity in such cases is usually the considerable difficulty of deciding where the public interest lies based on the actual information and circumstances in question.

Some possible rules include the following but these are by no means exhaustive⁴².

General private sector rules. These may include rules which set out the basic interests of the employer, the relevant public interests and the circumstances in which each should be given priority. Rules which require employees to keep the employer’s information confidential, for example, may have express exceptions for cases where the employer is dealing with the government as a supplier of goods, for example. If an employer does not create such exceptions, they may be created by the State in the form of legislation. Similarly, rules for dealing with cases

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⁴¹ Where judges are recruited from the ranks of the practising Bar, full application of this principle may not be practicable, especially in regions or communities where there are relatively few lawyers.

of “whistleblowers” that disclose information in the public interest but to the detriment of the employer may be effectively created by legislation or court decisions.

Private codes could also address a number of anti-corruption questions, although here the concept of corruption will generally be based on conflicts of interest in which some individual interest is placed ahead of that of the employer rather than the public interest.

- Rules could require disclosure, create limits or complete prohibitions with respect to gifts, gratuities, fees or any other benefits which might be offered to the employee. Since the disclosure is intended to identify potentially conflicting interests, it might be limited to the disclosure of sources which were linked in some way to the business or to the employee’s obligation to the employer.
- Rules could require the disclosure of other personal financial or related information, particularly for employees with significant responsibility for accounting and financial matters.
- Rules could govern the behaviour of employees engaged in particularly sensitive aspects of the business, such as the handling of sensitive information or the preparation or receipt of competitive bids for contracts.
- Rules could require the compliance of employees with legislative and regulatory requirements which apply to the company, such as those for financial disclosure or environmental standards. This ensures that, while the employer may be held legally liable for malfeasance by employees, such malfeasance will also constitute breach of contract by the employee, invoking powers of discharge and discipline.

Rules for journalists.

As noted, those who work for the commercial mass-media have a greater overlap in private- and public-interest functions than most because of the role of the media in providing information which allow members of the public to make informed choices about governance and other important matters. The essence of political accountability, for example, depends on the presence of an informed and independent media to keep the electorate informed about what elected officials have done or not done while in office, and what they propose to do if elected or re-elected. More generally, the mass media ensure transparency in public affairs, an important function in ensuring good governance in general and the control of corruption in particular. Rules for journalists could include the following.

- Rules setting standards for the quality of research and the accuracy of reporting. Generally, negligence or wilful blindness with respect to the accuracy of information gathered or the reporting of information which has not been properly verified or is known to be false or inaccurate serves neither the interests of the public nor those of the employer.
- Rules governing the conduct of employees in cases where applicable private and public interests may conflict. One possibility in such cases might be consultations with other experienced journalists or editors. In such cases, it may be necessary to identify and assess and weigh the relevant private and public interests, bearing in mind that the views of the government or particular officials, if known, may be relevant, but not necessarily determinative of the issue.
- Rules governing attempts to corrupt the media themselves will generally be similar to those for other private-sector employees. These may include requirements not to accept gifts or other benefits and requirements to disclose any potentially conflicting interests, including such things as offers of gifts or benefits, other employment, memberships or other affiliations. The major difference between the mass media and other areas of private employment in this regard is the breadth of the interests encountered by the media. Since most reporters or editors might be called upon to deal with news in almost any area, a much broader range of interests may raise potential conflicts and should be disclosed. Rules may
even prohibit some forms of activity entirely, if conflicts are seen as inevitable. Those who report on or analyze stock markets and have the power to influence trading might be prohibited from trading themselves, for example, and should be prohibited from disclosing in advance any commentary which could, when published, affect trading.

Preconditions and Risks

The Implementation of Codes of Conduct

Examples of cases in which excellent codes of conduct have been drafted and then implemented ineffectively, if at all, abound. It is essential that codes be formulated with a view to effective implementation, that there be an effective plan for implementation and that there be a strong commitment to ensure that the plan is actually carried out. Implementation strategies should include a balance of “soft” and “hard” measures: elements which ensure awareness of the code, which encourage and monitor compliance and clear procedures and sanctions to be applied when the code is breached.43

Effective implementation may require the following elements.

- Drafting and formulation of the code so that it is easily understood both by the insiders who are expected to comply with it and the outsiders who are served by them.
- Wide dissemination and promotion of the code, both within the public service or sector affected and among the general population or segment of the population with which the sector deals.
- Employees should receive regular training on issues of integrity and on what each employee can do to ensure compliance by colleagues. Peer pressure and peer reviews could be encouraged.
- Managers should be trained and encouraged to provide leadership, advice on elements of the code, and in the administration of compliance (monitoring and enforcement) mechanisms.
- The establishment of monitoring and enforcement mechanisms. These can range from criminal law enforcement to such things as occupational performance assessment and research techniques.
- The establishment and use of transparent disciplinary procedures and outcomes. Transparency is important both to ensure fairness to the employees involved and to assure both insiders and the general public that the code is being applied, and that this is being done effectively and fairly.
- The effective use of a full range of incentives and accountability structures. Using deterrence measures such as the use of extensive monitoring and threats of disciplinary action are an effective means of ensuring compliance with the code, but not always the most efficient option. Those made subject to the code should also be provided with as many positive incentives as possible. These could include such things as education and information programmes to instil professional pride and self-esteem linked to the code, compensation which reflects the higher degree of professionalism expected, and the inclusion of elements of the code in the assessment of employees. Front-line employees should be assessed on their compliance with the code, and managers on their promotion and application of the code in dealing with subordinates.

• The establishment of mechanisms to permit feedback from both employees and outsiders, anonymously if necessary, on the administration of the code, possible areas for expansion or amendment.
• The establishment of mechanisms to permit reports of non-compliance, anonymously if necessary.
• The establishment of mechanisms which enable employees who are uncertain as to the application of elements of the code to their duties in general or in a particular situation to consult prior to making decisions. Those facing conflicting obligations to keep information confidential and to ensure transparency in decision-making might consult with respect to what information should be disclosed, to whom, and in what circumstances, for example.

Related tools

Tools which may be required before codes of conduct can be successfully implemented include:
• Tools which raise awareness of the code and establish appropriate expectations on the part of populations, particularly those directly affected by the actions of those subject to the code, such as publicity campaigns and the development and promotion of “Citizens’ Charters” and similar documents;
• The establishment an independent and credible complaints mechanisms to deal with complaints that the prescribed standards have not been met;
• The establishment of appropriate disciplinary procedures, including tribunals and other bodies to investigate complaints, adjudicate cases and impose and enforce appropriate remedies or other outcomes;

Tools which may be needed in conjunction with codes of conduct include:
• Tools which involve the training and awareness-raising of officials subject to each code of conduct to ensure adherence and identify problems with the code itself;
• The conduct of regular, independent and comprehensive assessments of institutions and where necessary, of individuals, to measure performance against the prescribed standards;
• The enforcement of the code of conduct by investigating and dealing with complaints, as well as more proactive measures such as “integrity testing”; and,
• The linking of procedures to enforce the code of conduct with other measures which may identify corruption, such as more general assessments of performance and the comparison of disclosed assets with known incomes

Codes of conduct can be used with most other tools, but areas of overlap and possible inconsistency may be a concern and should be taken into account when formulating specific provisions. This is particularly true of other rules which may apply to those subject to a particular code. Codes should not be at variance with criminal offences, for example, and in some systems it may be advisable to reconcile other legal requirements by simply requiring those bound by the code to obey the law, effectively incorporating all applicable legislative requirements and automatically reflecting any future statutory or regulatory amendments as they occur, for example. Care should also be taken to ensure that codes are consistent with other applicable codes of conduct, or that if an inconsistency or variance is intended, this is clearly specified.
Tool 9 - National Anti-Corruption Commissions, Committees and Similar Bodies

Purpose

These bodies differ from anti-corruption agencies. Where an agency is a standing body established to implement and administer prevention and enforcement elements of a national strategy, a steering committee or commission is intended to develop, launch, implement and monitor the strategy itself. Its mandate would typically call for the development of a strategy and the major elements of that strategy, such as the establishment of an independent agency and any other necessary entities, the development of legislation, the development of appropriate action plan(s), taking measures to inform the public and foster broad-based support of the national strategy. A commission or committee could be a standing or ad hoc body. Its ongoing role, if any, would depend on the extent to which the national strategy was successful and whether ongoing responsibilities were safely in the hands of other bodies, such as anti-corruption agencies. Once basic anti-corruption legislation has been developed and enacted, for example, it may be sufficient to leave the question of the development of future amendments to the ordinary legislative process, possibly advised by the anti-corruption agency or outside sources of expertise.

Description

Mandate. The basic mandate of a committee is to formulate the national strategy, making adjustments as needed during the implementation of that strategy. This includes, for example, setting basic priorities, the sequencing of elements of the strategy, monitoring progress in specific areas and adjusting planning and time-lines to advance or delay future actions as implementation proceeds. It should report to the legislature and key officials, both in the interests of transparency and the coordination of the activities assigned to them. More generally, it should report to the public, encouraging support and participation and managing expectations.

Constitution, establishment and legal basis. As with anti-corruption agencies, some degree of independence, entrenchment of mandate and security of tenure is needed to ensure that the work of the committee will not be subject to undue influences or curtailment by those with an interest in not controlling corruption. This could be accomplished by an executive order, entrusted to the legislature or, if necessary entrenched more deeply. One possibility is establishment for a fixed period, with some form of renewal if the mandate has not been effectively discharged at the end of the period.

Membership. Members of the committee should be selected with a view to ensuring expertise in a range of areas, sufficient diversity to reflect the country as a whole, integrity and commitment to the combating of corruption. Committees must enjoy public confidence and credibility, which is enhanced by the appointment of individuals widely known and respected for their integrity and competence. It is also important that the membership represent areas of the public and private sectors identified as critical for the success of the national strategy. Often, these areas will themselves be early targets of reform if it is needed at all, and members will be able to assist in the reform process and to keep the committee aware of progress as it proceeds. Generally, committees will consist of members recruited from the executive, judiciary, legislature, electoral governing body, civil servants in key departments such as customs, procurement, revenue collection and law-enforcement, and from regional and local government bodies. Members from outside of government may include representatives of religious groups, relevant non-government organizations, business leaders, the mass-media, and the academic community.

Drafting Legislation Establishing a National Anti-Corruption Commission
Generally, legislation should deal with the following issues.

- If an existing body is to be mandated, the name and description of the body, and if not, the name by which the new body is to be designated.
- The basic composition of the body and the process whereby members should be appointed and removed. Once initially established, the body could be delegated the responsibility to appoint and remove members, for example. Legislation could specify appropriate levels of representation from key areas such as the judiciary, civil society and public service if necessary.
- The process whereby the Chairman is appointed and removed.
- Powers of the committee to engage, retain, compensate and dismiss staff as required, including both regular staff and the ad hoc engagement of individuals with specialized expertise.
- Provisions requiring members to disclose and where necessary discontinue other activities which might raise conflicts of interest. Similar provisions should be established for the staff of the committee, either by the legislation itself, by the committee using powers delegated by the legislation or through contractual provisions developed by the committee.
- Provisions governing the budget of the committee, ensuring basic independence and the adequacy of resources. The committee can also be required to submit to external audits or report on its activities and expenditures on a periodic basis.
- Provisions setting out the basic mandate and powers of the committee. Generally, this will include the development of a national strategy, the monitoring and adjustment of the strategy where necessary, and the roles to be played by the committee in the implementation of the strategy. Roles might include:
  - The development and furnishing of advice to other entities on the strategy and programmes to implement it.
  - The conducting of information campaigns to educate and develop support for the strategy among the public and key population groups.
  - The establishment and implementation of training programmes, or the delegation of this responsibility to specific departments or agencies. The national committee might design general anti-corruption training programmes, for example, and then call upon specific entities such as the judiciary or law enforcement agencies to adapt and supplement the general materials to take account of the issues most likely to arise for each entity.
  - The establishment of monitoring and reporting mechanisms to gather information about progress in implementing the strategy, the compilation and analysis of that information and the production of regular public reports on the status of implementation.
  - The role, if any, to be played by the committee in monitoring activities in specific areas, such as the operation of political organisations or election mechanisms. These roles will depend to a large degree on whether other organisations already perform them.
  - Provisions establishing the tenure of the committee, including and provisions governing such things as automatic renewal or expiry of its mandate, the duration at which this occurs, and any criteria for review and determination of whether the mandate should continue or not. Generally, once specific goals are set for the national strategy, the committee should continue in existence until the goals have been demonstrably met, or until such time as its work has been transferred to other established entities such as an anti-corruption agency.

Establish a National Integrity Unit to support Committees and Commissions

The purpose of a National Integrity Unit is to co-ordinate anti-corruption activities and the precise functions of the various institutions active in the fight against corruption.
The specific mandate will depend on whether other entities such as anti-corruption agencies, commissions or committees have been established, and if so, what their mandates are. Generally, however, where steering committees or commissions develop, launch, implement and monitor national strategies and agencies actually implement and administer prevention and enforcement elements of a national strategy, a National Integrity Unit would be called upon to consult with a national committee on elements of the national strategy, coordinating the formulation of specific mandates to ensure effectiveness and minimize redundancy. As the strategy is implemented, it would consult with departments, agencies and other entities about ongoing operations, ensuring mandates were respected and minimizing gaps and redundancies.

Functions that can be performed by a National Integrity Unit

**Secretariat to a National Integrity Commission or Steering Committee.** In some countries the national integrity unit has functioned as a secretariat to the National Integrity Steering Committee or similar body. It may perform the same functions for other entities such as ad hoc working groups, such as those working for reforms of public administration, deregulation, privatisation, budget, taxation, and banking.

**Clearinghouse for Citizens’ Participation.** In addition to coordinating institutional participation, the units can also coordinate between institutions, individually or collectively and the general population. They can act as a clearinghouse for citizen participation in the integrity process, accepting and transmitting proposals or criticisms and ensuring that questions are answered. They can initiate activities such as the signing of ‘Integrity Pledges’ by officials and other high-profile events aimed at building public confidence in reform and developing momentum for change. They can also facilitate longer-term institutional reforms by engaging civil society in implementing and evaluating reform programs.

**Special Tasks.** Aside from these general tasks, units could also be assigned special activities and responsibilities. In working with officials and agencies outside of the anti-corruption programme, it can assist in incorporating integrity issues or elements into other ongoing policies or operations, such as national development strategies or economic reform agendas. Providing a source of central co-ordination for expertise on integrity-related issues can ensure that quick and reliable information is available when and where it is needed. Units can also forge direct links between government and institutions of civil society for such things as research, information, and public awareness raising. Finally, the unit could conduct surveys on such things as the delivery of public services, organise public education and awareness raising activities, and conduct integrity workshops.

**Preconditions and Risks**

Four major areas of concern can be identified:

**Selection of Members.** The public credibility of the committee will depend largely on the perception that its members have integrity, are competent, and that all of the relevant interests are represented. The link between the credibility of the membership and of the committee as a whole is especially important in the early stages of the strategy, before the committee can be judged on its accomplishments. Later, if the committee is seen as successful, the credibility of individual members may be less critical.

**The setting of reasonable goals and the management of public expectations.** As with other anti-corruption bodies and programmes, credibility is often damaged by underestimating the extent of corruption and the difficulty of the task at hand. This leads to unreasonable expectations and the perception that the committee is a failure when those expectations are not met. Expectations must be reasonable, with respect to the goals of the committee, the time frame...
seen as reasonable for the achievement of various objectives, and the indicators used to assess ongoing progress.

**Isolation of the committee and its work from civil society.** If the committee does not regularly communicate with civil society regarding its goals, activities and progress, popular support is unlikely to be generated. Without such support, technical reforms are much more difficult to achieve, and may have little impact even if they can be accomplished.

**Lack of Involvement of all Stakeholders.** The fact that key individuals or entities are not closely involved and may damage credibility. More seriously, the uninvolved stakeholders may refuse to cooperate with or impede the reform effort, which can make success impossible given the linkages which must usually be addressed. The enactment of strict corruption offences will have little impact, for example if they are not properly enforced or if the judiciary does not cooperate. It is particularly important to involve stakeholders that are corrupt, or are perceived as being so, and stakeholders who themselves play a critical role in anti-corruption efforts, such as judges and watchdog agencies.

A common mistake has been to establish national integrity units which report to the executive instead of an independent entity such as a national anti-corruption commission or committee. Reporting to the executive erodes credibility, particularly if corruption involves the executive, or is perceived as doing so. It also impairs the function of the unit in coordinating anti-corruption efforts on a daily basis. If an independent entity has not been established specifically for the anti-corruption strategy, reporting to other independent entities, such as judicial bodies or multipartisan legislative committees, could be considered.

As with other entities, units must have the necessary financial and human resources, and some degree of protection of these from interference.

**Related Tools**

To be efficient National Anti-Corruption Commissions, Committees and similar bodies would need to be supported by:

- Evidence about types, levels, cost and causes of corruption established through independent comprehensive assessments
- Credible public complaints mechanisms
- Public awareness about their role in fighting corruption
- Legislation empowering and protecting the public in their fight against corruption including access to information and whistleblower protection legislation
- Code of conducts and Citizens Charters outlining expected performance standards
- National and Municipal (local) broad based Integrity and Anti Corruption action planning meetings
Tool 10 - National Integrity and Action-Planning Meetings

Purpose

As anti-corruption strategies are developed, implemented and evaluated, it will frequently be necessary to bring together stakeholders in order to ensure that they are well-informed and to assess – and if necessary mobilise – their support for the process. National integrity meetings can be held to deal with any substantive or procedural aspect of the strategy, and may be of a very general nature or focused on some specific area or issue of concern. Action-planning meetings are generally held on a more specific basis, to assess the effects of past or ongoing activities and to develop or adjust specific action plans taking into account this assessment.

The specific objectives may vary, but generally the goals of such meetings will include most or all of the following:

• Raising awareness about the negative impact of corruption;
• Assessing the state of progress has been made to curb corruption;
• Helping to build consensus for a national integrity strategy and action plans or elements of the strategy which apply to the participants;
• Helping participants to understand the national strategy and how their own efforts are linked to it;
• The development, planning, coordination and assessment of specific elements of the strategy; and
• The creation of partnerships, foster participation and direct group energy towards productive ends.

Description

National integrity meetings or “workshops” should bring together a broad-based group of stakeholders to develop a consensual understanding of the types, levels, locations, causes, and remedies for corruption. At the early stages of the process, such workshops will generally have multiple purposes: it will usually be necessary to assess the nature and scope of the problem and to develop a preliminary assessment of priority areas for attention, while at the same time serving to educate, and in some cases reassure, the participants in order to secure their support and cooperation. Later in the process, the focus will usually shift to the assessment of past efforts, the planning of future ones, and where necessary the re-adjustment of priorities to take account of ongoing efforts and developments.

Meetings can be organised at the national or the sub-national level or for a single sector in which common issues are likely to arise. Meetings could also be used to bring specific sectors together to facilitate cooperation or help share expertise or experience with respect to particular issues, ideas, successes or failures. The process component of meetings should maximize learning and communication, and the content component should produce new knowledge and stimulate debate leading to new policies. The discussions and outcomes of meetings should be documented where possible to serve as the basis for assessing future progress and for the holding of future meetings.

The evolution of meetings as the national strategy proceeds

Within specific sectors of government, several meetings may be held in sequence as the strategy is developed, implemented and assessed. For example, municipal or sub-national integrity workshops have been held in the following distinct stages or phases.
• **Phase I** seeks to build a coalition in support of reform by focusing on discussions with local stakeholders to raise awareness and assess their perception of the problem. Their views as to priorities and modalities are considered, and where possible, reflected in the applicable action plan. This helps to ensure future cooperation and support for the national strategy and especially those elements of it which directly affect the sector or region involved.

• **Phase II** focuses on a more objective assessment of the problem in the region or sector concerned, using Service Delivery Surveys (SDS) or similar methods. Information is systematically gathered, recorded and analyzed.

• **In phase III**, the results of the SDS are considered, and participants are asked to help develop and consider options for dealing with problems identified. Priorities may also be set or adjusted at this stage, having regard not only to the seriousness of specific problems, but also sequencing issues, in which reforms in one area may be needed at an early stage in order to support later reforms planned for other areas. An action plan setting out specific activities and the order in which they should be undertaken, is developed.

• **Phase IV** usually involves implementation of the various elements of an action plan according to an agreed timetable.

• **Phase V** would then involve the assessment of progress and where necessary, the adjustment of substantive actions or priorities in accordance with that assessment. Meetings could be held regularly for this purpose or as necessary.

*Information for the holding of national integrity or action-planning meetings*

All meetings should be designed with specific objectives in mind. Every aspect of the design should increase the chance that objectives will be met. The most important objectives are to:

• Ensure that content is focused and that the scope of the content is clearly defined; and
• Ensure that the process enhances the sharing of information and transfer of knowledge.

Other important process components include the creation of a learning environment; enabling networking and cooperation between participants; generating enthusiasm and motivating participants to take follow-up actions; and generally inducing participants to focus on the development of solutions to problems rather than simply dwelling on the problems themselves.

Meetings should be carefully planned, with a good framework in place well before actual start-up. Participants who will play leading roles, such as facilitators, chairpersons, panellists, speakers and support staff should be well briefed in advance about their respective roles and tasks. Participants should also be informed in advance about what is expected of them, and should attend the workshop well prepared to meet both the content and process objectives. Flexibility on the part of both organizers and participants is also important, however. The process should be evaluated as the meeting proceeds, and adjusted as necessary.

Based on previous experience, meetings could employ the following general pattern.

• A series of preparatory activities is conducted to build organizational capacity, foster broad-based consultation, collect credible data, select key workshop personnel, and publicize the meeting and its objectives. Some of these requirements may be met using standardized materials or personnel, while others will be specific to each meeting and the entity or entities in which it is to be held.

• Most meetings held thus far have been two-day events. This provides sufficient time to explore the issues involved and does not over-tax leaders or participants.

• A first plenary session is held to raise general awareness, launch the meeting and build pressure on participants to deliver on the objectives of the meeting. Such sessions usually begin with a keynote address and a review of workshop objectives and methodology.
Foreign experts, survey analysts and local analysts may be called upon to offer brief presentations.

- The opening plenary should set the tone for the meeting, with presentations covering the full range of topics within the chosen theme. Content should cover both problems and possible solutions. Speakers may include some experts from outside the host country, region or participant group, but domination by “outsiders” should be avoided if possible.

- A series of working group sessions follows the opening session, using small (fewer than 15) groups and trained chairmen to analyze substantive areas and build consensus on facts and issues. For example, a group might be called upon to examine the causes and results of corruption and/or lack of integrity, and to identify actions to address these problems. A range of separate topics can be developed to allow participants select those they want to address, and if appropriate, separate groups can be asked to consider similar, related or overlapping topics to permit later comparison or stimulate discussion between groups when the plenary re-assembles.

- Where separate groups are used, each group should designate a member to report to the plenary on its deliberations in order to ensure clarity and facilitate documentation.

- A final plenary session should be held to synthesize the results of the working groups. This session is also a forum for publicly presenting the findings of the workshops and other outcomes of the meeting, such as action plans or recommendations, and helps to ensure that the outcome of the meeting is documented and disseminated.

**Procedural Objectives of Meetings.**

In organizing meetings, basic procedural goals should be set and communicated to those who will organize and run each meeting. These can be adjusted in accordance with the substantive goals of the meeting (below). In cases where a series of meetings is held, the objectives and the extent to which they were achieved can also be taken into account in planning future meetings. Process objectives should be clearly communicated to both leaders and participants well in advance of the meeting, and reaffirmed as necessary at the start of and during the meeting. These will normally be as follow:

- To initiate a sharing and learning process appropriate for the participants involved;
- To establish an atmosphere in which participants are able to contribute effectively and are encouraged to do so; and,
- To create partnerships or linkages between participants from different stakeholder groups.

**Participation.** Organizers should ensure that participants do not merely passively listen to speakers, but have the opportunity to ask questions, express their views, and actively participate in discussions aimed at addressing the workshop objectives. This ensures better understanding, ownership of information and heightened awareness. There should be no more than 15 people per group and facilitators should ensure that all group members have an opportunity to speak. Facilitators should prevent individual participants from dominating discussions. Deliberations may seek consensus, but organizers and participants should recognize that this is not always realistic. An equally-valid goal in most cases is the identification, clarification and understanding of differing positions or viewpoints and the reasons these are held. This benefits the participants directly and assists others in adjusting the strategy to take account of and resolve the differences in other ways.

**Creating partnerships.** Many meetings are used to bring together individuals who do not normally associate with one another, and in such cases a key function is the development of contacts and relationships which benefit the anti-corruption strategy and which would not otherwise exist. Contacts may be established between those responsible for anti-corruption measures in relevant public sector departments or agencies, for example, or between representatives of the government, media, religious groups, private sector groups, and non-
governmental organizations or other elements of civil society. In processes funded or supported by outside agencies or donors, partnerships can also be created between donors, recipients and other interested parties, but in such cases it is important to ensure that the major focus of the meeting is on domestic issues, and that foreign donors or international agencies or experts do not unduly impose their views on country participants.

In order to achieve partnership, several options might be considered for the workshop process. For example, one option is to have some participants act as observers only. These ‘observers’ would not participate in the small group discussions and only listen and offer comments on group feedback by participants during plenary sessions. Another option is to have participants separately discuss identical topics during small group sessions and to then compare findings during plenary sessions.

**Managing group dynamics.** Every group has its own dynamics, which can be either detrimental or conducive to achieving the group’s objectives. Facilitators should monitor the proceedings and be prepared to intervene if necessary. In order to present content effectively, organizers may ask presenters or other participants to do any of the following:

- Present a general introduction to the workshop theme;
- Present key issues and formulate questions to stimulate discussion among participants;
- Share research information;
- Present (theoretical) models;
- Present examples of practical successes and failures; and,
- Generally facilitate and stimulate discussion.

**Content Objectives of the meeting.**

From a substantive standpoint, the content covered by a meeting will depend on who the participants are, what stage they or the entities they represent have reached in implementing their elements of the national strategy and other factors. Organizers should begin by ensuring that the content to be covered meets the needs of the participants. Presenters and panellists should be briefed beforehand on what is expected from them and asked to prepare accordingly.

**Workshop Topics, Key Issues and Elements.** To ensure that the content is relevant to the theme of the meeting, organizers should designate a list of topics or themes, from which specific areas to be covered can be designated by or in consultation with the participants. Those responsible for chairing or facilitating actual discussions should formulate basic questions or issues for each topic area which can be used to stimulate discussion or re-focus participants on the issues at hand.

General themes or topics which might be discussed include the following.

- The need to build a workable national integrity system, and the development of specific recommendations for action and the assignment of responsibility for improving the system.
- How society as a whole might participate in continuing debate on these issues and work with like-minded political players in a creative and constructive fashion.
- Issues of leadership, including the sort of leadership required, whether the right kind of leadership is available and if not, what can be done to fill leadership vacancies, and whether such leaders as may be available are appropriately trained.
- Identification of the results to be achieved and best practice guidelines that could be followed to achieve them.
- The need to foster partnership, action, learning and participation. The focus should be on partnerships between the types of organizations represented: how these partnerships can be established, and what is needed from individuals and organizations to do this.
• The creation of political will and commitment: whether a commitment for change exists and how to develop or reinforce it.

Some possible areas for specific discussions could include the following.

• Roles of the government in promoting or establishing key elements of the national strategy, such as transparency and accountability structures.

• Roles of the political process, including the legislature, bodies which conduct and validate elections, and the democratic political process in general.

• Roles of civil society (non-governmental organizations, the mass-media, religious groups, professional organizations, etc.).

• Roles of the private sector.

• Roles of specific officials or institutions, such as Auditors General, the judiciary, law enforcement agencies, and other constitutional office holders.

Preparation of materials

Careful consideration should be given to the written and oral materials prepared in advance. These help to orient and sensitise participants beforehand, serve as guidelines during discussions, and provide reference information afterward. It is important that drafters consider carefully the participants for each meeting, and that materials are framed in a style and format which is appropriate to the educational and knowledge level, linguistic, cultural and other characteristics of the participants. Content should seek to build upon existing knowledge and complement such knowledge by going into areas which may be new to the participants. For example, meetings of groups such as law enforcement officers, prosecutors or judges could be based on the assumption that participants will have some level of legal knowledge, but less understanding of social or economic issues. Content could then seek to develop specialized legal knowledge relevant to corruption, while also raising more general awareness of its social, political and economic effects.

Materials could include the following.

• Background papers and other documents distributed in advance or handed out on the first day.

• Short oral remarks by the authors of the papers.

• General comments from a number of speakers on the first morning of the workshop.

• “Trigger” questions formulated by the facilitators for each small group discussion to help identify key issues and stimulate the interest of participants.

Materials produced by meetings

The basic purposes of documentation are to inform those responsible for the overall strategy about the status of efforts in each area, to inform those in other areas which may be dealing with similar issues, and to inform those who plan future meetings or other actions about the history and development of each issue discussed. Documentation also forms an important source of historical information and, in the case of projects funded or supported by donors, demonstrates the results achieved as a result of the support and provides guidance with respect to future support. Generally, organizers should attempt to document as much as possible of the proceedings, bearing in mind the costs of producing and disseminating documents and the fact that texts which are too long or too detailed are less likely to be read by others.

The format of reports may be determined by the authority which convenes the meeting, or determined by the organizers or the meeting itself. Whatever the format, it is essential that the relevant information be set out clearly and in a logical framework which assists those who were
present in referring back to the proceedings, and is accessible and informative to those who were not present. Organization into clear and well-titled categories or segments greatly assists in this. To some extent, standardization of format assists those who may have to obtain information from many reports. If a series of meetings is planned, organizers may therefore wish to create a standard or “template” format for reports. Strict adherence to such forms should not take priority over clarity or the effective organization and labelling of information for easy access, however. If possible, reports should be prepared as the meeting proceeds, and reviewed, corrected and adopted by the meeting before it concludes.

Where feasible, documentation should include the following:

- A list of all participants, including basic information to enable those involved to remain in contact after the meeting;
- If the meeting is convened by a specific authority, based on a specific mandate, or as part of a series of meetings, basic historical and reference information about these should be included;
- A statement of the basic purpose of the meeting, the issue or issues taken up, and the basic organizational framework or process used;
- The results of discussions, and enough information about the tenor and substance of discussions to indicate how results were reached, or if they were not reached, why not;
- Texts of papers or speeches presented during the meeting (full texts, extracts or summaries), edited for uniformity and consistency;
- Observations, reports or any other notes provided by presenters or other participants; and,
- Any suggested follow-up actions, conclusions and recommendations. 44

Roles of organizers and other personnel

Meetings should be organised and conducted by an organised team, which assesses the needs of the country or region, develop specific themes and topics, prepares materials, organizes and conducts the meeting itself, and prepares reports and other substantive outputs. Team members should be properly briefed in writing ahead of time. If possible, they should meet two days before the meeting to share ideas, clarify and coordinate individual roles, agree on content and process objectives and clarify the content of topics and key issues. They should also agree on the format of small group and plenary findings to be included in the proceedings. Some typical roles are described below.

**Workshop Management.** A group of organizers can be assigned the task of selecting topics or options for workshops or discussion groups, organizing each group, ensuring that chairpersons, resource persons (e.g. subject-matter experts) and other facilitators are present, and ensuring that the proceedings are documented. During proceedings, this group can also meet to coordinate sub-group activities as discussions proceed. Additional facilitators may be recruited to provide further assistance if needed. Some specific assignments for managers include:

- The selection and briefing and training of chairmen, facilitators, rapporteurs, and other personnel as needed;
- Visiting small groups during discussions and supporting or assisting group facilitators where necessary;
- Management of time;

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44 The format of conclusions and recommendations may depend on the organization of the meeting. Meetings convened and mandated by a specific authority generally report back to that authority, often in a format established specifically for the purpose. Other meetings may simply publish recommendations in a more general form.
• Passing information between groups; and
• Providing feedback to organizers as the meeting proceeds.

**Chairpersons.** Chairpersons are needed for plenary sessions and for each sub-group which will be conducted. Individuals are usually selected for their ability to interact with large audiences and for their conceptual ability in guiding and summarizing discussions. It is advisable to have one or more vice-chairpersons appointed and briefed to ensure that proceedings are not disrupted if a chairperson becomes indisposed or unavailable. Specific responsibilities include:

- Chairing sessions;
- Encouraging, identifying and calling upon speakers in discussions;
- Ensuring that discussions are balanced and that everyone is encouraged to and permitted to speak;
- Ensuring that discussions remain focused;
- Guiding discussions where necessary, but also maintaining basic fairness and neutrality with respect to matters of controversy between participants;
- Managing time;
- Summarizing discussions at the end of each issue;
- Posing questions to be addressed by sub-groups;
- In the case of sub-group chairpersons, reporting the results of discussions back to the plenary; and
- Approving the official record of the meeting or ensuring that the plenary itself does so.

**Substantive support for assist chairpersons.** Depending on the size and complexity of the meeting and the ability of designated chairpersons, additional personnel could be designated to help run the meeting or manage discussions. In ongoing national strategies, for example, facilitators trained in advance can provide valuable assistance to chairpersons who are selected by the plenary and have less time to prepare. In some cases, this may provide the basis for ensuring meaningful input and “ownership” from multiple sources. Meetings of entities such as the professional associations of judges or lawyers or of local government can ensure some degree of control and ownership of the proceedings by appointing knowledgeable insiders as chairpersons, while the national anti corruption programme can have input into substance and the management of meetings by either providing or training facilitators to support and assist chairpersons. In such cases, the actual functions of facilitators commonly include the preparation of discussion agendas and briefing materials for chairpersons, providing advice and assistance in identifying issues and summing up discussions and either drafting reports or assisting chairpersons or others in doing so.

**Secretariat support.** Professional staff to provide organizational support, generate and manage correspondence, arrange transport, accreditation and other matters for participants, maintain financial records, produce documents and other such functions are also important, particularly for large or important meetings, where smooth proceedings and accurate documentation are needed.

**Media Liaison.** Ensuring that the meeting is well publicized is important to both transparency and raising awareness of the anti-corruption programme. The media liaison should be reasonably familiar with the local or other media who are likely to attend, as well as with the theme and topics for the meeting. He or she should be able to prepare press releases or communiqués as needed and assist the media by obtaining information, arranging interviews and other matters. Kits of materials may be prepared, and in-session documents and post-meeting reports may be made available if appropriate. One means of assisting the media is to set up a “press board” where newspaper clippings and other materials can be displayed on a daily basis.

**Preconditions and Risks**
A number of challenges may arise with the organization and conduct of meetings and workshops.

- It may be difficult to identify a full range of stakeholders, having regard to both the needs of the country or region involved and the specific themes and topics which are to be covered. Having identified the stakeholders, it may also be difficult to ensure the maximum possible breadth of representation.

- It is usually difficult to strike a balance between process and substance. Too much emphasis on process results in a well-run meeting without substance. Too much emphasis on substance can lead to detailed discussions which produce no clear outcomes.

- Sizes of working groups may be too large or too small. Experience has shown that a maximum of 15 participants works well. Larger groups make it difficult for everyone to contribute, and smaller groups may not have enough participants to represent a good range of knowledge and views.

- It may be difficult to produce output materials, such as action plans, which are reasonable and credible, or to mobilize support for those outputs. The true purpose of such meetings is to consider issues, develop appropriate responses which lead to action. Where the outputs are unreasonable or lack credibility, further action is unlikely.

- Where meetings involve specific groups, a balance of “inside” and “outside” participation is important. Meetings sponsored by foreign donors, for example, could include foreign participation, but should reflect the perceptions and priorities of the participants and not the donors. Foreign experts can be used to support discussions if needed, but should not dominate them. The same principle applies where participants are drawn from smaller communities, such as law-enforcement personnel or judges; outsiders can support the efforts of such groups to identify problems and develop solutions, but should avoid the perception of imposing solutions from without.

**Related Tools**

Tools which may be required before an integrity or action planning meeting can be successfully implemented include the following.

- A credible agency or body with a formal mandate and necessary resources to organize the meeting is needed.

- Where an action plan or similar instrument is produced, the organization and capacity to actually implement or supervise implementation of the plan is needed. The development of plans which are not implemented erodes the credibility of the overall anti-corruption effort.

- Tools which raise awareness of the meeting itself and role of the different stakeholders at the meeting and which establish appropriate expectations on the part of populations, are desirable.

- Where a meeting is likely to identify specific complaints or problems, the institutions and mechanisms needed to deal with such complaints should be in place.

Tools which may be needed in conjunction with integrity and action planning meeting include the following.

- The institution or entity which convened and mandated the meeting should be prepared to receive and follow up on any report or recommendations it produces.

- Where multiple meetings are held, the convening entity should retain and compile reports. A parent agency such as a national commission or committee may also be charged with making collective periodic reports synthesizing the information from many meetings to the national legislature or executive.

- Basic transparency is important, both to ensure that results are credible and that they are widely disseminated for use by others. An independent media to report on the outcome of the meeting and to monitor the implementation of action plans or recommendations is
important. Reports can also be made to public bodies such as legislative assemblies or committees.
**Tool 11 - Anti-Corruption Action Plans**

**Purpose**

Comprehensive and coherent plans of action set clear goals, time-lines and the sequences in which specific goals should be accomplished. Within overall anti-corruption strategies, this serves several purposes.

- Setting out clear goals and time-lines generates pressure on those expected to contribute to the achievement of those goals. Participants do not want to be seen as responsible for failing to meet the goals, and in some cases they may face legal or political accountability for malfeasance or inaction.
- Clear plans of action can (and should) be made public, ensuring overall transparency and helping to mobilize popular support and pressure to achieve the expected goals.
- Clarifying what actions must be taken, at what time and by whom assists in planning future actions and in the evaluation of past or ongoing actions.
- The exercise of developing and drafting action plans itself assists in planning, by forcing planners to consider issues such as the means of implementing each element, the timing and sequencing of various elements, and a realistic assessment of what can be achieved within the specified time-frame.
- The development of a national plan of action serves as a framework against which more specific and detailed action plans for specific regions or segments or agencies of government can be developed.
- The development of realistic general and specific action plans forces a degree of vertical integration, in which national planners must consult with their local counterparts to determine what is feasible, and vice-versa.

**Description**

The exact description of an action plan will depend to some extent on whose actions are being planned. A national plan is likely to be an extensive document setting out goals in fairly general terms for all segments of government and society. To a large extent, its primary functions are to articulate national goals, set political priorities, and serve as the basis for more specific action plans in which the objectives, planned actions and relevant time-frames for specific agencies or regions are set out with much greater precision. Plans should always be realistic. Setting goals which are not feasible will seriously damage the credibility of anti-corruption efforts when they are not achieved as planned. To ensure that this problem is avoided, the development of plans of action will usually require consultations with those who will be expected to take the necessary actions, those who will be affected by them, and those who will be asked to monitor and assess success or failure and to plan future actions. The views of those who will take the actions are needed to plan realistic actions, identify potential obstacles at the planning stage, and mobilise understanding and support for the proposed course of action. Consultations with those affected may serve much the same purpose, but also help to establish expectations of what will be done and when, thereby generating pressure on the actors to deliver accordingly. Consultations with those who will evaluate will ensure that, if goals are not achieved, it can be determined whether the failure resulted from poor planning, inadequate execution, or both. The most commonly used means of consultation are the national integrity and action-planning meetings described in the previous tool, but less-formal settings can also be used, particularly in developing plans which are very narrow in scope or directed at specific agencies or departments. What is important is that the views of all three key groups of stakeholders are brought forward and considered in the formulation of the plan of action. Setting goals which are too high results in failure and loss of
credibility, while setting goals which are too low fails to make maximum use of the potential of the individuals and organisations involved.

**National action plans**

National action plans should take the following factors into consideration.

- National action plans are often involve input and support from outsiders, including donor or other foreign governments, foreign experts, non-governmental organisations and international institutions such as agencies of the United Nations, World Bank or International Monetary Fund. Such input can be invaluable, allowing a country to profit from the experience of others before it starts its own anti-corruption effort, but it should not be allowed to become dominant in the formulation of an action plan or the assessment of what is feasible for the country concerned. Domestic “ownership” of the process is important, and the most realistic assessment of what is feasible is often based on a combination of the high expectations, demands and pressures of outsiders and the intimate knowledge of insiders about what must be done and how to avoid or deal effectively with obstacles which arise in the process of doing it.

- Within each country, diversity of input and consultation is also important. As noted above, those who are expected to take actions, those affected by the actions and those who will monitor and assess should all be consulted. In the case of a national action plan, much wider consultations and much greater transparency are needed, both to ensure that the plan is reasonable and to mobilize popular support and political pressure for the achievement of goals. This will generally require the involvement of the political or legislative and executive elements of government, as well as most elements of civil society.

- Substantively, action plans can include elements in five important areas: awareness raising, institution building, prevention, anti-corruption legislation, enforcement and monitoring.

- A high level of co-ordination will be needed, both in developing and implementing the action plan. National plans will require coordination with the subordinate plans of specific regions or government entities, and within each plan the various actions and actors must be coordinated with one another. The implementation of a national action plan will typically involve actors such as a supreme audit or similar institution, national and regional Ombudsmen, prosecutorial and law enforcement agencies, civil service management structures, “central” agencies or departments responsible for government planning and budgetary controls, other government departments, public procurement agencies, public service unions or associations and other groups.

- Those expected to take action under the national plan should be held accountable for achieving results.

The major substantive measures in national action plans can be broken down into the following major groups of actions and actors:

- Public sector or executive measures;
- Legislative measures;
- Law enforcement measures;
- Private sector measures;

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45 The judicial branch of government would not usually be involved, since elements of national action plans may well take the form of offences or other legislative changes on which judges may be expected to rule. Judges may be kept informed in a neutral manner, however, and would of course be the primary focus of development for specific action plans directed at the judicial branch itself.

• Civil society measures; and,
• International measures.

Some action plan objectives for executive and other public sector actors

• Government programmes and activities should be made more open and transparent by:
  inviting civil society to oversee aid and other government programmes; establishing and
  disseminating service standards; and establishing a credible and open complaints
  mechanism.
• Transparency and clarity with respect to the delivery of public services should be generated
  by clearly stating what services are to be delivered, by whom, to whom, to what standard
  and within what time-frame. This creates standards for those who deliver services and
  expectations from service-users. A major element of this effort is the establishment of
  legislative requirements and administrative procedures to ensure appropriate public access
  to government information.
• Civil service reforms should be developed and implemented to: increase the level of
  professionalism; increase the focus on integrity and service standards; replace patronage
  and other irregular structures with clear, codified consumer rights; and generally establish
  the principle of meritocracy in staffing, promotion, discipline and other matters.
• Projects which educate society about the true nature, extent and harmful effects of
  corruption and instil a moral commitment to maintain integrity in dealings with business
  and government officials are an important factor in prevention and in mobilizing popular
  support for the national action plan itself.
• Government agencies, such as specialized anti-corruption agencies can be established if
  needed, and all State institutions should be strengthened by: simplifying procedures;
  improving internal control, monitoring, enforcement and efficiency; and establishing
  meaningful incentives and remuneration.
• The independence and competence of investigative, legislative, judicial and media
  organisations can be strengthened.
• Legislative and administrative measures which permit and encourage the use of civil
  remedies, which allow those affected by corruption to take direct action against it, can be
  developed.

Some action plan objectives for law enforcement

• Clarify the basic roles and functions of law-enforcement, prosecutors and judges, including
  judicial and prosecutorial independence and where applicable, the role of prosecutors in
  advising law enforcement and reviewing criminal charges.
• The establishment of basic standards for integrity and professional competence in law
  enforcement functions, and the development of codes of conduct or similar documents to
  provide specific guidance to law enforcement officers and specific target groups, including
  senior officers and training officers or instructors.47

47 See, for example United Nations Code of Conduct for Law Enforcement Officers, GA/RES/43/169 and
guidelines for their implementation, ECOSOC Resolution 1989/61. On the use of force and firearms, see
(Havana, Cuba, 1990), A/CONF.144/28/Rev.1, Sales No. E.91.IV.2, Part I.B, Resolution 2 and annex. Both
are reproduced in the Compendium of United Nations Standards and Norms in Crime Prevention and
Criminal Justice (1992), E.92.IV.1.
• The establishment of basic principles and standards for recruitment, training, active service and disciplinary matters, or the adjustment of existing principles and standards to incorporate integrity or anti-corruption elements.
• The establishment of independent oversight and monitoring functions within agencies to monitor both integrity and competence.

Some action plan objectives for prosecutors

• Clarify the basic roles and functions of law-enforcement, prosecutors and judges, including judicial and prosecutorial independence and where applicable, the role of prosecutors in advising law enforcement and reviewing criminal charges.
• The establishment of basic standards for integrity and professional competence in prosecutorial functions, and the development of codes of conduct or similar documents to provide specific guidance to prosecutors\(^4\). In many countries these will supplement codes of professional conduct for the legal profession in general, of which prosecutors are members.
• The establishment of independent oversight and monitoring functions within agencies to monitor both integrity and competence.

Some action plan objectives for legislators and legislative bodies

Actions for legislatures will generally include both measures which address issues such as transparency and integrity on an internal basis, and where the legislature in question has the necessary competence, the adoption or enactment of legislative elements of the national anti-corruption strategy.

• Clarify the role and functions of the legislature and its relationship with other key elements of government and political structures, particularly those which influence law- and policy-making functions, such as political parties, the professional/neutral public service and judicial elements.
• Establish or clarify the standards of conduct expected of elected members of the legislature and their partisan political supporters, bearing in mind the application of both legal and political accountability.
• Establish internal bodies and procedures for dealing with members or staff who do not perform in accordance with the applicable standards.
• Establish or clarify requirements for the disclosure of incomes and assets and for the disclosure and dealing with conflicts of interest.
• Enact or adopt anti-corruption laws called for by the national strategy covering areas such as: the establishment and independence of anti-corruption agencies, audit authorities, anti-corruption commissions or other bodies; the regulation of political and campaign financing; freedom of information, media and other transparency measures; conflict of interest legislation; whistleblower and witness protection provisions; public service reforms such as limits on discretion, reducing complexity or merit-based compensation; amnesty provisions where needed; and, law-enforcement powers needed to investigate corruption, test integrity, provide international cooperation; and trace, freeze, seize and confiscate the proceeds of corruption.

Some action plan objectives for civil society and the private sector

Action plans for civil society and the private sector will generally need to establish clarity and credibility for the overall anti-corruption strategy, while also setting out goals for various elements. Given the broad range of individuals and organisations involved, action plans at the national level will not usually be very specific. Instead, they will set out general areas or objectives within which more specific plans can be formulated for each institution or sector. Some elements include the following.

- Establish general principles for integrity and ethical conduct suitable for adaptation and expansion to specific circumstances. These would include general principles underpinning such things as ethical practices for government contractors and other businesses, the mass-media, academic and other institutions, as well as those who work in them.

- Plans for private-sector institutions could include elements dealing with issues such as: fiduciary or trust relationships; conflicts of interest; auditing practices and other safeguards; transparency in business dealings, particularly on public exchanges or stock markets; the regulation of anti-competitive practices; and general awareness-raising with respect to topical issues such as corporate criminal liability for corruption offences and the relationship between private-sector corruption and the public interest.

- Plans for civil society institutions could include elements such as academic research on corruption and related topics; measures to ensure professional competence, diversity and independence in the mass-media and academic institutions; the consultation, awareness-raising and empowerment of the population groups served by elements of civil society; and the development of the expertise and infrastructure needed to support genuine transparency and open monitoring of public institutions and their functions.

The incorporation of international measures into action plans

A significant portion of overall corruption involves transnational elements such as corrupt practices by transnational organised crime or multinational business concerns. It is also recognised that some otherwise-domestic corruption also represents a problem which has transnational aspects, particularly in activities such as development aid projects and some international commercial activities. To address these issues, national action plans, as well as many plans directed at specific segments of government, and even civil society, should incorporate some of the following elements.

- The national action plan should ensure that various elements deal appropriately with all forms of corruption, whether domestic or transnational in nature.

- National action plans should include and support a national commitment to develop, ratify and fully implement international instruments against corruption.

- Action plans for legislatures and national government agencies should include elements to ensure that adequate policies, legislation and administrative infrastructure are in place to encourage and support effective international cooperation in corruption cases. Major forms of cooperation would generally include: education and other forms of prevention; mutual legal assistance and other forms of investigative cooperation; the willingness to prosecute multinational cases where appropriate; the extradition of offenders to other jurisdictions undertaking such prosecutions; and, assistance in the recovery of the proceeds of corruption.

49 The various forms of international cooperation are dealt with in detail in the Revised Draft United Nations Convention on Corruption, which is expected to be finalized in late 2003. For the latest documents, see: http://www.odcep.org/crime_cicp_convention_corruption_docs.html. See also the terms of reference for the negotiation of the Convention, GA/RES/56/261, paragraph 3, and the Report of the Open-Ended
• Plans for public sector, private sector and civil society elements should all provide for the exchange of information about the nature and extent of corruption, the harm it causes, and various “best practices” or other means of dealing with it.

• Plans of action for the private sector should contain elements to promote the development and implementation of international rules and standards for investment, banking and other financial practices which deter corruption and prevent and combat the illicit transfer and concealment of the proceeds of corruption.

Preconditions and Risks

The major risk associated with plans of action is that, in setting clear and transparent goals, the overall credibility of anti-corruption efforts will be damaged if such public goals are not achieved. As noted, plans which are overly ambitious or unrealistic are likely to bring about such an outcome, whereas plans which are too conservative fail to make the maximum use of anti-corruption potential which exists, and may be seen as cosmetic or token efforts, which also affects the credibility of the national strategy and those engaged in carrying it out.

Most of the other risks are associated with individual or institutional resistance to specific elements of action plans. For example, elements which re-structure or reform established bureaucratic practices are likely to be confronted with institutional inertia, resistance from elements which perceive their interests threatened, and the time and effort needed to train officials in the new practices. These risks must be identified and dealt with as they arise, but as a general principle, the harmful effects of delays and other problems can be minimized by ensuring that plans of action are sufficiently flexible that the delay or failure of one element does not derail the entire plan.

Related Tools

Tools which may be required before an action plan can be developed include the following:

• Consultations and other information-gathering efforts to determine which sectors or subject-matter areas require action plans and what is feasible with respect to the various plans under consideration;

• The development of specific actions which will form part of the various plans under consideration, such as codes of conduct or accountability or transparency structures;

• The development of a broad national plan is needed as a foundation and framework before action plans which are more specific in subject matter or application are developed.

Tools which may be needed in conjunction with action plans generally include those tools which form element of the plan or plans in question. Further meetings or other ongoing consultations will also usually be needed to assess the status of implementation and develop further actions based on that assessment.

Tool 12 – Strengthening Local Governments

Purpose

Anti-corruption strategies must involve all levels of government, and efforts at each level must be coordinated. Many elements of anti-corruption strategies are conceived and planned at the national level, but must be taken seriously and implemented willingly at the local level to be effective. Other elements must be planned and implemented entirely at the local level. The purposes of these tools include the following:

- To assist planners and policy-makers in adapting tools formulated for general circumstances to meet the needs of action-planning and implementation at the local level;
- To facilitate both vertical (ie: with national or central programmes) and horizontal (ie: with programmes of other local communities) integration of tools used in local communities; and,
- To encourage and facilitate public participation at the local level.

Description

Unlike other segments of the toolkit, the content of this segment effectively represents a number of tools. In some respects, anti-corruption programmes at the municipal or local level can be seen as a miniature version of similar efforts undertaken at the national level. To deal with these aspects, some of the following content does not constitute fully developed “tools” but rather information needed to adapt tools described in other segments to fit the circumstances of locally based efforts. In other aspects however, corruption represents an exclusively local problem which must be dealt with on that basis or corruption of a more widespread nature requires purely local countermeasures. To deal with these aspects, some of the following content describes tools or elements of tools specifically developed or tailored to support actions at the local level.

In developing countries, decentralisation has increased citizen participation in decision making at the local level. This has advantages and disadvantages for the control of corruption. Decentralisation and greater local autonomy can isolate local activities from centralised monitoring and accountability structures which deter and control corruption. If well managed, however, it can also place local activities under closer and more effective scrutiny from local people, provided that they can be mobilised to identify and eliminate corruption. Elected local governments face increasing responsibility for the construction and maintenance of basic infrastructure, delivery of basic services, and social services, with the financial, managerial and logistical challenges that this entails.

The following specific actions can be adapted as “tools” and incorporated into local anti-corruption programmes, or can be used as a guide to modify elements of programmes being adapted for use at the local level. One way of initiating the local process is through the use of meetings similar to action planning meetings at the national level. Following some preliminary research to identify possible agenda elements and participants, a meeting of local stakeholders would be organised to inform them about the national strategy, assess local corruption problems, identify issues and possible courses of action to be taken. In most cases a series of meetings would be held to gradually refine the issues, set priorities, establish a plan of action, and identify the responsibilities of individuals or organisations to implement the plan. The tools which deal with the organisation of meetings and the preparation of action plans will generally be valid for activities undertaken at the local or municipal level.

Action planning meetings and the local anti-corruption programmes which result will generally have to deal with the following issues.
Identifying the political will and capacity to execute local reforms.

It is important that local leaders be identified who have the will and the ability to press for better governance in general and anti-corruption measures in particular. Often local civil society sources such as the media can assist in this effort.

The assessment of local corruption, the institutional framework for actions and other factors

Most corruption has some local component, and it is important for those active at the national or international levels to bear in mind that planning at that level will usually have to be flexible enough to allow for local circumstances to be implemented effectively. Much assessment, particularly of local institutions and political conditions, can be done using action planning meetings. Other information, such as assessments of the local nature and extent of corruption and general public concern about it, may have to be obtained using more detailed and specific measures such as public surveys. Assessment should precede the development and implementation of action plans, but it also takes place during and upon completion of the process in order to assess progress and adjust actions as necessary (see “evaluation and monitoring”, below).

Generally, information must be obtained and considered with respect to the following matters.

- **Assessment of local administrative structures.** This includes a general assessment of the basic organisation of local government, the identification of sectors which are affected by corruption, and the identification of institutional capacity which can be used for anti-corruption efforts. Assessments should employ both internal (ie: those who work in the institutions) and external (those who use or are affected by the services or operations involved) sources.

- **Assessment of the nature and extent of local corruption problems and of local priorities for action.** The basis of any local action plan must be a subjective and objective assessment of corruption. An objective assessment should provide some indication of the actual nature and extent of problems: which elements of government are most affected and what the overall impact is. A subjective assessment of how local people perceive the problem will provide further insight, and will often form the basis, in whole or in part, for setting priorities for action. Conflicts between national and local priorities may be encountered and have to be addressed.

- **Assessment of good governance factors.** General information should be sought regarding effectiveness, efficiency, transparency, integrity, and accessibility of service delivery. This should be compared to an objective assessment of the same factors, and both sides of the comparison should provide a basis for assessing the impact of future reforms.

- **Assessment of the quantity and quality of citizen-government interaction.** This should identify major deficiencies in interaction between the population and the local government, structures which facilitate or impede public information and participation and assess levels of public awareness of how local government works, both in theory and in practice.

- **Assessment of service-delivery.** This should seek to identify major deficiencies in the levels and types of services delivered by the municipality. This would include analysis of how public resources are allocated to each department and the impact, if any on service delivery. As noted above, information should be sought both about actual delivery levels and capacity, and about public perceptions of whether these are good, adequate or inadequate.

- **Assessment of other governance indicators.** Internal governance factors such as procedural complexity, the degree of discretion in decision-making, the use of accountable and merit-based compensation mechanisms, promotion, hiring, degree of formality in the handling of budget resources; transparency in the flow of organisational information, whether codes of
conduct exist and are enforced, and how these are related to service-delivery should be assessed.

**Obtaining local participation and “ownership” of local programmes**

It is important to involve the local population in the process for several reasons. Generally, in adjusting measures which have been developed for other levels of government or for municipal governments nation-wide, local input is needed to tailor the reforms to local circumstances, to ensure that local priorities are reflected, and to ensure that the resultant plans make the most effective use of local resources and capacity without setting goals or time-frames which are not realistic or feasible to achieve. Local participation is also crucial to informing people about the programmes, mobilising local support for them and generally providing a sense of credibility and “ownership” at the local level. For this reason, action-planning meetings should include whatever local participants are appropriate for the subject matter which will be considered. Generally, this will include local politicians, officials of local departments and agencies, representatives of civil society elements, and representatives of the public or specific segments of the public affected by the areas under discussion. “Outsiders”, such as representatives of national governments or anti-corruption programmes, donor countries or institutions, or technical experts may be needed to assist in organising and running the meetings, but they should not dominate proceedings.

**Implementation of Reforms.**

Based on the consensus of the workshops and the analysis of qualitative and quantitative information, specific reforms can be developed and implemented in ways which address – and are seen to address – factors which may be hampering integrity and service delivery at the local level. Experience suggests that international institutions may play an important role in supporting municipal implementation. In an environment of scarce human and financial resources, technical assistance plays an important role. It is also important to develop an appropriate sequence for reforms, taking into consideration factors such as direct and indirect economic costs, political costs and benefits, the need to obtain short-term results to generate longer-term credibility.

The objective is to incorporate best practices which have previously given positive results into municipal public anti-corruption policies through these civil society operational committees. If effective, these should produce lower levels of corruption and improved service delivery, combined with the accountability generated by effective social controls. This demonstrates the advantages of combining political will, technical capacity to execute reforms, and a partnership with civil society.

**Evaluation and Monitoring**

Efficiency, effectiveness, levels of corruption, accessibility, transparency, procedural complexity and other relevant factors must be reassessed from time to time to determine whether local government services have shown an improvement and whether adjustments to anti-corruption programmes are needed. As with the initial assessment, both objective indicators of performance and subjective indicators of the perceptions of the public and key service-users should be considered. In analysing the indicators, some consideration should be given, not only to the individual factors, but how these are related and what this says about overall impact. Regarding procedural complexity, for example, it is important to consider whether complexity in a particular area has increased or decreased, but also whether overall performance has improved or deteriorated and whether these are linked. Where complexity is reduced but performance does not improve, further inquiry may be needed to determine whether other factors are impeding progress.
**The use of local anti-corruption commissions or committees**

The establishment of commissions or committees to develop, implement and monitor anti-corruption efforts is the subject of a specific tool. The elements discussed there can be adapted to use at the local level, where appropriate. Specific mandates for local committees could include the following elements:

- The development of a municipal strategy or action plan which combines elements of the national programme and those generated or modified by local needs;
- The translation of national and municipal anti-corruption policies into specific plans of action for the local level;
- The preparation of municipal legislation where needed;
- The dissemination of information and the generation of local support and momentum;
- Monitoring of the implementation of the local programme; and,
- Providing local information and feedback to national, regional, and local anticorruption entities.

**Related tools**

Most public services are delivered at the municipal or local level and as results this is where most of petty and administrative corruption is likely to take place. In order for municipal anti-corruption initiatives to succeed there is a need for additional initiatives to be launched as well. Specific tools which may form elements of local programmes or be used in conjunction with such programmes include the following.

- Tools which increase public awareness, such as media campaigns. These serve to increase awareness of and resistance to corruption, and foster awareness and support of anti-corruption efforts.
- Tools which support consultations and the development of strategies and action plans which reflect local problems and priorities, such as the holding of action planning or similar meetings.
- Tools which involve assessment of the nature and extent of the problem and of local perceptions and reactions to both the problem of corruption and to anti-corruption efforts. Tools in this category are used to develop preliminary information as the basis for developing local action plans, “base-line” information against which later progress can be assessed, and ongoing and concluding assessments to determine whether goals have been achieved and to advise modifications or adjustments to ongoing strategies or actions.
- Tools which develop and establish standards, such as codes of conduct, are often used to provide the basis for efforts at the local level and to generate appropriate expectations from service-users.
- Tools which support transparency.
- Tools which support institutional reform, such as the creation of performance-linked incentives for officials, the reduction of official discretion, and the streamlining or simplification of procedures.
- Tools which support accountability, such as inspection or audit requirements, disclosure requirements, complaints mechanisms, conflict of interest measures and disciplinary rules and discretion.
Tool 13 - Legislatures and The Fight against Corruption

Purpose

The purpose of this tool is to assist legislatures in strengthening the roles they play in areas which are critical to the fight against corruption. These include general areas such as transparency and accountability in government and specific areas such as the formulation and adoption of anti-corruption laws and the independent, multipartisan oversight of anti-corruption bodies. While the focus is on anti-corruption efforts, it must be noted that such efforts are often closely linked to the broader concerns of legislatures in areas such as human rights and the rule of law.  

Description

Anti-corruption efforts in legislative bodies may be directed at the institutions themselves, or at the individuals who serve as elected members. Many elements are simultaneously directed at both: committee structures, for example are institutional structures, but have as one of their major functions ensuring that substantive responsibilities are efficiently allocated among individual members.

Accountability structures. Generally, these include standards and rules governing conduct, and bodies or tribunals which deal with breaches of such standards. In holding individual members accountable, it should be borne in mind that those who hold elected office are politically accountable as well as legally accountable. Legislative or administrative codes of conduct may set general standards for the conduct of election campaigns, the management of offices and the general conduct of the business of an elected representative. Some elements, such as the obligation to attend sittings and participate in various legislative functions may also be governed by procedural rules of the legislature, and are often strongly influenced by political factors such as the need for a political government to ensure that it has sufficient support when the legislature votes on its initiatives. Others, such as rules for disclosing, avoiding and otherwise dealing with conflicts of interest, may have to be developed and established specifically.

Holding elected members politically accountable requires that there be transparency with respect to the business of the legislature and the conduct of its individual members. Structures which would hold them legally accountable, as noted in the previous chapter, must take into account the need for some degree of legal immunity and the independence of the legislature itself. As with independent judges, this generally involves bodies or tribunals constituted from within the legislature itself, to ensure that disciplinary proceedings are not misused by outsiders seeking to improperly influence the conduct of legislative business. English-style Parliaments commonly do this by establishing a committee of members to maintain codes of conduct and where necessary to conduct disciplinary proceedings. Committees are usually established with the same political profile as the legislature as a whole, which ensures that the majority political faction also holds a majority on each committee, but that committees themselves are multipartisan.

50 On the role of parliaments in the fight against corruption, see also the Committee on Economic Affairs and Development of the Council of Europe http://stars.coe.fr/doc00/edoc8652.htm.

**Other oversight structures.** The committee system itself provides additional oversight by distributing subject matter among many committees, some of which will have overlapping mandates. Matters which must obtain the support of one committee for the substantive policy being proposed must often also have the approval of committees responsible for the approval of the budgetary spending it will require for example. Apart from those assigned to monitor the conduct of individual members, committees may also be called upon to monitor areas such as legislative publications, the finances of the legislature itself, freedom of information and media access to legislative matters, and the multi-partisan oversight of key executive functions. The efficacy of legislative oversight depends to a large degree on how well informed members are about the subject matter they are called upon to oversee. Government agencies and other bodies may be required to report to legislative oversight committees regularly or on an ad hoc basis, and may be given research capabilities to assist in their work.

**Transparency structures.** As noted, transparency is critical to holding elected officials politically accountable, and this can be supported by such things as open access to information requirements, media access to the legislature, the publication of accounts and proceedings, modern technological aids such as the establishment of web-sites for the legislature and for individual members, and ensuring that members of the public have as much access to sittings as possible, whether in person, or through technological assistance in the form of television or radio broadcasting. Given the partisan political nature of political activities and political accountability, diversity of sources is important: in their desire to seek re-election, members can be expected to put their achievements in the most favourable light, while the opposite can be expected from political adversaries. It is important that voters have sufficient diversity of views to permit them to make their own judgments.

**Sittings and proceedings of the legislature.** It is important that important political issues be raised in legislative bodies, and both substantive and procedural rules are usually tailored to produce this effect. Procedurally, it is important that individual members have the freedom to express any views or concerns, and that they be provided ample opportunity to do so. The first requirement is generally met by ensuring the freedom of speech or expression for members and affording them legal immunity for statements made in the legislature. The second is met by procedural rules which allocate time among members to ensure that everyone will have an opportunity to speak. Proceedings usually allocate some time for subject-specific discussion on matters such as proposed legislation and some time in which members can raise any issue. A tradition of the Parliament of the United Kingdom which has been adopted by many other legislatures is the holding of regular “Question Periods” in which members can question government ministers, who in parliamentary systems are usually also members and must attend the sittings to respond. In systems where ministers are appointed from outside of the legislative branch, such as the United States of America, other means, such as requiring ministers to appear before standing committees from time to time, perform a similar function. In both systems, failing to appear or giving false or misleading answers to questions is considered a serious transgression and subject to either legal or political sanctions.

**Watchdog Institutions.** The same watchdog institutions which have oversight of non-political government or public-service functions may also have some powers of oversight over legislatures, bearing in mind the need for legislative independence and political accountability. As noted in the previous chapter, the legal immunities of members should be limited to what is strictly necessary to ensure full and free legislative debate and to prevent undue influence from being exerted on legislative matters. Immunity need not shield members from review by bodies such as Auditors General and basic human rights bodies and standards, and it should not shield them from legislative or other rules governing such things as accountability for political funds.

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52 Canada, the United Kingdom and the United States of America all have standing legislative committees for the oversight of national security and intelligence agencies, for example.
the conduct of election campaigns, misappropriation and mismanagement of public funds, improper expenditures or procurement malpractice.

**Preconditions and Risks**

Election campaigns and transition periods. All political office-holders may be subjected to additional corrupt influences during these periods. Funds must be raised and spent quickly, making accounting difficult, and donors may take advantage of political pressures to seek promises of favourable consideration should the candidate be elected. Politicians leaving office suddenly find themselves free of many of the political sanctions used to enforce standards of conduct, and those coming into office are usually under pressure to engage in patronage appointments to reward supporters. All of this can set precedence for corrupt behaviour and erodes the credibility of those involved, making them less effective in fighting corruption, even if dedicated to this task.

**Related tools**

In order for the Legislature to be credible in its fight against corruption it is critical that the Parliament is perceived to have sufficient integrity it self to address corruption as an issue. To increase the integrity of the parliament the following additional anti corruption tool should be implemented:

- Establish, disseminate, discuss and enforce a Code of Conduct for parliamentarians
- Establish a Disciplinary Mechanism (disciplinary committee or publics accounts committee) with the capability to investigate complaints and enforce disciplinary action when necessary
- Have all parliamentarians declare their assets and their campaign financing
- Conduct an independent comprehensive assessment of the governments levels, cost, coverage and quality of service delivery, including the perceived trust level between the public service and the public
- Simplifying procedures of complaining
- Raising public awareness where and how to complain (e.g. by campaigns telling to public what telephone number to call), and
- Introducing a computerized complaints system allowing the institutions to record and analyze all complaints and monitor actions taken to deal with the complaints.
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Situational Prevention
III. SITUATIONAL PREVENTION

Introduction

This is the first of two chapters dealing with prevention and related subject matter. For ease of reference, prevention measures have been classified as either “situational”, in the sense that the measures are directed at specific situations in which corruption problems are to be addressed, or “social”, in which measures are directed at more general social or economic factors in order to bring about conditions less likely to produce or support corrupt practices. Most of the latter measures have to do with raising awareness of corruption and mobilizing the general population to desist from corrupt practices and to expect integrity on the part of those who provide services, particularly in the public sector. For this reason, many of the social elements of anti-corruption programmes can also be considered as “empowerment” measures, in the sense that they provide powers and incentives for members of the general population to take appropriate actions. These are arguably more potent instruments because of the impact they can achieve, but are also much more general in nature and more difficult to classify and describe in detail, and some combine elements of prevention with other desirable effects.

Most of the concern about corruption relates in some way to corruption which exists in the public sector, or which has some significant links to it, and the tools set out in this chapter therefore focus on the prevention of corruption in situations which tend to involve public institutions, functions or other significant public interests. However, many can also be applied to the private sector with relatively minor adaptations or modifications.

Balancing independence and accountability

Good governance and the rule of law require the striking of a careful balance between efficiency and accountability. A balanced system ensures that government officials have sufficient discretion to function effectively, while at the same time regulating and structuring that discretion to avoid arbitrary, unaccountable decision-making, taking into account other relevant factors such as legal, political and economic circumstances. Accountability structures must operate effectively on an everyday basis in order to control corruption.

Effective, practical accountability may be eroded by a variety of problems individually or in combination. Legal accountability requires the effective operation of the rule of law operating through appropriate legislation and competent, motivated and independent courts, judges and lawyers, for example. Political accountability depends on the presence of adequate electoral systems supported by transparency, public information and other civil society functions. Even where adequate procedures and structures are in place, they may be made ineffective by factors such as excessive complexity, a lack of adequate resources, or cultural resistance from officials.

As effective accountability for decision-making is reduced, the scope of administrative discretion increases and various forms of corruption tend to become easier to commit, more widespread and prevalent. Conversely, factors such as the establishment of clear, stable, and coherent criteria for the interpretation and enforcement of legal rules and a public service culture which condones the transparent, objective and accountable application of such rules, prevent corruption by reducing the opportunities for improper actions on the part of officials and deter it by increasing the probability that the officials involved will be held legally or politically accountable for such actions.

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An official who has the discretion to award government contracts, for example, is unlikely to have unfettered discretion in such matters. In a well-regulated system, he or she normally has only the discretion to determine which bidder offers the terms most advantageous to the public interest, and in most cases, will have objective criteria against which to assess the competing bids. The official is less likely to abuse that discretion for corrupt reasons if the terms offered may later be the subject of comparison and comment in the public media, or if unsuccessful bidders are permitted to make their own comparisons and challenge what they may see as improper use of the discretion in some form of judicial or administrative appeal.

**Key areas for institutional reform**

*Regulating official discretion*

The development of rules, practices and cultural values that regulate the use of official discretion should be based on a wide range of criteria, some of them general in nature, and others that may be more specific to the country or particular public function involved. Factors such as cost-effectiveness are important, particularly for developing countries: the objective is to reduce conditions in which corruption may flourish without imposing elaborate or unwieldy controls which unduly impede the transaction of public affairs. One of the reasons openness and transparency are popular strategic elements is that releasing information costs little and controls are exerted by pre-existing political and legal structures. Objective criteria for assessing whether conditions which may foster the abuses of discretion exist, and if so what sorts of measures might be applied to reduce such abuses, can be developed by sampling and reviewing case files and other materials, both generally, and on a country-by-country basis.

*Reducing Procedural Complexity*

One factor that can erode the effectiveness of accountability structures is excessive complexity in the decision-making process. Overly complex procedures impede the functioning of both internal discretion-structuring and control factors such as audits and external structures such as transparency, increasing the potential for corruption. Bureaucracies which have too many layers, overly-complex rules or unclear lines for reporting, responsibility and accountability create environments in which the demarcation between appropriate and corrupt conduct may be unclear, contributing to cultures which are permissive of corrupt practices and may even condone them. Such environments also shield corruption from both official and public scrutiny, and in cases where the presence of corruption itself is apparent, erode the effectiveness of disciplinary and criminal justice controls by making individual responsibility difficult to assign. The problem of complexity is often aggravated by other factors, such as the lack of training and resources that often plague the bureaucracies of developing countries. In such cases, complexity increases the costs and delays of efforts to hold officials accountable, while the lack of adequate financial and human resources on the part of accountability structures such as public auditors, law enforcement agencies and the civil and criminal courts increases the difficulty even further.

These problems may be addressed by assessing and reducing complexity to levels consistent with the basic functions of the bureaucratic functions involved. De-layering and other restructuring procedures, especially in “service-delivery” areas involving extensive contact with private individuals, companies and other elements of civil society not only reduces the potential for corruption, but increases the cost-effectiveness of the bureaucracies themselves, a particularly significant factor in developing countries. Such reforms could be adapted from best practices found to work in other countries or other areas of the government of the country in question, or be formulated as part of the process of overall strategies for good governance reforms or the control of corruption. The use of mechanisms, such as workshops or focused discussion groups which incorporate participation of not only bureaucrats, but those members of civil society who are the users of the service in question is important, both to ensure the
Situational Prevention

development of viable reforms and to ensure “ownership” of those reforms by those most concerned with them.

The reform and streamlining of public administrations is often undertaken for reasons other than combating corruption, and many examples of useful programmes can be found in the work of the development agencies of governments, intergovernmental and non-governmental organisations. Reforms undertaken for other purposes will generally be consistent with the additional goal of reducing the opportunities for corruption, and in many cases, will have specifically incorporated anti-corruption elements. In developing anti-corruption strategies, it is important that more general goals of public-sector reform be considered, and vice-versa.

Increasing Transparency in the Allocation of Public Resources

Another factor that is strongly associated with both legal and political accountability is transparency. In the context of preventing corruption, transparency in the structures and procedures whereby public funds are spent and benefits conferred directly helps to prevent corruption by reducing the opportunities for corrupt officials and transactions to remain undetected. Where the light of public scrutiny does disclose corruption, deterrence and control factors such as criminal, civil and disciplinary liability and loss of political support are engaged. Transparency may also prevent corruption in less-direct ways. Public scrutiny may generate political pressure to reform overly complex and inefficient bureaucracies, leading to changes which reduce the opportunities for corruption as a side-benefit, for example. More generally, the establishment of transparency as an ongoing, general principle of public administration serves to educate the population, developing popular expectations of high standards, and triggering a response when those expectations are not met or when transparency is withdrawn in an attempt to conceal malfeasance.

Transparency structures may be internal within the public sector, as is the case with internal audit systems, or they may be external, as where matters of public accounts or public resources are subject to public debate in legislative bodies or review by the popular media. Transparency requires not only that relevant information is disclosed and accessible, but that it be gathered and produced in a format which is both authoritative and easily understood. Internally, this requires the establishment of effective budgeting and auditing systems which have access to accurate government information while at the same time having a sufficient degree of independence or autonomy to ensure that the information will be dealt with objectively. Such systems must be capable of analysing information both in the detailed context of specific government functions or agencies, and in a more general approach which integrates government-wide data. Externally, transparency requires the existence of motivated, competent, adequately resourced and independent elements of civil society to scrutinise public administration and make observations and conclusions available in a form accessible to various segments of the public. This includes not only popular print and broadcast media, but also more specialised commentators such as academics, trade unions and professional associations, which report on specific subject-areas to specific constituencies.

The political oversight of legislative bodies is also important, both at the stage of setting budgets and spending priorities and in ensuring that these are adhered to. Such oversight ensures popular input, and hence ownership for major policy decisions, as well as making the overall process subject to political accountability. This is also true for cases where a government finds it necessary to depart from established spending priorities. Such departures will occur from time to time, but political oversight and accountability create counter-pressures which ensure that departures will only occur when a legitimate necessity can be established, and increased public scrutiny of the new priorities and the way in which resources are allocated to them. Such transparency is required at all levels of government, including central, municipal, and in federal systems, regional governments, and internally within each level, and there should be a
substantial degree of vertical integration in such elements as audit requirements to ensure that increased scrutiny in one level does not simply displace corruption there to other levels.

Consistency and clarity in the principles, which govern the allocation of resources, is also an important element of transparency. Establishing basic principles for accountability through such things as requirements to keep records and the independent auditing or review of such records develops a public expectation that such controls will be applied, and the knowledge of officials that the public expects this. Media and other commentators become educated as to the functioning of such controls, ensuring that any abuses identified, or any attempt to depart from basic principles, whether by an individual official or the government itself will be reported. It is important that such principles become established, both as administrative practices and cultural values, at all levels of government. In many cases, countries that have vigorous scrutiny of public administration at the central or federal government levels are plagued by corruption.

Employee culture and motivation and the creation of positive incentives

The culture and motivation of officials is a critical factor at several stages of corruption-prevention. Officials among whom corrupt values and practices have been adopted and institutionalised as cultural norms tend to persist in such practices themselves and to be resistant to structural or cultural reforms intended to reduce corruption itself or strengthen anti-corruption measures such as transparency and accountability. Bureaucratic cultures are influenced by extrinsic factors such as status, wages, working conditions, job security, career advancement and the nature of the duties of the bureaucrats in question. Once established, entrenched cultural values tend to be very difficult to uproot, particularly in relatively closed, rigid bureaucracies such as those commonly associated with police or military personnel.

Low status, salaries and living standards contribute to cultural values sympathetic to corruption for several reasons. At a practical level, officials who have low living standards are more likely to be tempted by bribes or other benefits that would improve those standards. On the other hand, officials who enjoy high status and standards have more to lose if disciplined or prosecuted for corrupt practices and are therefore more susceptible to deterrence measures. Low salaries and living standards are also commonly associated with low morale and self-esteem, which can create moral justifications or rationalisations for corrupt behaviour. Employees who perceive themselves unfairly treated may engage in corrupt practices to obtain what they see as fair compensation, or as a form of revenge against employers or society. The behaviour of the officials in such cases will be determined by a combination of subjective and objective factors. Ultimately, corruption tends be associated with what the corrupt officials perceive to be their situation, which perception itself depends to some degree on the actual conditions in which they find themselves.

The perception also depends to a large degree on the basis for comparison to the officials’ owns situation. Often the basis are the conditions enjoyed by those in the private sector who have what is seen as equivalent duties, or are employed in positions commonly encountered by the officials in their duties. If a wide gap is perceived, officials are tempted to migrate to the higher-paying careers or to engage in corrupt practices in order to raise their standards of living and status to what is seen as acceptable levels. Examples of this phenomenon abound in the area of narcotics enforcement, where even relatively well-paid officials are sometimes tempted by the affluence and ostentatious lifestyles of the major offenders they encounter.

To reduce such tendencies, the establishment of adequate salaries, status and working conditions for officials is an important preventive measure. Similarly, it is important that career advancements, such as promotion and salary increases, be based on merit rather than corrupt criteria. While reforms such as salary increases can be costly, it is essential that public officials be assured of an adequate standard of living in comparison with their counterparts from the
private sector, and that status and salary levels in the public sector be commensurate with the workloads, duties and levels of responsibility involved.

It is unlikely that any salary increase that is affordable will match the potential incomes from corrupt practices in many cases, particularly in developing countries where resources are in short supply. In such cases, educating officials about the importance of the work they do can also help to increase professional status, support non-monetary incentives for ethical public service and encourage realistic assessments of disparities between themselves “equivalent” employees in the private sector. Education can also be directed at more fundamental issues. Corruption offers the possibility of great individual enrichment, but only at the cost of erosions in overall social conditions in which the officials involved and their families must still live. Officials tempted to compromise on safety standards, for example, can be reminded that such compromises may well endanger themselves, friends and family members. It is also absolutely essential that any perception that public sector salaries are low in the expectation that they will be supplemented by corrupt income be thoroughly dispelled.

In attempting to instil bureaucratic values, it is important that measures be realistic, practical and enforceable. Ethical principles should be straightforward and clearly enunciated in a format easily understood by those to whom they are directed. Complex structures or principles afford opportunities for creative interpretations that can foster corruption. It is also important that the same messages be delivered by everyone and to everyone. The same principles that apply to junior officials should also apply to their superiors, and senior officials should reinforce basic ethical principles both in their statements to subordinates and in the example of their own conduct and practices. More generally, the same principles should be known to and supported by civil society, so that it is clear to officials what will be expected of them, and so that public service values are consistent with those of the society as a whole.

Result and evidence based management

The internal accountability of officials can also be strengthened by the use of management styles in which the assessment of merit and, hence advancement, is based on measurable results. Many governments and organisations, in order to provide a coherent accountability framework, have adopted result-based management, also known as performance management. Such systems are also used to ensure appropriate accountability in decentralised structures. Decentralisation, in which greater autonomy is given to officials closer to the decision-making process, offers the possibility of greater efficiency and more responsive decision-making, but the greater autonomy can make relatively junior officials less accountable. The potential for corruption increases unless accountability is instituted in other ways.

Internal reporting procedures

Most of the preventive measures set out in the previous segments have elements that operate through internal government processes as well as through the external relationship between officials and the private sector or general population. Once these basic measures are in place, their effects can often be greatly amplified by the adoption of additional elements on a purely internal basis. These are effective because, being specific to the organisation involved, they can be specifically tailored in accordance with factors such as the types of people who work in the organisation, the functions it performs and the ways in which it is organised, both formally and informally. Functions such as the keeping of formal records, audits, and the instruction and discipline of officials are common to most if not all bureaucracies, for example, but would operate quite differently in a para-military police force than in organisations which administer such things as public health-care or transportation infrastructures.

Each organisation should be encouraged to adopt standards and practices which are appropriate to its individual factors, but which are also consistent with more fundamental principles.
established for the government as a whole. Requirements for the keeping of records should ensure that appropriate records are kept, protected from tampering and made available for audits or similar reviews, but the exact form and content of such records may vary. Individual decision-makers must be afforded sufficient information and discretion to perform their functions, but still subject to appropriate review to monitor performance and permit inappropriate or incorrect decisions to be reversed. The exact means of review will also vary: the decision of a police officer to arrest a suspect will in most cases be challenged in the criminal courts, whereas other decisions might be the subject of an administrative review, complaint made directly to another official, or another agency established for the purpose, such as an ombudsman. In some cases, decisions seen as inappropriate will be brought to the attention of the public media in an attempt to generate popular political pressure for redress. In all cases, the review process has two related functions: the correction of unfair or incorrect decisions, and the identification and correction of problems within the decision-making process itself.

Of particular concern are internal structures intended to identify and address corruption or other improper practices on the part of officials. Such structures should be equipped and willing to entertain reports or complaints from both users of the bureaucracy and those who work within it. They should be competently staffed and adequately resourced, and possess some degree of independence or autonomy from those whose functions they review. They require sufficient authority to gather information or evidence, to develop remedial measures and to ensure that such measures are implemented. In many cases such remedial measures may include the discipline, discharge or criminal prosecution of those found to have engaged in illegal or inappropriate conduct. Often such structures will be charged with dealing with other areas of official malfeasance in addition to corruption. The degree of formality may vary depending on the seriousness of cases and the nature of the bureaucracy within which they occur, ranging from relatively informal official enquiries to full-blown criminal law-enforcement and prosecution operations. The seriousness of a bribery case might vary depending on what official was bribed, what outcome was sought, and whether it was achieved. Most systems would treat attempts to bribe a minor official to issue a business licence prematurely less seriously than the successful bribery of the judge in a major criminal case, for example.

The elimination of conflicting interests

While it is desirable to have public officials who are completely independent of the decisions they are called upon to make, this is not always possible. Officials must live in society. Their children attend schools, they invest their wages, buy and sell personal property, use health-care systems and many other services which can create interests which conflict with independent decision-making. Having a personal interest which conflicts is not corrupt or improper, per se; the impropriety lies in having a conflict of interest which is not disclosed or in which the private interest is allowed to unduly influence the exercise of the public interest. To address this, many governments have adopted systems which require officials to identify personal interests which may conflict and ensure that some action be taken to eliminate the conflict. This can be done at either side of the conflict. Requiring the official to divest or dispose of it, either as a conflict arises, or more proactively, as a condition of employment could eliminate the private interest. Alternatively, removing the official who has a conflict from any position of influence could protect the public interest.

Divestment or mechanisms such as “blind trusts”, in which decisions are made by a trustee so that the public official has no knowledge of what assets he or she owns, are often used in cases where the nature of the public office involved is likely to raise conflicts too frequently to be dealt with on a case-by-case basis. Finance ministers and other senior public officials responsible for setting fiscal or monetary policies, or who make policy or enforcement decisions with respect to stock-trading, might be completely prohibited from owning or trading in stocks as a condition of employment, for example. Similarly, employees whose duties routinely involve handling “inside knowledge” of a company’s financial status and affairs might be prohibited from any trading in
that company’s stock as a precaution against “insider trading”. Excluding the official involved from any position of conflict, on the other hand, is often used for more routine conflicts of interest, or in cases where requiring divestment or non-ownership is impracticable or unfair to the official. For example, officials cannot be prohibited from owning houses or other real property, but an official may be required to abstain from participating in or voting on municipal decisions which could increase or decrease the value of specific property the individual owns.

The management of conflicts of interest in this way also requires organisational structures that are sufficiently decentralised to ensure that if some officials are excluded, enough independent officials will remain to make the necessary decisions in a manner which is consistent with the public interest and visibly free of corruption. Monitoring and other precautions are also needed to ensure that corrupt officials are not able to conceal their true interests, that the ultimate decision-maker is kept independent of any colleagues who may have conflicts, and that inside information is not simply transferred to a third party for corrupt use to the indirect benefit of the official. Many codes of conduct or employment contracts may specify that information not be disclosed and extend other anti-conflict measures to third parties close to the official, such as former employers or business associates or close family members\(^{54}\).

Taking proactive measures against conflicts of interest clearly prevent corruption by routinely removing the temptation or opportunity to engage in it. They also protect officials by removing any basis for suspicion, and instil trust and confidence in the integrity of public administration. Such measures also increase deterrence and the effectiveness of criminal justice measures by creating records which make it easier to prosecute or discipline corrupt officials. In some cases, corrupt officials can be identified and dismissed based only on their failure to comply with disclosure requirements, which avoids the need for more costly and complex criminal proceedings, and removes the official before any significant harm can be caused by actual corruption.

**Disclosure of Assets**

Requiring officials, and in particular those in senior positions, to disclose their assets, either publicly or to internal government anti-corruption agencies, prevents corruption in two major ways. The identification and disclosure of assets and interests assists both the official concerned and the government in determining whether conflicting interests exist which may require either divestment of the private interest or the reassignment of the public interest to another official not in a conflict position. More generally, requiring officials to fully disclose their wealth and specific assets at various stages of their careers provides a base line and means for comparison in order to identify assets which may have been acquired through corruption. An official who has acquired significant wealth while in office might reasonably be required to explain where the wealth came from.

To support the first function, public officials may be required to list their major interests and assets upon assuming office, and to ensure that the list is kept up to date while in office. This permits others to consider whether a conflict of interest exists and if so, to call for appropriate action. Some systems go further, placing the onus on the official involved to formally indicate that a conflict of interest may exist whenever this appears to be the case. To support the second function the listing of assets must take place at an absolute minimum when the official assumes and leaves office, but most systems require more regular assessments, in order to identify corrupt officials before they leave office. While such systems may be based on self-reporting, corrupt officials will not incriminate themselves. This requires formal and independent reviews and record-keeping functions, accompanied by sanctions for officials who fail to report or

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\(^{54}\) In most legal systems, a contract between an employer and employee cannot bind others, such as associates or relatives, who are not a party to the contract. It can, however, impose conditions on the employee, which are contingent on actions or conduct of third parties.
misrepresent information. Such sanctions could be of a criminal, monetary or disciplinary nature, but should be serious enough to provide an adequate deterrent. As with the disqualification of officials, the vigorous application of such sanctions can be a powerful instrument against corruption, since officials can be removed simply for failing to meet reporting obligations, even if actual corruption cannot be proven.

Disclosure of political contributions

The principle of disclosure can also be effectively applied to the making of political contributions to ensure that they are legitimate attempts to support a particular political faction rather than attempts to bribe or buy influence with politicians who are in government or who may later assume it. In such cases, disclosure requirements can be used to assist in the enforcement of legal requirements, such as bans on large single donations or the anonymity of donors, particularly if both the donor and recipient are required to make the necessary disclosures. Since the public function involved is by definition political in nature, the transparency created by disclosure requirements also supports basic political accountability. Officials who are publicly known to have received large donations from identified individuals, companies or other interests will find it politically difficult to improperly favour these interests once in office. Distinguishing between cases where the donor simply supports the political faction he or she later expects to follow a particular policy or course of action and cases where the donation is intended to actually influence or bring about that course of action would be difficult in a court of law, but public disclosure requirements address this problem by effectively transferring the issue to the court of public opinion. Where disclosure requirements are imposed, it is usually important that timely disclosure be required. Unless information about contributions, which may affect the outcome of an election, is made public before the election, any real political accountability is deferred until the next election.
Tool 14 - Disclosure of Assets and Liabilities by Public Officials

Purpose

The purpose of this tool is to increase transparency with respect to the incomes and assets of public servants. Assets must be declared, and any increases must be accounted for, which deters illicit enrichment from sources such as bribery or investments made with inside knowledge, and ensures that cases where this does occur are quickly identified and dealt with. The disclosure of information concerning the incomes and assets of public servants also raises privacy concerns, and “transparency” in this case does not necessarily entail full public disclosure. Where possible, disclosure may be made to bodies established for this purpose and trusted to take any necessary actions, such as inspectors or auditors general. Where this is done, full public disclosure need only be made in cases where improper conduct is discovered.

Description

The obligation to disclose can be either established by legislative means such as statutes or regulations, or as a contractual condition of employment. To clarify the exact nature, scope and reasons for disclosure, new employees may be required to sign documents such as “integrity pledges” setting out the details. It is usually neither necessary nor practicable to subject every member of the public service to a disclosure obligation; these normally apply only to officials at or above a fixed level of seniority or those in specific positions. In either case, the purpose is to target the measures on those public servants whose positions place them in a position where there is sufficient potential for illicit enrichment. Examples commonly include those who are responsible for government expenditures, the allocation of contracts or other benefits, those who have discretion in dealing with public funds or assets, those whose positions entail access to confidential information which has value or which can be used to gain wealth or advantage outside of government, those whose decisions carry economic impact on others, and those responsible for audit and watchdog functions in these areas.

Initial disclosure should be required either upon entry into the public service or on employment in (or promotion into) a position for which it is required. This generates basic information against which later disclosure can be compared to assess whether there has been enrichment which must be accounted for. Disclosure itself would contain elements similar to that required by many income-taxation systems, including basic income from all sources and any large expenditures, but go beyond this to require information about assets, including investments, bank-accounts, pensions and other intangibles, as well as real property and major items of personal property. It should require the disclosure of holdings and transactions both domestically and in other countries and currencies. In addition, disclosure of locations dates, parties and other basic information which permits the verification of any element of the disclosure should also be required, and the official should be required to consent to further disclosure by others holding information on his or her behalf, such as banks or financial institutions to those responsible for verification or investigation. Officials can also be compelled to provide further assistance, up to the point where criminal malfeasance is suspected, at which point rights against self-incrimination will usually apply.

Penalties for failing to disclose as required, or for making false or misleading disclosure, must be severe enough to act as a significant deterrent. Generally, this will require at least the same penalties as apply for the types of misconduct the disclosure is intended to discover: otherwise corrupt officials will simply refuse the disclosure as the lesser penalty. Disclosure requirements

55 If the employee has a separate written contract of employment, that document should either set out the disclosure obligations or incorporate by reference any other document used such as an integrity pledge.
are intended to deter corruption and to identify and exclude corrupt officials, which requires that
two distinct types of penalty should apply. Discharge and other disciplinary sanctions flow from
breach of contractual requirements either to disclose (non-disclosure) or to refrain from corrupt
behaviour (malfeasance), and from breaches of criminal or other offence provisions. The first
category results in employment action to remove the official from the public service or from a
position open to abuse, and the second leads to criminal punishments intended to deter others.
Since only one category is of a criminal law nature, double-jeopardy rules do not, and should not
apply.

**Preconditions and Risks**

The major difficulties with disclosure requirements arise from the fact that they must balance
between controlling illicit enrichment and the privacy of those required to make disclosure.
Legitimate employees may feel that they are being treated as offenders, or untrustworthy
employees, and private harm may occur if personal information is made public without good
cause.

The interests of controlling corruption and illicit enrichment generally favour some disclosure
with respect to associates and relatives of officials, but this is more problematic. They are not
parties to any employment contract and therefore cannot be contractually obliged to make any
disclosure. The employee can be obliged to disclose information about transactions he or she has
with a relative, but cannot compel the relative to disclose information the employee does not
have. Legislative requirements can be imposed, but this will usually require political
justification, and in some cases constitutional justification, for invading the privacy of non-
employees, and may encounter difficulties in defining the class of individuals who would be
subject to the obligation in respect of each official.

When the obligation to disclose extends beyond immediate family, a greater need emerges to
verify the disclosures. For example, in cultures where it is not unusual for extended family to
provide significant financial support either in money or housing, it is important to take into
account this fact when evaluating the lifestyle of the disclosure subject. An initial judgement that
one is living beyond his means can easily be explained by financial assistance from family
members. At the same time, this fact also requires that inquiries be made regarding the family
donors’ means. It would not be unusual for a corrupt official to use his extended family as a
conduit to receive ill-gotten bounty. Any verification method should aim to produce an accurate
initial lifestyle evaluation. The method should be clear and transparent in order to avoid
criticism.

**Related tools**

Tools which may be used in conjunction with declaration of assets include the following.

- Code of Conducts and/or legislation outlining the requirement for the declaration of assets
  and the consequences if somebody is either not complying with the rules by not reporting
  their assets or not reporting them accurately.

- Tools giving the public access to the declared assets

- Tools establishing an Asset Declaration Monitoring Body. Successful enforcement requires
  an entity with a clear mandate, capacity and resources to build a system that keep records,
  monitor the timeliness and the validity of the assets declared. The asset declaration
  monitoring board needs to be mandated as part of the legislation introducing monitoring of
  assets and sufficient resources have to be budgeted to ensure a proper records management,
  investigation and enforcement trough a disciplinary body.

- Tools which establish and raise public awareness and expectations, such as Citizens’
  Charters and public-relations campaigns.
• Tools which establish and support mechanisms to enforce compliance, disseminate, monitor and investigate cases where. In most cases, enforcement of political standards consists of simple transparency, leaving voters to interpret the appropriate standards and the conduct of political officials, and to decide for themselves whether standards have been met.

There are no tools which should be specifically avoided if a body is established to develop and administer declaration of assets. Questions of overlap with other applicable standards, especially legal ones, will arise, however. If legal compliance mechanisms are applied, the standards must become more clear and certain in order to be enforceable, effectively making these standards indistinguishable from employment codes of conduct or legislative standards (tool 5, above).

In order to increase transparency with respect to the incomes and assets of public servants, it is important that the declaration of assets is enforced and monitored.
Tool 15 - Authority to monitor public sector contracts

**Purpose**

The purpose of this tool is to create a specialised authority to monitor key contracts and transactions in areas where corruption is widespread. Such authority or mechanism could be established from within a country, but in many cases an international authority may be needed to ensure that it is beyond the reach of corruption. The basic functions of such an authority would include the review and validation of non-corrupt transactions, the identification of corrupt transactions and generating advice or recommendations for anti-corruption reforms.

Purpose of this tool is to:

- Increase the uncertainty of exposure and punishment for corrupt national and multi-national practices regarding public sector contracts.
- Increase the transparency and accountability of the business community in international contracting and thereby improve the efficiency and effectiveness of projects, as related to natural disaster relief efforts, among others.
- Remove national immunity for international corrupt practices as a foil in those countries where extradition is unavailable to complaining countries and thereby ensure that guilty parties are tried at the very least in their country of residence.
- Initiate a complaint mechanism which is easily accessible to civil society and civic organizations as a means of addressing mal-administration and corrupt practices within international aid efforts (see tool 4, international ombudsman)

**Description**

**Background**

In recent years, international organizations have been focusing increasing attention on the impact of corrupt activities on economic, social and political development. To this end, several have adopted anti-corruption instruments which codify measures to address such practices in international commercial transactions including, but not limited to, the Inter-American Convention against Corruption (OAS, 1996), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 1997) and the Criminal Law Convention on Corruption (Council of Europe, 1998).

At the same time, a number of development projects are failing and services are not being delivered because of dubious practices within international agencies and non-governmental organizations. Thus the use of aid allocated for a given project is not being maximized and is having reduced impact. As a result, the world's most poor and vulnerable are paying the consequences and have no effective channels of complaint.

**An International Anti Corruption Forum (IACF)**

The need for establishing an authority or mechanism, let us call it an International Anti Corruption Forum (IACF) was first discussed between the World Bank and CICP on December 8, 1998.

The IACF would assist in the implementation and application of current and future anti-bribery conventions adopted by multilateral institutions as a means of raising transparency in international commercial transactions, and the awareness among the international business community of (i) the unacceptability and, indeed, the illegality of participating in corrupt
practices abroad, and (ii) the consequences of such participating in such practices (including extradition and imprisonment, monetary sanctions, international press exposure, tarnished business reputation, blacklisting, etc.).

Domestic authorities could be established by legislation or executive appointment. In such cases, the basic credibility of the authority will depend on the credibility of individual members. On the request of a Member State, the United Nations Centre for International Crime Prevention (CICP) could select three internationally renowned experts in the corruption prevention field to staff an international authority for the requesting State.

**The role and the mandate of the IACF**

*Review of Public Sector Contracts.* When established, the IACF would assist local authorities producing a document setting out the types of public-sector contracts which should be submitted to it for review, based on criteria such as the type of contract or the value of the goods or services involved. Generally, review would include not only the terms of the contract itself, but the process whereby it was prepared and a successful contractor was selected, including the drafting of contract requirements which were fair and did not favour specific applicants and the management of processes for soliciting and assessing competitive bids.

*International Commercial Transactions.* The IACF could also monitor international commercial transactions undertaken within the country. In response to a request from the government or one of the parties to the transaction, it would review such things as negotiations, contract terms and the fulfilment of the contract or completion of the transaction, providing transparency and the assurance that the transaction was not corrupt. It could also offer advice to those planning or arranging transactions. It should be empowered to report any improprieties to the appropriate judicial, law enforcement or anti-corruption authorities.

*Transparency and annual report.* The work of the IACF should be as transparent as possible, having regard to the fact that some aspects of contracts and transactions must in some cases be kept confidential for commercial or competitive reasons. The authority should make public reports on its work from time to time. These could take the form of reports on specific transactions, contracts or other activities the authority was requested to review, or periodic reports summarising the general work of the authority. Periodic reports should be made annually if the volume of work carried out warrants this. The mass media should be encouraged to publish materials from such reports.

**Organization of the IAF**

Three mechanisms for monitoring the public sector contracts and international commercial transactions have been envisaged: (i) an international contract transparency mechanism; (ii) an international accountability/arbitration mechanism; and (iii) the establishment of a UN Ombudsman. The first could have a direct effect on public sector contracts. The second, which might encompass both public sector contracts and international commercial transactions, could provide the contractors with an international arbitration mechanism allowing for decisions on the commercial effects of corruption and bribery. The third would organize an international complaints system through the establishment of an Ombudsman which would address the concerns of civil society and civic organizations relating to mal-administration and/or corruption in international development activities.

**Mechanism for Transparency in Public Contracts**

This mechanism would seek to guarantee the honesty and transparency of public sector contracts. First, the public sector contracts falling under the jurisdiction of the mechanism must
be identified. Specific criteria might be defined such as the amount of the contract and the nature of the goods/services. In addition, these contracts may include international elements.

**Mechanism for International Accountability/Arbitration**

This mechanism would seek to ensure the international accountability of national authorities/bodies and international companies involved in public sector contracts and in international commercial transactions. It should be underlined that the jurisdiction of the arbitrators would only be applicable to the commercial consequences of the contract. The criminal offence will remain within the jurisdiction of the national criminal justice system. The advantages of such arbitration mechanisms include: objectivity, speed, reduced bureaucracy and prompt implementation of the decision. States signing such agreements will assure the international community and the private sector of their strong commitment to respect transparency and accountability.

**Mechanism for UN System Ombudsman (see also tool 4)**

The establishment of an Ombudsman for the UN system is proposed to increase transparency and accountability, and to provide an avenue for civil society (at both the national and the international level) to initiate remedial action. Such an Ombudsman would not have jurisdiction over complaints within the UN system about itself, which are presently covered by other arrangements. The focus of jurisdiction for the Office would be on mal-administration in the delivery by UN agencies of specific projects and services to civil society within recipient countries. The Office could have the following additional features:

- Focus on improved administration and accountability, and the establishment of a co-operative relationship with relevant UN agencies—it might also cover the World Bank and the Regional Development Banks;
- A system through which complaints could be addressed both from civil society and "whistleblowers" within the UN system itself—where a "whistleblower" was within the UN system, it would be contrary to relevant procedures for any form of subsequent retribution, etc. to ensue;
- Right of access to all relevant documents and to interview staff within relevant agencies; and
- Regular reporting requirements to the General Assembly, for instance annually and in special reports as dictated by given circumstances.

**Selection of Experts:**

A pool of high level experts recognized at the international level for their expertise and competence in the area of anti-corruption strategies and economic, financial and legal affairs will be selected. The pool should include, among others, prosecutors, judges, academics and representatives of the private sector, selected on a broad geographical basis. The experts will CICP/ODCCP in assessing the needs of the requesting countries, in elaborating on recommendations of best practice to tackle corruption as well as in implementing the measures recommended by the Global Programme.

**Possible Functions:**

- Independent and non-partisan assessment of the cost of structural building (e.g. a bridge, school, house or hospital) to guide the disaster relief and rebuilding effort.
• Neutral assessment of large tenders/bids on big contracts. People from the international assessment facility could be called in to review the final bid process. In particular, upon the request of the national authority in charge of issuing the contract, the CICP/ODCCP would offer advisory services covering all the phases leading to the conclusion of the contract, and in particular, the establishment of criteria for the selection or designation of candidates. The immediate effects would be a significant improvement in the transparency of these types of contracts, real competition among the candidates, and real competitiveness in the field of international transactions.

• Strengthening Rule of Law: Examination of the modalities of the recent international cases of violation of the Geneva Convention with regard to war crimes and crimes against humanity to determine lessons from these incidents and make it fair game in the future for the international community to take on corrupt officials when they are traveling outside their protected area.

• Test the implementability of the OECD Convention and the OAS Convention by having countries implement the law.

• Implementation of an Arbitration Mechanism within the framework of the “National Anti-Corruption Programme Agreement.”
  • Provisions for the mechanism could deal with cases of corruption and bribery defining those contracts to which the mechanism will be applied. In addition, this mechanism might also be included in sub-regional or regional treaties or conventions against economic crimes, either as part of treaties or as a protocol. The State or other partners could submit the cases to the college of arbitrators who would apply the rules of international trade to these transactions. For each international commercial transaction or public sector contract which falls into such a mechanism, a letter of agreement would have to be signed by the parties and the State in order to give jurisdiction to the international arbitration mechanism.

  • Both representatives of Member States and representatives of companies involved in an international commercial transaction falling within the International Arbitrators jurisdiction would obtain the right to bring the case to these arbitrators. Principles and procedures of arbitration would refer to the principles established by the United Nations Commission on International Trade Law. The arbitrators will transmit their decisions to the parties. Because of the penal implications of corruption and bribery, the arbitrators should also send a copy of their decision to the competent national criminal justice authority.

  • The IAF could assist the Oversight Committee, especially in the dealing with the "corrupt initiatives from the North" but also, possibly, if there is involvement of political parties in “grand corruption” which might be discovered.

  • Ombudsman function for UN agencies which would seek to raise awareness in the countries of the South of the complaint system through which they could make their voices heard.

Expected Impact:

At the national level, the implementation of the proposed project would result in more effective international transactions, by increasing the efficiency and transparency of financial and contractual procedures. This may in turn liberate national funds for other socio-economic programs as well as corporate funds for commercial investment.

Internationally, the project would improve the transparency and accountability surrounding the international commerce, raising the uncertainty of businesses in benefiting from corrupt practices. It would also emphasize the consequences being incriminated (including extradition and imprisonment, monetary sanctions, international press exposure, tarnished business reputation, blacklisting, etc.) thereby providing a disincentive to participating in such practices.
Increased accountability in the INGO community would result from the establishment of a complaints mechanism designed to address concerns from civil society relating to aid projects being conducted within a client country.

Partner Institutions:

The Office for Drug Control and Crime Prevention (ODCCP) and the Centre for International Crime Prevention (CICP), Transparency International (TI), OECD, IMF and the World Bank

Preconditions and Risk

Key challenges establishing such a facility:

- Location of such a facility
- Addressing issues of sovereignty
- Identifying key people to involve
- Piloting and identifying scope of activities

Related tools

For the IACF to succeed it is critical that the following programmes are implemented in parallel:

- A clear international mandate including the necessary resources needs to be established by a relevant international legal instrument and/or convention
- Educate, aid and empower businesses to be able to refrain from participating in illicit behaviour, as either the victim or perpetrator of corrupt transactions;
- Promote ethical standards in business through the development of codes of conduct, education, training and seminars;
- Develop high standards for accounting and auditing, and promote transparency in business transactions;
- Develop rules and regulations that draw a clear line between legal and illicit activities;
- Develop normative solutions to the problem of criminal responsibility of legal persons; and
- Develop sufficient internal control mechanisms, personnel training and development of sanctions for violations.
Tool 16 - Curbing Corruption in Procurement Process

Purpose

The concept of “islands of integrity” is based on two common concerns:

- The fear that many of the pressures to engage in corruption arise from concerns that competitors will do so; and,
- The understanding that, where corruption is pervasive, it may not be feasible to attack it everywhere at once.

It is argued that, if an “island of integrity” can be created by ensuring that a particular agency, department, segment of government or transaction is not corrupt, competitors can be secure in the knowledge that refraining from corrupt practices themselves will not put them at a competitive disadvantage.

Description

Transparency International (TI), the NGO behind the Island of Integrity concept

Transparency International (TI)\(^{56}\) developed the concept of Island of Integrity to prevent corruption. TI itself has based its anti-corruption approach on the following three basic principles:

- **First**, it aims to build broad coalitions against corruption by bringing together groups that are expressly non-partisan and non-confrontational. Consultations draw in other relevant segments of civil society--typically business leaders, journalists, religious figures, academics, existing NGOs with shared aims, members of chambers of commerce and other professional bodies--to test the interests and feasibility of forming a national chapter. In some instances, well-established NGOs of high public standing have amended their constitutions to adopt the TI approaches and then become their country's national chapter.

- **Second**, the role of the national chapters. Not only are the TI chapters the "owners" of the TI movement, but they are free to define their own mandates and work programmes. However, they must follow two important rules of conduct: (i) they will not investigate and expose individual cases of corruption as such activity would undermine efforts to build coalitions which promote professional and technical improvements of anti-corruption systems; and (ii) they must avoid party politics as partisan activity would damage TI's credibility.

- **Third** element of the TI strategy is to involve civil society in an evolutionary manner. Rather than arguing for dramatic, sweeping programmes that attempt to cleanse the stables in a single onslaught, TI argues for achievable and highly specific plans of action in a step-by-step process towards problem solving.

Why is there a need for an Island of Integrity concept

The prevalence of corruption can dishearten individual firms or even nations from taking the first step to end the practice. When everyone pays bribes, no one wants to be the first to stop and end up empty-handed. To counter this, TI has developed an approach it has called "Islands of Integrity," where in a specific project, all parties enter into an Integrity Pact (or Anti-Bribery Pact)

\(^{56}\) Transparency International see TI web page and/or TI Sourcebook
The "Islands of Integrity" approach is also being developed in areas of government activity which are particularly susceptible to corruption (e.g. revenue collection). In such cases, it can be feasible to hive off the department concerned, ring-fence it from other elements in the public service, pay the staff properly, and have officials raise their standards.

Public Procurement: Where the Public and Private Sectors Do Business

Mention the subject of corruption in government and most people will immediately think of bribes paid or received for the award of contracts for goods or services, or--to use the technical term--procurement.

Few activities create greater temptations or offer more opportunities for corruption than public sector procurement. Every level of government and every kind of government organisation purchases goods and services, often in large quantities and involving much money. This is in many countries seen as one of the most common form of public corruption partly because it is widespread and much publicised.

**Public procurement--Private profit.** To the non-specialist, the procurement procedures appear complicated, even mystifying. They are often manipulated in a variety of ways, and without great risk of detection. Some would-be corrupters, on either side of transactions, often find ready and willing collaborators. Special care is needed, as the people doing the buying (either those carrying out the procurement process or those approving the decisions) are not concerned about protecting their own money, but are spending "government" money.

**To be found everywhere.** Corruption in procurement is sometimes thought to be a phenomenon found only in developing countries with weak governments and poorly paid staffs. The "most developed" countries have amply demonstrated in recent years that corrupt procurement practices can become an integral part of their doing business. Nor is procurement corruption the exclusive domain of the buyer who controls the purse strings: it can just as easily be initiated by the supplier or contractor who makes an unsolicited offer. The real issue, of course, is what can be done about it?

**Principles of fair and efficient procurement**

*Value for money.* Procurement should be economical and based on the principle “value for money”. It should result in the best quality of goods and services for the price paid, or the lowest price for the acceptable quality of goods and services; not necessarily the lowest priced goods available; and, not necessarily the absolutely best quality available, but the best combination to meet the particular needs. "Price" is usually "evaluated price"--meaning that additional factors such as operating costs, availability of spares, servicing facilities are taken into account.

*Fair and impartial.* Contract award decisions should be fair and impartial. Public funds should not be used to provide favours; standards and specifications must be non-discriminatory; suppliers and contractors should be selected on the basis of their qualifications and the merit of their offers; there should be equal treatment of all in terms of deadlines, confidentiality, and so on.

*Transparent.* The process should be transparent. Procurement requirements, rules and decision-making criteria should be readily accessible to all potential suppliers and contractors, and preferably announced as part of the invitation to bid. The opening of bids should be public, and all decisions should be fully recorded in writing.

*Efficient.* The procurement process should be efficient. The procurement rules should reflect the value and complexity of the items to be procured. Procedures for small value purchases should be simple and fast, but as purchase values and complexity increase, more time and more complex rules will be required to ensure that principles are observed. "Decision making" for
larger contracts may require committee and review processes, however bureaucratic interventions should be kept to a minimum. 

**Accountability** is essential. Procedures should be systematic and dependable, and records explaining and justifying all decisions and actions, should be kept and maintained.

**Competence and integrity** in procurement encourages suppliers and contractors to make their best offers and this in turn leads to even better procurement performance. Purchasers who fail to meet high standards of accountability and fairness are quickly identified as poor partners with which to do business. Clearly, bribery and corruption need not be a necessary part of doing business. Experience shows that much can be done to curb corrupt procurement practices if there is a desire and a will to do so. In order to understand how best to deal with corruption in procurement, it helps to know first how it is practised.

**How corruption influences procurement decisions**

Contracts involve a purchaser and a seller. Each has many ways of corrupting the procurement process, and at any stage.

At the same time, suppliers can:
- Collude to fix bid prices;
- Promote discriminatory technical standards;
- Interfere improperly in the work of evaluators; and
- Offer bribes.

Before contracts are awarded, the purchaser can:
- Tailor specifications to favour particular suppliers;
- Restrict information about contracting opportunities;
- Claim urgency as an excuse to award to a single contractor without competition;
- Breach the confidentiality of suppliers' offers;
- Disqualify potential suppliers through improper prequalification; and
- Take bribes.

The most direct approach is to contrive to have the contract awarded to the desired party through direct negotiations without any competition. Even in procurement systems which are based on competitive procedures, there are usually exceptions where direct negotiations are permitted--for example:
- In cases of extreme urgency because of disasters,
- In cases where national security is at risk,
- Where additional needs arise and there is already an existing contract, or
- Where there is only a single supplier in a position to meet a particular need.

**Manipulations by the purchaser; how to make a favored party win**

Even if there is competition, it is still possible to tilt the outcome in the direction of a favoured supplier. If only a few know of the bidding opportunity, competition is reduced and the odds improve for the favoured party to win.

**Improper prequalification requirements.** Bidder competition can be further restricted by establishing improper or unnecessary prequalification requirements--and then allowing only selected firms to bid. Again, prequalification, if carried out correctly, is a perfectly appropriate procedure for ensuring that bidders have the right experience and capabilities to carry out a
contract's requirements. However, if the standards and criteria for qualification are arbitrary or incorrect, they can become a mechanism for excluding competent but unwanted bidders.

**Taylor specifications.** Persistent but unwanted parties who manage to get past these hurdles can still be effectively eliminated by tailoring specifications to fit a particular supplier. Using the brand name and model number of the equipment from the preferred supplier is a bit too obvious, but the same results can be achieved by including specific dimensions, capacities and trivial design features that only the favoured supplier can meet. The inability and failure of competitors to be able to meet these features, which usually have no bearing on critical performance needs, are used as a ploy to reject their bids as being "non-responsive."

**Breach of Confidentiality.** Competitive bidding for contracts can only work if the bids are kept confidential up until the prescribed time for determining the results. A simple way to predetermine the outcome is for the purchaser to breach the confidentiality of the bids, and give the prices to the preferred supplier to submit a lower figure. The mechanics are not difficult, especially if the bidders are not permitted to be present when the bids are opened.

**Invention of new criteria.** The final opportunity to distort the outcome of competitive bidding is at the bid evaluation and comparison stage. Performed responsibly, this is an objective analysis of how each bid responds to the requirements of the bidding documents and a determination of which one is the best offer. If the intention is to steer the award to a favoured bidder, the evaluation process offers almost unlimited opportunities: if necessary, and unless prevented from doing so, evaluators can invent entirely new criteria for deciding what is "best", and then apply them subjectively to get the "right" results. They are often aided in this process by issuing bidding documents that are deliberately vague and obscure about what requirements must be met and how selection decisions will be made.

These techniques are only a brief outline of some of the ways in which a purchaser is able to corrupt the procurement process.

It would be a mistake to think that the buyers are always the guilty parties: just as often, they are the ones being corrupted by the sellers, although perhaps without undue resistance.

The most serious and costly forms of corruption may take place after the contract has been awarded, during the performance phase. It is then that the **purchaser** of the goods or services may:

- Fail to enforce quality standards, quantities or other performance standards of the contract;
- Divert delivered goods for resale or for private use; and
- Demand other private benefits (trips, school tuition fees for children, gifts).

For his part, the unscrupulous contractor or supplier may:

- Falsify qualities or standards certificates;
- Over or under invoice;
- Pay bribes to contract supervisors.

If the sellers have paid bribes or have offered unrealistically low bid prices in order to win the contract, their opportunities to recover these costs arise during contract performance. Once again, the initiative may come from either side but, in order for it to succeed, corruption requires either active cooperation and complicity or negligence in the performance of duties by the other party.

What can be done to combat corruption in procurement?

**Key principles to be followed**
Public exposure. The most powerful tool is public exposure. The media can play a critical role in creating public awareness of the problem and generating support for corrective actions. If the public is provided with the unpleasant and illegal details of corruption—who was involved, how much was paid, how much it cost them—and if it continues to hear about more and more cases, it is hard to imagine that the people will not come to demand reform.

Once support is developed for the reform of procurement practices, the problem can be attacked from all sides. Usually the starting point will be the strengthening of the legal framework, beginning with an anti-corruption law that has real authority and effective sanctions.

Criminalize bribing. Only the United States has had a Foreign Corrupt Practices Act—since 1977—that specifically makes it a crime under its domestic laws to bribe foreign officials to gain or maintain business, even when these events take place abroad. The OECD Convention, directed at outlawing international business corruption involving public officials, in essence aims to internationalise the US approach.

TOC convention reference needs to be made

The next legal requirement is a sound and consistent framework establishing the basic principles and practices to be observed in public procurement.

Unified Procurement Code. This can take many forms, but there is increasing awareness of the advantages of having a unified Procurement Code, setting out clearly the basic principles, and supplementing this with more detailed rules and regulations within the implementing agencies. A number of countries are consolidating existing laws, which have often developed haphazardly over many years, into such a code.

Transparency procedures. Beyond the legal framework, the next defence against corruption is a set of open, transparent procedures and practices for conducting the procurement process itself. No one has yet found a better answer than supplier or contractor selection procedures based on real competition.

The complexity or simplicity of the procedures will depend on the value and nature of the goods or services being procured, but the elements are similar for all cases:

- Describe clearly and fairly what is to be purchased;
- Publicize the opportunity to make offers to supply;
- Establish fair criteria for selection decision-making;
- Receive offers (bids) from responsible suppliers;
- Compare them and determine which is best, according to the predetermined rules for selection; and,
- Award the contract to the selected bidder without requiring price reductions or other changes to the winning offer.

For small contracts, suppliers can be selected with very simple procedures that follow these principles. However, major contracts should be awarded following a formal competitive bidding process involving carefully prepared specifications, instructions to bidders and proposed contracting conditions, all incorporated in the sets of bidding documents that are usually sold to interested parties.

Such documents may take months to prepare. Procurement planning must be sure to take these time requirements into account, and start early enough to ensure that the goods and services will be ready when needed. Any pressures for "emergency" decisions should be avoided.

On-Line procurement advances
Opening of bids. One key to transparency and fairness is for the purchaser to open the bids at a designated time and place in the presence of all bidders or their representatives who wish to attend. A practice of public bid openings, where everyone hears who has submitted bids and what their prices are, reduces the risk that confidential bids will be leaked to others, overlooked, changed or manipulated. Some authorities resist this form of public bid opening, arguing that the same results can be achieved by having bids opened by an official committee of the purchaser without bidders being present. Clearly this does not have the same advantages of perceived openness and fairness, especially since it is widely believed, and it is often the case, that a purchaser is a participant in corrupt practices.

Bid evaluation. Bid evaluation is one of the most difficult steps in the procurement process to carry out correctly and fairly. At the same time it is one of the easiest steps to manipulate if someone wants to tilt an award in the direction of a favoured supplier.

Delegations of authority. The principle of independent checks and audits is widely accepted as a way in which to detect and correct errors or deliberate manipulation, and it has an important place in public procurement. Unfortunately, it has also been used by some to create more opportunities for corruption. In particular, the delegation of authority for contract approvals is an area that warrants some discussion.

At face value, the rationale for delegation is convincing: low-level authorities can make decisions about very small purchases, but higher levels should review and approve these decisions for larger contracts. The larger the contract value, the higher should be the approving authority. A desk purchase can be approved by the purchasing agent; a computer must be approved by a director; a road must be approved by a Minister; and a dam may need to be approved by the President.

Establishing such a group requires a long-term effort, one that is never completely done. It requires regular training and re-training programmes; security in the knowledge that one’s job will not be lost if the winning contractor is not the one favoured by the Minister; and at least a level of pay that does not make it tempting to accept bribes to meet the bare necessities of a family. If a competent procurement cadre is developed, and there are a number of places where this has been achieved, the chain of approving authorities, with its accompanying delays, and other hazards can be reduced to a minimum.

Independent checks and audits. None of this is to suggest that all independent checks and audits should be eliminated; they have an important role. However, there are some countries where so many review and approval stages have been built into the process that the system is virtually paralysed. In some, it is impossible to award a major contract in less than two years from the time the bids are received.

Additional reforms

The list of actions suggested here is lengthy, but looks at the subject broadly, rather than examining such technical details as the standardisation of bidding documents and the establishment of simplified purchasing procedures for special kinds of procurement.

Public information programmes about procurement must address all parties—the officials who have responsibilities for procurement, the suppliers and contractors who are interested in competing for contracts, and the public at large. The messages could be that:

- The particular jurisdiction, whether a nation or one of its organisations, possesses clearly stated rules of good procurement practice which it intends to enforce rigorously;
- Violators of the rules will be prosecuted under the law;
- Officials who indulge in corrupt practices will be dismissed; and
• Bidders who break the rules will be fined, possibly jailed, and excluded from consideration for any future contracts, by being "blacklisted".

Whatever statements are made must then be backed up by appropriate actions.

**Success fees and "grand corruption"

"Commissions" as a cover for corruption. As George Moody-Stuart has made clear, the greatest single cover for corruption in international procurement is the "commission" paid to a local agent. It is the agent's task to land the contract. He or she is given sufficient funds to do this without the company in the exporting developed country knowing more than it absolutely has to about the details. This creates a comfortable wall of distance between the company and the act of corruption, and enables expressions of surprise, dismay and denial to be feigned should the unsavoury acts come to the surface. The process also enables local agents to keep for themselves whatever is left of the handsome commissions after the bribes have been paid. Much of it may have been originally intended for bribing decision-makers but none of it, of course, is accounted for.[14] This gives rise to practices of kick-backs all along the line, with company sales staff effectively helping themselves to their employer's money.

Obviously, if commissions can be rendered transparent it would have a major impact on this source of corruption.

Under this gradualist approach, the bidders for specific projects are being brought together and encouraged to enter into an "Anti-Bribery Pact" with the Government, and with each other. Each bidder agrees not to pay bribes and to disclose the commissions paid, and for its part, the Government pledges to take special efforts to ensure that the exercise is not tainted by corruption. In this way, the rules change for everyone and at the same time; and the players are, themselves, a part of that process of change. Once the selected contracts have been offered, the bidders continue to meet to monitor developments and build confidence for future exercises of a similar nature.

A drawback has been opposition from some international lending institutions to any ad hoc arrangement for a specific project, the view being that the law must be changed across the board. This can present obstacles where a government has difficulty in persuading its Legislature to back serious anti-corruption efforts, and also where it may be beyond the capacity of the government machine to adequately police new arrangements, at least initially.

However, these problems have been largely overcome by making the Anti-Bribery Pact a voluntary one, and it has won encouraging levels of support from the private sector firms involved. Indeed, this may be the better approach.

Initial monitoring suggests that the innovation is working and that it is serving to significantly reduce corruption levels in the selected major contracts.[16]

**Lessons learned**

The field of public procurement has been a battleground for corruption fighters. It is in public procurement that most of the "grand corruption" occurs with much of the damage visibly inflicted upon the development process in poorer countries and countries in transition. Although initially there were sceptics who fought against the "islands of integrity" approach, successes are increasingly being recognised. "Islands of integrity" is a process in which voluntary agreements are made, involving bidders and the government, to restrict opportunities for corruption in a particular project. The use being made of the Internet for public procurement by the city of Seoul and in Mexico is likewise promising.

**The commissions bidders pay to agents should be declared.** Some thought that legislation requiring disclosures of commissions would undermine international competitive bidding and
that some corporations would not wish to abide by such a rule. However, where such a requirement has been introduced, there has been little evidence of it having such negative effect. The honest have nothing to hide, and if the corrupt fold their tents and leave, the field is better without their presence. The experience in New York City has been an inspiration to corruption fighters, and is being followed in Nigeria.

**Corrupt bidders should be blacklisted.** Blacklisting firms caught bribing can be a potent weapon. Of course, this requires that due process be observed, and that penalties be proportionate. But there can be no doubt that the international corporations blacklisted by Singapore in the 1990's received a considerable shock, and that in the future others will think twice before attempting to bribe Singaporean officials. The World Bank subsequently went down the same path. It posts the names of black listed firms and individuals on its web site. This remedy works best in countries where the Rule of Law is functioning properly and adequate appeal mechanisms are in place.

**Preconditions and Risks**

**Related tools**

Likely related tools to strengthen social control mechanisms could be:

- Establish, disseminate, discuss and enforce a Code of Conduct for public servants
- Establish and disseminate, discuss and enforce a Citizen Charter
- Establish an independent and credible complaints mechanism where the public and other parts of the criminal justice system can file complaints
- Establish a Disciplinary Mechanism with the capability to investigate complaints and enforce disciplinary action when necessary
- Conduct an independent comprehensive assessment of the governments levels, cost, coverage and quality of service delivery, including the perceived trust level between the public service and the public
- Simplifying procedures of complaining,
- Raising public awareness where and how to complain (e.g. by campaigns telling to public what telephone number to call), and
- Introducing a computerized complaints system allowing the institutions to record and analyse all complaints and monitor actions taken to deal with the complaints.
Tool 17 - Integrity Pacts

Purpose

Integrity pacts perform a similar function to islands of integrity, but are focused on specific contracts or transactions rather than ongoing institutional arrangements. Those involved in a specific process such as the bidding for a government contract are asked to enter into an “integrity pact”, in which everyone involved agrees to observe specified standards of behaviour and/or not to engage in corrupt practices. Such pacts can be of a contractual nature, and could be linked to the principal contract, permitting litigation attacks on it if one of the parties to it is found to have breached the integrity pact.

Where effective, integrity pacts result in bids and contract terms negotiated on the assumption that there is true competition between the bidders. This leads to lower public costs, and the transparency of the process reassures both participants and the public that neither the process nor the outcome was tainted by corruption. Transparency also establishes a precedent which can lead to further use of integrity pacts in the future.

Description

Integrity pact.

The pact consists of a contract in which the responsible government office and bidders or other interested parties agree to refrain from corrupt practices. The description of specific practices to be prohibited is advisable, but will depend to some degree on the nature of the activity to which the pact would apply. Competitive bidders would be asked to agree to refrain from offering or paying bribes or any other inducements or otherwise seeking, gaining or using unfair advantages such as inside information, for example. All parties should be required to set out in writing their procedures and safeguards to assure compliance with the pact during the competition and process of creating the contract, and the successful parties could be required to do the same with respect to the administration of the contract once it has been agreed. As a contract, disputes or questions of interpretation arising out of the integrity pact will normally be resolved using the courts and laws of the country in which it was made, unless it specifies otherwise. Cases where this might be desirable include multi-national contracts, which usually specify whose national laws and courts will be used, and cases where a dispute-settlement mechanism other than the regular courts, such as arbitration, is desired.

Sanctions and remedies. The agreement should include clear sanctions and remedies for government officials and bidders or service providers. Sanctions could include referral of improprieties to law enforcement authorities, prohibition from future contracts, and contractual remedies for those prejudiced by the improper actions. In the case of public servants they should also include disciplinary measures. Contractual remedies would be based on the principle that the pact is a contract among all of the participants, on which any one of them could seek a judicial remedy. This would ensure that unsuccessful bidders, who would not be a party to the principal contract, could still sue, if necessary under the pact. The pact could also fix specific remedies should this occur, including financial damages and the possibility of voiding the principal contract and re-staging the bidding process.

Transparency. Integrity pacts should also provide for transparency of the process through such things as disclosure of all payments by the government to contractors and by contractors to their sub-contractors.

Middlemen and Agents. Middlemen and agents are often used by businesses to disguise acts of bribery. In order to be effective, the island of integrity agreement or integrity pact should include
clear rules either prohibiting the use of intermediaries or regulating the activities of agents, facilitators or other middlemen so as to ensure transparency and preclude corrupt activities. The corrupt activities of intermediaries should trigger the same sanctions and remedies as malfeasance by the principal participants.

Monitoring/Civil Society. In order to ensure effective contract monitoring, transparency of the entire bidding and contract execution process is important. Corruption might occur at any stage, and it is important that effective transparency be ensured from beginning to completion of the contract. An atmosphere in which transparency is presumed and expected, and in which confidentiality must be justified, should be created. Much of the most effective monitoring is done by competitors and civil society organisations, and all relevant documentation and information should be made public if possible. This can be done by simply making documents available, or where feasible, by posting them on the Internet. Documentation should include all decisions regarding the bidding process, including the evaluation criteria utilised and the reasons for the decision, as well as the identities of bidders, and a list of unsuccessful bids. Similar standards should apply to the execution of the contract, with particular attention paid to any changes in performance criteria or remuneration provisions.

Preconditions and Risks

The viability of integrity pacts depends on all of the participants agreeing to be bound by them, and this should be made a requirement of participation. If not, the competition will be inherently unfair, unsuccessful parties may not be able to obtain remedies or sanctions against corrupt competitors, and the general impression that corrupt practices have a competitive advantage over non-corrupt ones will be reinforced.

The contract remedy provisions must be carefully considered. The successful bidder and the government will be parties to the principal contract, under which either could take action on the basis that there was corrupt practice by the other. Unsuccessful applicants are not parties to this contract, however, and can only pursue remedies (as opposed to sanctions, which are legislative) under the integrity pact. It should be drafted to ensure that this is possible and feasible (e.g., by ensuring access to low-cost arbitration). At the same time remedies should be reasonable having regard to the circumstances. Where it is not practicable to allow the principal contract to be declared void, for example, remedies such as financial damages and holding a successful, but corrupt, competitor liable for a full accounting of the profits may be feasible.

Related tools

Likely related tools to strengthen social control mechanisms could be:

- Establish, disseminate, discuss and enforce a Code of Conduct for public servants
- Establish and disseminate, discuss and enforce a Citizen Charter
- Establish an independent and credible complaints mechanism where the public and other parts of the criminal justice system can file complaints
- Establish a Disciplinary Mechanism with the capability to investigate complaints and enforce disciplinary action when necessary
- Conduct an independent comprehensive assessment of the governments levels, cost, coverage and quality of service delivery, including the perceived trust level between the public service and the public
- Simplifying procedures of complaining,
- Raising public awareness where and how to complain (e.g. by campaigns telling to public what telephone number to call), and
Introducing a computerised complaints system allowing the institutions to record and analyse all complaints and monitor actions taken to deal with the complaints.
Tool 18 - Reducing Procedural Complexity

Purpose

Excessive complexity tends to reduce accountability and transparency, thereby creating conditions in which external and institutional corruption can flourish. Restructuring administration in order to reduce complexity, streamline organisation and clarify roles, relationships and the use of authority tends to reduce or eliminate such opportunities, and can also bring benefits in transparency, general integrity, reduced costs and better service delivery.

Description

Excessive complexity will often be made apparent by symptoms such as low levels of cost-effectiveness, non-compliance and corruption. Confronted with overly-complex requirements to obtain building-permits, for example, some people will simply build without a permit (non-compliance), while others will attempt to streamline the application process by engaging in corruption. Specific areas can be further identified by research methods such as surveys of service-users or analyses which compare the service or functions in question with similar ones in other subject-areas or other jurisdictions. If a building permit takes longer to obtain than a driver’s license, is this due to complexity, or some substantive difference between the two? Do building permits take as long to obtain in another city or country where similar circumstances exist?

Once a basic problem has been identified, the subject bureaucracy should be studied in detail. From a substantive standpoint, this entails identifying the criteria which are presently being used to process cases and make decisions, a determination of which criteria are actually necessary to the function in question, and then the elimination of unnecessary criteria. From a procedural standpoint, each stage of the process should be examined, and as many stages should be consolidated or eliminated as possible. Diagrams such as algorithmic “flow-charts” and similar analytical tools can be useful in this process. In the case of a building permit, for example, the process would entail identifying the criteria on which permits should be issued or refused, creating an application form which ensures that applicants have provided information on all of the criteria, decision-making on all of the criteria at one determination, and the collecting of fees as an integral part of the process, either at the same time as an application is filed or the same time as a permit is issued.

Recently finished diagnostic studies of administrative reforms conducted in Chile, Bolivia, Venezuela, Singapore, and Uruguay show that the assessment of the perceptions and case files in a sample of users of municipal and national public services can be used as the empirical basis to design reliable public policies aimed at reducing excessive administrative complexities in public service delivery. For example, these surveys measured the perceptions of efficiency, efficacy, public access and coverage, the quality of the information supplied by the local authorities for public use, and the public's perceptions of corruption all related to the provision of key services within these jurisdictions in each of the countries.

These diagnostic studies concluded that the main factors affecting corrupt practices were rooted, among other factors, within two main areas: (i) the lack of efficiency, excessive complexity, and unpredictability of the administrative procedures used to grant permits; (ii) and the lack of channels for the supply of public information related to what and how to demand public services from local government administrations. Given the above, the implementation of solutions to the problems aforementioned required finding the mechanisms to reach a greater effectiveness in the functional structure of the procedures followed within the Municipal and national administrative jurisdictions in the granting of the most common and important permits. According to these
diagnostic reports, the most important areas in need of improvements fall within the permit domain (e.g. construction permits in Venezuela and debt-free permits in Uruguay)

In this context, the greater effectiveness in service delivery require meeting the following conditions

- The identification of the ways to achieve a greater effectiveness in the administrative procedures followed by those citizens who apply for permits and any other administrative service at the municipal and national levels respectively;
- The identification of the administrative reforms needed to attain greater efficiency in the processing of permits and documents issued by municipal authorities;
- The identification of the administrative sequence of procedures that would enhance the level of the public's access to municipal services and decrease the likelihood of corrupt activities in the supply of these services.

The methodology to be used to achieve the conditions (i), (ii), and (iii) above must be based on the use of quality control techniques in the definition of efficiency-enhanced flow charts and the use of interviews with each administrative employee working for the Departments involved in the granting of the selected administrative services and/or permits. In this case, the studies and reforms applied to the above country-specific contexts include the design of flowcharts for each of the procedures involved to be built in order to establish the old and the newly proposed simplified administrative procedures. These flowcharts would allow for the measurement of several impact-performance indicators. These indicators must include the following areas: a) the number and definition of each administrative procedural step; b) the procedural times for a sample of permits and documents issued; c) the procedural times per procedural step; d) the procedural times per employee; (e) amount and type of resources used in each procedural step per permit; (f) the users satisfaction with the effectiveness of the service provided by the public agency; (g) the users’ trust in the agency providing the public service; and (h) the users’ cost of access to the public service demanded.

Therefore, and as a result of our sampling of case files per user and extensive interviews with public local government officials, a final report would perform the following tasks:

- The identification of procedural bottlenecks and time excesses within each procedural step that would allow authorities (and in some cases, specialized civil society NGOs) to propose different ways to streamline the procedural structure followed in the granting of permits at the municipal levels and other administrative services at the national levels while enhancing the efficiency of the administrative processes;
- The development of new administrative flowcharts based on best practices followed under similar resource and budgetary conditions that would simplify the procedures while diminishing the degree of discretionality involved in the granting of permits.
- The development of procedural and functional manuals for each of the selected permits and administrative services that would also define the functions of each public official involved

Preconditions and Risks

In many cases, elements of complexity are generated by employee initiatives which accumulate over time as new elements are passed from employee to employee. Imposing strict conditions and merging elements of the process can be seen as a threat, since more efficient operations may result in the loss of jobs, status or other considerations. Streamlining reforms are therefore often met with internal reluctance or resistance.

Moreover, the cultural changes required in an organization are usually slow motioned and subject to vested interests opposed to reforms. Therefore, the right balance must be applied in order to provide reformers and change-prone employees tangible benefits in the short term while shifting some of the costs of reforms to the long term.
Related tools

The Reducing Procedural Complexity Tool could be combined and sequenced with the following tools:

- Reducing and Structuring Procedural Discretion
- Increased accountability through Results and Evidence Based Management
- Public Complaints Mechanisms
- Citizen Charter
- Committee on Standard of Public Life
Tool 19 - Reducing and structuring discretion

Purpose

Excessive substantive and procedural discretion in the provision of public services also tends to reduce accountability and transparency, thereby creating conditions in which external and institutional corruption can flourish. Ensuring that discretion is limited to what is necessary to the function in question and properly structured by such things as the application of rules and criteria for decision-making, transparency and effective review mechanisms help to ensure that decisions are made exclusively on the prescribed criteria, which in turn reduces the potential for the influence of corrupt criteria.

Description

As noted in the introduction to this chapter, discretion is essential to effective decision-making. This means that the structuring of discretion generally involves an assessment of the decision which must be made and the criteria on which it should be made and the range of acceptable outcomes. This may involve the following elements.

- Criteria for the making of the decision should be clearly established, set out in writing, and made available to both the decision-maker and those affected by his or her decisions.
- A process should also be established which ensures that all of the relevant criteria will be made apparent, and that the process is sufficiently transparent to ensure that improper or irrelevant criteria cannot be advanced. In some cases this might involve public hearings, for example, or in less-elaborate frameworks, the public disclosure of application forms, so that interested parties can review all of the criteria which were put forward.
- When a decision is made, this also should be generally disclosed, with sufficient reason given to permit a challenge or appeal if inappropriate criteria were used.
- There should be some opportunity for unsuccessful applicants or other interested parties to have the decision reviewed by an authority which is independent of the decision-maker, such as a more senior officer, an administrative review body or a court of law.

In order for any reform in this area to be successful the following steps needs to followed:

- Apply empirical-statistical techniques and a survey of public opinion and municipal employees in order to identify the social, economic, and organizational factors explaining the public's perceptions of efficiency, effectiveness, quality of the government-issued information, and access to municipal services
- The examination of case files in order to detect inconsistencies/incoherences in the application of decision-making criteria by public officials
- A list of courses of policy action to improve these perceptions and the objective indicators showing abuse of procedural and/or substantive discretion (i.e. in our case, abuse of discretion represents the application of incoherent/inconsistent procedural or substantive criteria in the decision-making process within the provision of a public service).

In this context, the objectives of the survey of public opinion is to:

- Reveal the users'(individuals and firms) perceptions of the effectiveness, efficiency, and the corruption related to the provision of selected public services provided by local/national government;
- Quantify the subjective perception of abuse of procedural/substantive discretion by a public official in the provision of public services

In order for any reform in this area to be successful the following steps needs to followed:
• Identify the main areas affected by abuse of discretion within the local government jurisdiction, and
• Determine how the possible relative lack of perceived efficiency, effectiveness and abuse of discretion in the provision of public services affects the citizen's perceptions of how well their social preferences are translated into government actions.

An initial diagnostic report must then be signed and drafted as a basis of any future policy proposal. This report must aim at capturing and explaining the public's perceptions associated with the efficiency, effectiveness, abuse of discretion, corruption, the quality of the information issued by a government agency, and the nature, scale, and scope of the public’s access to the public services.

Taken into account time and resource constraints, a survey must then be designed in order to achieve the above objectives. This survey will be aimed at gathering information from users (citizens and firms) at point of service provided by government agencies in two municipal jurisdictions.

The survey of perceptions must then focus on the impact of the citizen/firm perceived efficiency/effectiveness and abuse of discretion. A stratified random sampling technique can be used as a way to quantify perceptions within the aforementioned areas through the use of simple and accessible questionnaires. The survey must also cover all relevant representative strata including gender; age group; income/wealth levels; and education levels and focus on those users of public services. The assessment-diagnostic survey would need to be repeated after policy initiatives go through the implementation stage and community-based monitoring of these reforms (for example the implementation of information campaigns and the participatory budgeting).

From a substantive standpoint, the survey can be divided into the following four parts:
• A survey of perceptions of efficiency/effectiveness and abuse of procedural/substantive discretion related to specific public service areas;
• A survey of perceptions of how well the interviewees' preferences are translated into local government actions
• A survey of how effective is the public's access to the public services
• Qualitative data; addition to the above quantitative data, qualitative data must also be collected from the same sites, using focus group discussion and meetings with each of the employees working in areas related to the issuing of the aforementioned permits.

Finally, samples of real case files must be drawn in order to detect inconsistencies/incoherences in decision making processes applied by a specific public official to similar case types coming before her.

The public and firms’ perceptions gathered in the survey must be monitored by social control boards (see Tools 11 and 24) and explained over time through the use of public service performance indicators (e.g. coverage, unit cost, variable cost, production of services, and production of services) and through the use of input indicators such as administrative structure of the procedures used to supply a specific public service; allocations of public funds to each service within an agency’s budget, economic variables such as wages, cost of capital, and other budget-related variables. Within this context, input variables (to be monitored over time) will in part determine the impact indicators and the public (and firms’) perceptions also to be monitored over time after reforms are implemented.

A report focusing on explaining and describing the citizens' perceptions of the efficiency/effectiveness and abuse of substantive/procedural discretion related to the provision of the specific public services would include:
(i) revealing the change in the users' (individuals and firms) perceptions of the effectiveness, efficiency, and the abuse of procedural/substantive discretion before and after reforms are implemented with the decision-making related to the provision of selected public services;

(ii) the examination of case files aimed at detecting the abuse of procedural/substantive discretion before and after reforms are implemented with the decision-making related to the provision of selected public services;

(iii) Additionally, the report will also focus on the implementation of policy solutions to the problems found above that negatively affect the public perceptions aforementioned. For example, this report may require the finding of the mechanisms to reach a greater effectiveness in the functional structure of the procedures followed within a government agency in the granting of the most common and important permits.

Let’s recall that the greater effectiveness of the improved public service delivery (i.e. with less abuse of discretion) require meeting the following conditions:

(i) The identification of the ways to achieve a greater effectiveness in the administrative procedures followed by those citizens who apply for administrative services before government authorities;

(ii) The identification of the administrative reforms needed to attain greater efficiency in the processing of public services.

(iii) The identification of the administrative sequence of procedures that would enhance the level of the public's access to the public services and decrease the likelihood of abuse of discretion in the supply of these services.

The methodology used to achieve the conditions (i), (ii), and (iii) above must then be based on the use of quality control techniques in the definition of efficiency-enhanced flow charts and the use of interviews with each of the employees working for the Departments involved in the granting of the selected documents and permits.

Flowcharts for each of the procedures involved must be built in order to establish the old and the newly proposed procedures. These flowcharts would measure several indicators. These indicators include the following areas: a) the number and definition of each administrative procedural step; b) the proportion of cases where abuse of discretion is detected; c) the procedural times for a sample of permits and documents issued; d) the procedural times per procedural step; e) the procedural times per employee; and f) amount and type of resources used in each procedural step per permit.

As result of the random sampling of case files per user and extensive interviews with public government officials, a diagnostic and later impact assessment reports would include

(a) The identification of procedural bottlenecks within each procedural step that would allow to propose ways in order to neutralize areas within which abuse of discretion takes place;

(b) The development of new administrative flowcharts based on the best practices followed under similar resource and budgetary conditions that would simplify the procedures while diminishing the degree of discretionality involved in the supply of specific public services.

The development of procedural manuals in the supply of specific public services that would also define the functions of each public official involved.

Preconditions and Risks

In many cases, patterns of abuse of discretion are generated by employee initiatives and organizational inertias which accumulate over time as these behavioral patterns are passed from employee to employee. Imposing strict conditions and merging elements of the process can be
seen as a threat, since more efficient operations may result in the loss of jobs, status or other considerations. Streamlining reforms are therefore often met with internal reluctance or resistance.

Moreover, the cultural changes required in an organization to eradicate systemic abuses of procedural/substantive discretion are usually slow motioned and subject to vested interests opposed to reforms. Therefore, the right balance must be applied in order to provide reformers and change-prone employees tangible benefits in the short term while shifting some of the costs of reforms to the long term.

**Related tools**

The Reducing and Structuring Procedural Discretion Tool could be combined and sequenced with the following tools:

- Reducing Procedural Discretions
- Increased accountability through Results and Evidence Based Management
- Public Complaints Mechanisms
- Citizen Charter
- Committee on Standard of Public Life
Tool 20 - Result or Evidence Based Management

Purpose

The term “result-based management” (RBM) is used to describe management structures which set clear goals for achievement, as well as criteria and processes for assessing whether these have, in fact, been achieved. The effect is to increase overall accountability: corruption becomes more difficult to conceal because of the surveillance and reviews of performance, and its effects become apparent when stated goals are not met.

Description

The exact description of result-based management systems will vary considerably depending on the nature of the organisation in which they are applied and other situational factors. Generally, however, they have the following characteristics:

- The setting of clear goals and objectives for the overall process or bureaucracy, as well as for specific elements of either;
- A performance measurement system that focuses on results;
- A learning culture grounded in evaluation and feedback;
- Stakeholder participation at all stages of the program design and implementation;
- Where the organisation is decentralised, clear lines of authority and accountability among the various units;
- Concrete links between results, planning and resource allocation.

RBM functions as both a management system and a performance reporting system. The requirement to establish clear goals at the outset as well as a system for assessing performance effectively operates as a management tool, clarifying lines of authority and responsibility and quantifying expected and actual performance. Establishing the measurement and reporting of results as an institutional norm makes it difficult to conceal substandard results. The standardisation of goals and assessment methods throughout the system also facilitates comparisons, which tend to make it apparent when one element is not functioning at the same level as the others, which alerts management to the possible presence of corruption or other inefficiencies.

Typical RBM structures are characterised by the following results chain

INPUT ➔ PROCESS ➔ OUTPUT ➔ OUTCOME ➔ IMPACT

Preconditions and Risks

Terminology and Concepts must be Understood and Accepted. Even though the basic concept is easy to understand, many government organisations experience confusion and misunderstanding related to certain terms. It is important to start the implementation process by clarifying and defining important terms. It is also necessary to have a process to create ownership and commitment.
Information must be Clear and Easy to Assess. Many organisations publish a broad array of handbooks, reports, guidelines etc. both in hard copy and electronically through the Internet and Intranets. Systematic training and dissemination of “best practices” are also commonly offered.

RBM may be too complicated and comprehensive for some applications. Implementing comprehensive management reforms is a major task which may not always be practicable or cost-effective, depending on the nature of the problem encountered.

RBM is difficult to apply to occupations or structures in which performance is difficult to quantify. The nature of the function or service which a particular structure performs should be carefully considered against any criteria that will be used to assess performance. Criteria such as the number of files or individuals seen are at best meaningless and at worst counterproductive without some realistic assessment of the quality of the service provided in respect of each. Encouraging those who license drivers to process more applicants may simply result in the exclusion of fewer sub-standard drivers and higher accident levels, for example. Genuinely effective qualitative criteria may be virtually impossible to produce or monitor for some public sector activities.

Related tools

The Evidence Based or Results Oriented Management Tool could be combined with the other tools intended to bring about changes in public-sector institutions. These include a number of specific anti-corruption tools. More generally, institutional reforms intended to prevent and combat corruption in public sector institutions will often be integrated within much more broadly based public sector reforms. While the immediate focus may in some cases be on corruption, it is also important that larger reform efforts incorporate anti-corruption elements wherever possible. The reduction of corruption should be an ongoing effort in which no opportunity should be wasted. Moreover, the failure to incorporate anti-corruption measures and expertise into more general public-service reform programmes may result in unintended consequences in which other reforms create new opportunities or incentives for corruption or roll back previously-achieved efforts.

Specific tools which may be used together or combined into general public-service reform programmes include the following:

- Tools for reducing and structuring discretion;
- Tools which establish and monitor public service standards, such as codes of conduct, public complaints mechanisms and service delivery surveys; and,
- Tools which provide positive and negative incentives for reforms, including improvements in compensation, professional status and working conditions, as well as disciplinary and other deterrence measures.
Tool 21 - The use of positive incentives to improve employee culture and motivation

Purpose

Many elements of anti-corruption strategies can be described as “negative” incentives in the sense that they are intended to deter or punish corrupt conduct by increasing the associated risks or probability of undesirable or unpleasant consequences, such as criminal prosecution or professional discipline, for those involved. The establishment of positive incentives, such as increased remuneration or compensation, compensation which is linked more closely to positive performance, increased or enhanced professional status and general improvements in job security, working conditions and similar matters, is also an important anti-corruption measure. Generally, positive incentives can prevent or combat corruption in the following specific ways.

- Adequate wages or other compensation may result in employees who do not require additional, outside income to achieve a satisfactory standard of living. This is particularly important where requirements for disclosure and the avoidance of conflicting interests may drive public servants to conceal supplementary income if they cannot afford to discontinue it.

- Additional compensation can be linked to improvements in performance, both generally and in relation to specific anti-corruption measures. Such incentives can take the form of pay increases or bonuses linked to performance assessments. Seen another way, adequate salaries and benefits can be seen as additional compensation for requirements that public-sector employees not engage in outside employment or seek to earn additional income.

- Increases in job security, professional status and compensation increase the effectiveness of “control” factors, under which employees are less likely to engage in prohibited conduct because they have more to lose if discharged, disciplined or prosecuted criminally. This effect can be enhanced by ensuring that corrupt or other relevant criminal conduct is cause for discipline, including dismissal, in employment contracts, disciplinary rules or codes of conduct.

- Improvements in professional or job status can be linked to or used to reinforce integrity standards. Employees with high morale and professional self-esteem are less likely to engage in corrupt practices and more likely to take positive actions against those they encounter if they are encouraged to believe that corruption demeans this status.

- Positive incentives will often be used as elements of broader public-service reform programmes, thereby supporting a higher quality of public service, and indirectly contributing to other anti-corruption elements embedded in such programmes.

Description

Types of positive incentive

Generally, positive incentives may include any reward compensation or benefit which may induce an employee or institution to improve standards of integrity, efficiency or effectiveness, and which lies within the economic, political and legal means of the employer to confer. In some cases, the existence or effectiveness of a benefit depends on how it is perceived by the proposed recipient, which means that the basic applicability or effectiveness of incentives may vary depending on the individuals or groups to which they are directed. Low-level employees, whose incomes are often marginal, may be more strongly influenced by pay increases or financial performance bonuses, whereas those at higher levels may be more motivated by changes to
working conditions or professional status. Generally, positive incentives may include the following:

- Increases in basic pay or the increases or range of pay-rates applicable to a particular job classification;
- Bonuses or other payments linked to specific achievements of performance;
- Improvements of quality-of-life benefits such as accommodation or health-care provision;
- Improvements in pension or retirement benefits, especially in cases where early retirements or reductions in the numbers of public servants are among the desired outcomes;
- Improvements in prospects for promotion or career advancement linked to the desired performance outcomes;
- The enhancement of professional esteem or status, either for public servants in general or for specific professional groups within the public service;
- General reforms which increase equity in the way that job assignments are allocated and compensation is assessed, addressing, for example, inequities resulting from discrimination based on age, region, culture or ethnicity, gender or other factors; and,
- Other improvements in working conditions.

**Linkage between incentives and other reforms**

Positive incentives can be an effective anti-corruption tool, but they will almost never be used in isolation. Indeed, failure to establish a proper context and ensure that compensation is in fact closely linked to desired outcomes may result in a waste of resources, and in some cases the creation of incentives which reward, or are seen as rewarding, corrupt behaviour.

One major factor in establishing linkages is the simple economic costs of positive incentives. Simply increasing the compensation of large numbers of public servants is beyond the financial means of developing countries, and for this reason positive incentives are often imbedded in reform packages which increase the pay and status of public servants, but which also reduce the numbers of employees and involve training and institutional reforms which will allow smaller numbers of employees to perform the work successfully. To justify higher compensation, it is usually necessary to achieve economies in operation, or to improve the overall delivery of services in some way which justifies the additional costs involved. 57

Another major factor is the fact that to function as incentives, close links must be established between the conferring of a benefit and the outcome(s) for which that benefit is intended to provide an incentive. Employees must be made aware of the desired outcome, what is expected of them and how they are intended to accomplish it, and the fact that the benefit is contingent on actual performance. This entails the establishment of specific goals for individuals and organisations, some fair but accurate means of assessing performance, and a fair and neutral means of increasing and reducing the benefit in accordance with assessed performance. In the case of corruption, this may involve the direct assessment of whether an employee is corrupt using means such as integrity testing, monitoring of interactions with members of the public and encouraging those affected by corruption to complain about it. Additionally or alternatively, it may involve the setting of individual or institutional performance standards which cannot be met using corrupt practices, or which, if achieved, at least are suggestive of a high degree of individual and/or institutional integrity.

**Preconditions and Risks**

As noted, one of the major problems is that broad-based positive incentives will be too costly for the governments most in need of them. In extreme cases, the inability of State resources to support an effective professional public service sector indirectly leads to the subsidization of public services by the corrupt incomes of public servants, at the high cost of substituting the priorities and dynamics of a corrupt economic and social fabric for the rule of law and fair, efficient and effective public policies. Reforms and positive incentives may in some cases be supported by aid donors, who can provide not only the resources to confer benefits, but elements of the training and increases in competence, efficiency and integrity to which those benefits are linked.

The other major risk is that benefits will be conferred without clearly linking them to the desired improvements, and that these improvements will not be achieved as a result.

Related tools

This Tool should be combined with a range of other tools intended to bring about changes in public-sector institutions. To avoid unsuccessful outcomes, it should not generally be applied in isolation. These include a number of specific anti-corruption tools. More generally, institutional reforms intended to prevent and combat corruption in public sector institutions will often be integrated within much more broadly based public sector reforms. While the immediate focus may in some cases be on corruption, it is also important that larger reform efforts incorporate anti-corruption elements wherever possible. The reduction of corruption should be an ongoing effort in which no opportunity should be wasted. Moreover, the failure to incorporate anti-corruption measures and expertise into more general public-service reform programmes may result in unintended consequences in which other reforms create new opportunities or incentives for corruption or roll back previously-achieved efforts.

Specific tools which may be used together or combined into general public-service reform programmes include the following:

- Tools for reducing and structuring discretion; and
- Tools which establish and monitor public service standards, such as codes of conduct, public complaints mechanisms and service delivery surveys and result-based management.
IV. SOCIAL PREVENTION AND PUBLIC EMPOWERMENT

Introduction

This is the second of two chapters dealing with prevention and related subject matter. For ease of reference, prevention measures have been classified as either “situational”, in the sense that the measures are directed at specific situations in which corruption problems are to be addressed, or “social”, in which measures are directed at more general social or economic factors in order to bring about conditions less likely to produce or support corrupt practices. Most of the latter measures have to do with raising awareness of corruption and mobilizing the general population to desist from corrupt practices and to expect integrity on the part of those who provide services, particularly in the public sector. For this reason, many of the social elements of anti-corruption programmes can also be considered as “empowerment” measures, in the sense that they provide powers and incentives for members of the general population to take appropriate actions.

The social measures dealt with in this chapter are arguably more potent instruments because of the impact they can achieve, but are also much more general in nature. While most include elements which tend to prevent corruption, most also go beyond this to include elements which bring about other desirable outcomes as well. Generally, raising the awareness, integrity and expectations of large numbers of people will tend to prevent corruption by enhancing deterrence and making those prone to corrupt practices less likely to engage in them, but will also make reactive elements of anti-corruption strategies stronger and more effective. Mechanisms such as criminal law enforcement and audit structures become more effective, for example as public expectations make outside interference more difficult, and those affected by corruption more likely to report incidents and cooperate with investigations and prosecutions.

Ultimately, the success or failure of any national anti-corruption strategy will depend to a very large degree on the extent to which it mobilizes popular concern about the true costs associated with corruption. In the vast majority of cases, it is society as a whole that bears the costs of corruption rather than individuals, and it is the tolerance or apathy of populations that allow corruption to flourish. In most cases, accountability for corruption also ultimately vests in the population at large. While specific institutions or individuals may be held to account for specific cases or specific corruption problems, those who hold them accountable are themselves in turn accountable to the people. Mobilizing public opinion in support of strong anti-corruption measures also entails mobilizing popular support for high standards of integrity and performance in public and private administration and opposition to corrupt practices wherever they occur. If this is done, anti-corruption strategies will have a greater chance to succeed.

Public education and information campaigns

No two societies are the same and the identification of both the message and target audience will vary to some degree. Generally, however, the focus should be on educating people about the true nature and consequences of corruption in order to ensure that it is recognized when it occurs and to mobilize general opposition to it, and ensuring that the population is kept informed with respect to specific cases, new developments and trends, and the efforts to combat corruption.

Within general populations, many specific groups can be targeted with more specific messages, or by means of specific media, in accordance with their positions. The private citizens who use a particular government bureaucracy might receive information about the standards of ethical conduct expected of it, for example, while the bureaucrats employed in it would receive the same materials, supplemented with deterrence information about such things as audit controls, surveillance or criminal or other sanctions which may apply.
General messages about corruption might be published or broadcast in the general public news media, while more intensive measures such as seminars or more targeted materials can be directed at those directly involved in processes seen as vulnerable to corruption, using media appropriate for this purpose. The following segments will examine the range of media that could be used, the messages to be disseminated by those media, and key sectors, or target audiences, for these messages.

**The means of delivering anti-corruption messages**

Once basic principles have been formulated, education and awareness raising can be implemented through a variety of activities. As with the substantive content, the means of communicating will vary to some degree depending on the target audience. A strong national anti-corruption programme will incorporate a number of possible options, and a flexible approach to developing or modifying communications plans should the need arise. Means such as surveys of the officials involved and members of the public with whom they deal should also be employed to provide feedback information to help planners assess which methods are effective and which require modification or replacement. Some communications options include the following:

- **Media of broad or general distribution**, such as radio, television and print media can be used to reach the general population. Information can be disseminated not only using advertising and public service announcements, but also news coverage. Officials who provide information to the media should not manipulate or distort the information, but should ensure that the media are well briefed about both successes and failures in the fight against corruption. In reaching general populations, factors such as literacy, formulation of materials in appropriate linguistic and cultural formats, and the access of target populations to appropriate technical facilities (e.g., telephones, radio or television receivers etc.) must also be considered.

- **Where available, the Internet and other computer or communications networks can be used**, both to disseminate messages about corruption and as a possible means of encouraging and facilitating reports by those who encounter it. A major advantage is the flexibility of computers in formulating, storing and disseminating information. Major disadvantages include a lack of access to computers and networks among some countries and population groups, and the need for basic standards of technical proficiency and literacy, although available evidence suggests that these factors are being overcome.

- **Seminars, meetings or workshops can be conducted**, in which specific stakeholders are invited to discuss problems and suggest actions. This format is costly and time-consuming, but offers the advantages of a detailed examination of any materials offered and two-way communication with participants. Meetings can be used not only to brief audiences about such things as anti-corruption projects, but also to seek out their views as to what should be done and how best to explain it. They may also provide a valuable opportunity for specific groups to explore ethical issues and develop ethical principles for themselves.

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58 A major success story is that of Hong Kong SAR’s Independent Anti-Corruption Commission (ICAC), which annually conducts 2,780 training sessions to strengthen partnership between anti-corruption agencies and the private and public sectors. Community relations officers reach between 200,000 and 300,000 people on average per year through 800 talks, activities and special projects. The 200 staff members meet annually face to face with between 4-5% of population through meet-the-public sessions, training workshops at workplaces, school talks and seminars designed for businesses and professionals. See Alan Lai, Commissioner of Hong Kong SAR’s ICAC in “Building Public Confidence: the Approach of the Hong Kong Special Administrative Area of China”, in UN’s Forum for Crime and Society (forthcoming 2002)
• Public inquiries or hearings can be conducted into corruption in general or to examine specific corruption problems or cases. This is not an efficient method of examining corruption on a case-by-case basis, but can provide a detailed and transparent examination of problem areas, drawing conclusions that may be relevant to other areas as well. In many countries, such inquiries are limited to some degree by the possibility or presence of criminal proceedings and the procedural rights of accused persons in such proceedings. The State may have to choose between prosecution and an inquiry, or delay any inquiry until all relevant criminal proceedings have been exhausted in some cases.

• Surveys can be used to gather, analyse and make public information about such things as the actual rates or frequency of corruption, public perceptions of corruption, the effectiveness of anti-corruption measures, and the general overall performance of public administration or integrity in such administration. They tend to measure subjective perceptions of corruption rather than an objective measure of its actual nature and extent, but in most strategies, both objective and subjective assessments will be important requirements.

• The criminal law is often overlooked as a communications medium, but as noted above, the development, enactment and publication of criminal offences and procedures concerning corruption set absolute minimum legal, and in many cases moral, standards of behaviour. The fact that the legislature resorts to the criminal law also sends a powerful message, making it difficult for those engaged in corruption to retain any rationalizations or moral justifications for their behaviour.

• Publication of information about investigations, prosecutions and other (e.g. disciplinary) proceedings in corruption cases can also send a strong deterrence message, as well as providing the media with an opportunity to explore the nature and costs of corruption in the context of actual cases, which tends to attract greater public interest than if the same materials are published in the abstract.

• The production and dissemination of a national strategy for integrity and anti-corruption measures can also be used to send a message both to the general public and to the specific groups to which the measures will apply. It is important that the materials actually disseminated are in a format that is likely to interest and be understood by the target audience.

• The publication of more detailed materials in specialized media, such as public affairs programming using broadcast media, and academic or professional journals, provides an opportunity for a more in-depth exploration of critical issues. Materials directed at academic and professional groups, as well as the media itself should be formulated not only to educate members of the group in question, but also with a view to assisting them in educating others. It is important that academic experts participate in national strategies, both as a source of policy advice and analysis and as a competent external review of government proposals, and such participation should be supported and encouraged, both with resources and access to information.

• Many existing materials produced by governments, as well as intergovernmental and non-governmental organizations, can also be used effectively, either by disseminating them verbatim, or as sources of information for other more closely targeted materials. Examples include this United Nations Anti-Corruption Tool Kit and international instruments such as the OECD and OAS Conventions against corruption. Many academic and professional articles also provide useful research and policy analysis. These represent an important means of transferring expertise and experience from one country to another.
The messages to be delivered

Depending on specifics of the target audience, the following general points will generally be covered in anti-corruption campaigns. As noted above, more detailed comments and additional messages will usually supplement these for specific target audiences.

- The nature of corruption. International discussions have illustrated a wide range of attitudes about what constitutes “corruption”. At the national level, it is important that policy-makers have a clear concept, and that this be effectively communicated to various target audiences. Opposition to corruption and support for measures against it cannot be mobilized until people have a clear understanding of what it is.

- The direct costs of corruption. The other major prerequisite for enlisting public support is establishing that corruption is harmful, both to societies and the individuals who live in them. Direct costs include such things as unfair or irrational procedures for allocating public resources. Those who do business with government can be told of the additional costs and uncertainties of corrupt bidding processes. More general audiences can be told of the overall increases in costs and decreases in benefits. Essential services such as medical treatment may be unavailable in general because the planning and allocation of priority to health care was based on corrupt criteria, for example, and medical services may be unavailable in individual cases because a sick individual could not afford the necessary bribes.

- The general or indirect costs of corruption. These include such things as the general failure of internal and external development projects and the corruption of essential institutions such as the courts and political bodies. Populations should be shown that corruption enables a few individuals to gain, but at a far greater cost to general populations resulting from inadequate public administration and institutions which fail to function properly, if they function at all.

- Reasonable standards expected in public administration. Basic standards should be enunciated both for general application in all areas of public administration, and in the context of specific institutions or functions. Standards of conduct can, where appropriate, also be promulgated in the private sector, particularly in areas where it does business with the public sector. The proposal of standards of conduct is likely to spur public discussion and debate about what is appropriate, which is useful in raising awareness, refining the proposed standards, and creating a sense of public ownership and support for the standards. The absolute minimum standards will generally be set by the criminal law, which defines conduct that will attract prosecution and punishment, but in many cases a higher standard will be expected as a condition of employment or a matter of professional ethics. One important message for officials is that the failure of the legislature to criminalize conduct should not be taken as permission to engage in it, and that the legal judgement of legislatures and courts should not replace individual or professional judgement of right and wrong.

- The importance of vigilance and public accountability. Ultimately each member of the population should be encouraged to watch for corruption and take action when it is detected. Public support for mechanisms and institutions which increase accountability, such as requirements that State agencies make their proceedings as public as possible, and the presence of an objective public media to report and comment on those proceedings, should also be encouraged.

- Information about anti-corruption programmes. In order to enlist cooperation and support for both proactive and reactive programmes, those whose cooperation is called for require both general information about what the programmes are intended to accomplish and why they should be supported, and more specific information about what cooperation is sought and how it can be given. For example, public servants must be convinced that combating corruption is in their interests, and then given specific information, such as addresses or
telephone numbers, to which reports can be made. As noted in Part II.A of this Manual, convincing informants that they will be allowed to remain anonymous or otherwise protected from retaliation is also important.

- Specific messages for specific audiences. The foregoing elements will usually apply across a broad range of public service target audiences. The message that taking bribes causes individual and social harms and may subject the recipient to criminal liability, for example, should apply to almost any audience. The specific application of general anti-corruption principles may be different, however, depending on the nature of the duties being performed and the fact situations commonly encountered by those who perform them. One common approach to developing audience-specific principles or variations is the development of fact situations that raise the critical issues in a manner relevant to the audience. Scenarios developed in consultation with groups such as law-enforcement officials, aid-workers, banking or financial officials or health-care workers will ensure that the message is communicated in a meaningful way and that the participants have a sense of commitment to the standards, principles and practices they will be expected to apply.

**Target audiences for anti-corruption messages and measures**

The messages to be communicated, their intended recipients and the measures to be actually employed against corruption can all be divided into several basic categories, which tend to classify both the groups who will be urged to apply specific policies or measures and the actual measures they are called upon to apply.

**Political and legislative measures and audiences.** While many measures can be implemented without laws, many major or fundamental changes require a basis in national constitutions or statute law. These include basic judicial independence and separation-of-powers safeguards, basic human rights such as the freedoms of association and expression; where necessary, rules to protect the independence of key groups such as the media; and the creation of independent anti-corruption institutions. The immediate target audiences for issues are legislators, policy-makers in government and academic institutions, and in some cases the judiciary. Given the nature of these groups, they will also in many cases be the sources of elements of the message. Since reforms of this kind are inherently political in nature, however, part of the message must also usually be directed at general populations in order to generate the necessary political support. Multipartisan support for anti-corruption efforts is necessary so it will be important to formulate and direct information in ways that address the broadest possible range of national political beliefs.

**Public sector measures and audiences**

Public sector measures advocated by anti-corruption programmes may include some of the following. These will be directed at public servants in general, in some cases including those in judicial and political positions, and in many cases specific groups will be targeted with materials appropriate to their functions positions and levels of seniority.

- Greater transparency in critical government functions by ensuring that operations are open to popular, media, legal and academic scrutiny.
- Greater public participation in critical programmes, both in the form of opportunities to comment on policies and their implementation, and in some cases through actual participation on boards, committees and other decision-making bodies.
- The development and dissemination of standards of conduct.
- The development of complaint, comment, review and similar functions.

59 This classification was developed in collaboration with Transparency International.
The regular assessment of public confidence in anti-corruption institutions, judicial, law enforcement and other critical functions.

The creation and administration of access to information systems.

Where necessary, the creation of independent anti-corruption commissions or similar bodies.

**Private sector measures and audiences**

Private sector individuals and institutions could be targeted with materials and information intended to educate, aid and empower them to avoid involvement in corrupt practices. This may include the dissemination of ethical standards, codes of conduct, and similar materials. Private sector elements of a national strategy may be limited to transactions or dealings between the private and public sectors or could also address purely private-sector interests.

**Civil society measures and audiences**

Civil society measures should include the following. Messages developed could be addressed to civil society either generally or to specific elements, such as non-governmental organizations or academics concerned with specific issues. For some elements, combating corruption is a central policy or raison d’être, while for others it is only one problem to be resolved in the course of pursuing other objectives, such as the effective delivery of aid, health-care or public services. In many cases, elements of civil society are also an important source of anti-corruption content, which should result in a two-way dialogue.

- The general identification, education, awareness and involvement of civil society and its organizations, including the media, non-governmental organizations, professional associations, and research or academic institutes, to research and monitor good governance and the status of corruption and the progress made in combating corruption.
- The creation and strengthening of networks of non-governmental organizations to share information on local, regional and national anti-corruption initiatives.
- Strengthening, equipping and encouraging civil society to demand integrity and fairness in government and business transactions.
- Developing databases and networks for ensuring analysis and monitoring of corruption trends and cases, as well as information exchange among the different agencies called upon to deal with corruption.
Tool 22 - Access to Information

Purpose

If information is power, then increasing the public’s access to information will empower civil society to oversee the state. When done correctly, increased access to information will raise public awareness about: (a) their “consumer rights”, (b) government’s objectives, work programs, budgets and performance indicators; and (c) government’s planning and decision-making process. The objective of awareness raising is to expose government operations and functions to make public servants more accountable.\(^\text{60}\)

Description

Where government lays open its operating practices for all the public to see, citizens will have the information necessary to guard, and to enforce, their basic rights. This transparency is a valuable tool in curtailing corruption. Many countries, both in the North and the South, recognize this fact and have enacted appropriate legislation.

Access to information is a powerful mechanism of accountability. To the extent that shrouds are lifted from government operating practices and decision-making processes are made transparent, opportunities for corruption and/or conflict of interest will be commensurately minimized and potentials for abuses of power reduced. Where there is accountability, the quality of decision-making will improve. As Justice Louis D. Brandeis of the United States Supreme Court wrote: “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman”.

Access to Information Laws usually adopt four methods to achieve the objective of enforcing transparency in government:

- Every government agency is required to publish an annual statement of its operations. This statement includes a description of its structure and functions, as well as a register of all categories of documents in its possession in sufficient detail to facilitate access. It is also required to publish its policy documents. These include interpretations, rules and guidelines, any statements of policy, practice or precedents issued to its officers, and its procurement rules.
- A legally enforceable right of access to documented information held by the government is recognized, subject only to such exceptions as are reasonably necessary to protect public interests or personal privacy. The subjects generally excluded from scrutiny include cabinet discussions, judicial functions, law enforcement and public safety, intergovernmental relations and internal working documents. Access is provided by giving applicants a reasonable opportunity to inspect the document or by supplying them with a copy.
- A person’s right to apply to amend any record containing information relating to themselves which, in their opinion, is incomplete, incorrect, out of date or misleading, should be recognized and allowed.
- Independent bodies provide a two-tier system to appeal against any refusal to provide access.

However, there are grounds on which government is, and should be, entitled to withhold information from the public. Some government functions require confidentiality. For example, the need to respect personal privacy, e.g. health records, or issues involving national security can

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be legitimately excluded from public access. Government agencies should be required to present the details of the services they provide and should publish the official price for each service requiring payment.

Preconditions and Risks

Two decades of experience with the implementation of public information systems has not justified governments’ initial reluctance and fear. Governments in all parts of the world have conceded that the public has a right to know about government operations and functions. Studies indicate that most government departments soon adapted to the innovation without much difficulty, and that the cost for providing access to information still represents only a small fraction of governments’ information budgets.

All ‘access to information’ acts and regulations are based on recognition of the fact that the public has a “right to know”. Such empowerment is the first step in the process of transparency. However, acts and regulations are not adequate substitutes for an access to information law. When politicians or administrations are able to use discretion in deciding whether to release information, the temptation to deny access when the requested information is embarrassing or incriminating is too often irresistible for them.

“Access to Information” laws should be supplemented with related legislation such as a Privacy or Data Protection Act (to empower individuals to require that government records about themselves are accurate and are not being misused, and to restrict the government’s ability to disseminate information about individuals to others without a valid basis), an Environment and Safety Information Act (to require the publication of enforcement actions against companies which contravene environmental or safety laws) and/or a Government in the Sunshine Act (which requires meetings of public bodies to be announced in advance and opened to the public).

Related tools

Access to information is one of the basic tools that will be part of most anti corruption strategies attempting to establish new institutions and measures relying on public trust and inputs. Access to information is therefore likely to be combined with any of the following tools:

- Mobilizing Civil Society through Public Education and Awareness Raising
- Public Complaints Systems
- Anti Corruption Agencies relying on public inputs
- Citizen Charters and Code of Conducts
- Whistleblower legislation
- National and International Ombudsman
- Public Education and Awareness Raising

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Tool 23 - Mobilizing Civil Society through Public Education and Awareness Raising

Purpose

An important achievement for any anti-corruption program is to empower the public with the opportunity to oversee the state, to raise public awareness about the negative effects of corruption and to help ensure the public’s right to service by a clean and professional government. The purpose of this measure is to increase the checks and balances by guaranteeing independence of the judiciary, legislative and executive and by empowering the civil society to oversee the state including the executive, legislative and the judiciary.

The desired impact of an awareness raising program should include broad public dissemination of expected behaviour on the part of government collectively and its officials individually. Such awareness by the public should lead to greater accountability of public service providers (officials) in the delivery of government services.

The importance of public trust in the government and its anti-corruption institutions is critical and often underestimated. Without a certain level of public trust public complaints mechanisms are not going work and witnesses are not going to come forward to facilitate prosecution of anti-corruption cases in the courts. The purpose of this tool is to describe how it is possible and necessary to win back the public trust in order to fight systemic corruption. The case study will also show how to go about earning the trust of public and the importance of managing the trust based on evidence.

Description

Aggrieved citizens and “whistleblowers” from within an administration should be encouraged to complain through new institutions (anti-corruption commissions, Ombudsman offices, etc.) or through telephone “hot-lines”. Unless the public is given easy access to credible new institutions, the risk of corruption spreading deeper and wider is greatly increased. As has been stated previously, the public can be the greatest single source of intelligence to the anti-corruption agency and a positive mutually beneficial relationship must be fostered. Awareness raising programs linked to a competent anti-corruption agency or similar institution are absolutely crucial in any fight against corruption. It is important that complainants are convinced that complaints will be taken seriously and that they themselves will not be placed at risk. In some countries, social taboos pressure citizens to not “denounce” fellow citizens. Such branding must be overcome and replaced with the idea that society as a whole suffers from the effects of corruption and that those who are brave enough to report suspicions are heroes to be applauded and not ‘snitches’ to be shunned. Although there is much talk on the part of government about raising public awareness, civil society itself is usually the only party addressing this issue.

Using the Internet to Fight Corruption.

The potential impact of the Internet on awareness raising is huge. It is an inexpensive medium and global in readership. Its wide appeal, influence and use is evident as we see totalitarian governments become aware of its potential to carry news from overseas sources that cannot be censored. Although these governments have tried to find ways to restrict access to the Internet, their efforts will probably be unsuccessful, as technology seems to outpace efforts to limit access to it.

Governments should post their National Integrity Action Plan together with regular updates on implementation and results to Internet web sites. This would not only allow for the plan to be...
widely broadcast, but it would also allow the public to monitor implementation. Survey and Integrity Workshop results should similarly be published on web sites. These data provide the public with information regarding public perceptions on corruption and training measures used to prevent corruption. The Internet can be used to facilitate broad participation of interested parties in the dissemination of important and timely information and thereby strengthen awareness globally. In this regard, the Internet can contribute to minimizing duplication and sharing relevant experience.

It is important to bear in mind that as much as the Internet can serve as an extremely efficient and cost-effective means of raising awareness and fostering discussion around the globe, a huge target audience of key stakeholders has no access to the Internet. The Internet remains primarily a utility of the North with very few people from the South and from poor developing nations having ready access. There is still the need to use printed media, radio and television to reach these people.

Media Campaign

In addition to using the Internet, media campaigns should be used to disseminate anti-corruption information. It not only serves to augment other dissemination methods, but it can reach those citizens without access to the Internet. Just as with any other type of advertising, short sentences and phrases that are easy to remember can help make people more aware of the problem of corruption. A media campaign could include publishing advertisements in newspapers, journals or magazines, or on posters. They could appear on radio and TV, and leaflets could be handed out in highly frequented areas (pedestrian precincts, mass events, sport meetings, etc.).

Public Education Programme.

The public must learn:

- Not to pay bribes themselves;
- To report incidents of corruption to the authorities;
- Not to sell their vote; and
- To teach their children the right values.

In order to inform citizens about their rights to services as well as about their responsibilities to avoid and report corrupt practices, the program should include detailed information about free access to information, existing complaint mechanisms and results in fighting corruption.

Building public confidence; best practice experience

The Independent Commission against Corruption in Hong Kong was established at a time when the government’s determination and capability to fight graft was in doubt. Thus, the Commission had to win back public trust.

The public believes results, not empty slogans. The first Commissioner of the Independent Commission against Corruption decided that only through quick and forceful action could public confidence be gained. The civil service as a whole and the police in particular were identified as the primary targets. The successful extradition from London of Peter Godber, a fugitive police officer, and his subsequent conviction within a year gave the Commission a promising start.

High-profile arrests and prosecutions continued to make headlines. That gradually inculcated in the minds of the public that the government and the Independent Commission against Corruption meant business. Reports on corruption began to flood in; in the first year, 86 per cent of the reports were against government departments and the police. Corruption syndicates in the police, high on the Commission’s list of problems to be dealt with, were vigorously pursued. In one
major operation mounted during that period, 140 police officers from three police districts were rounded up at the same time. More than 200 policemen were detained for alleged corruption at one time. All in all, 260 police officers were prosecuted between 1974 and 1977, four times the total number prosecuted in the four years preceding the establishment of the Commission.

In parallel, corruption prevention specialists were dispatched to various government departments to examine their procedures and practices with a view to removing all loopholes for corruption. Assistance was also rendered when necessary to help departments produce codes and guidelines on staff conduct. The Corruption Prevention Department was also involved in the early stages of policy formulation and in the preparation of new legislation to obviate opportunities for corruption.

At the same time, the community relations Department of the Independent Commission against Corruption has brought about a revolution in the public’s attitude towards corruption. Various publicity and outreach programmes have been organized by the Department to educate the public about corruption. The strategies have been refined and adjusted to suit the changing social and economic environment.

The importance of public education

The public education endeavours of the Independent Commission against Corruption have been in two forms:

- Extensive use of the mass media and
- In-depth face-to-face contact.

Over the past 25 years, the approach has proved to be effective in instilling a culture of probity.

Mass media. The Hong Kong SAR is reputed for its free press. There were about 60 printed dailies and more than 700 periodicals in 2000. In addition, there are two free-to-air commercial television stations, one cable network plus other satellite-based television services beaming news and other programmes in more than 40 domestic and non-domestic channels.

The Independent Commission against Corruption has realized from the beginning that the mass media is a powerful and an indispensable partner in disseminating anti-corruption messages. A news story about a person convicted of corruption has a significant impact on the community. A press information office was one of the first units established by the Commission. Acting as a bridge between the Commission and the press, the office regularly issues press releases on operations of the Commission, arranges interviews and briefings by officers of the Commission to hammer home the message that corruption is evil. Media reports on crime involving corruption can have a deterring effect.

Advertising campaign. In addition, the Commission produces its own “announcement of public interest” to proactively articulate a culture of probity through advertising campaigns. The messages are tailored to suit the prevailing public sentiment and social climate. The messages of the past 27 years can be put into four different categories:

- The era of awakening. During its early years, the Independent Commission against Corruption had to deal with a population that was deeply suspicious of the government’s commitment to fighting corruption. People with lower income, who were more vulnerable to abuse held a particularly compromising view towards such crime. Media campaigns were launched to reach that segment of society and highlight their suffering. Backed with tough law enforcement action, the Commission urged the public to be a partner in fighting corruption by reporting such crime.
- Level playing field. As syndicated corruption in the police and the civil service had diminished by the late 1970s, the Independent Commission against Corruption was able to channel more of its energy to dealing with the problem of corruption in the private sector. In
the midst of an economic upturn, the Commission emphasized that the fight against corruption was important to the continued economic growth by the Commission of Hong Kong. Elements of deterrence and persuasion were in those campaigns. The slogan used by the Commission “Whichever way you look at it, corruption doesn’t pay”, reverberated loud and clear in the community. Tough action against some private corporations and their senior managers during the period reinforced the warning by the Commission that it was not making any empty threat.

- **The 1997 jitters.** During the 1997 jitters, years of transition leading to the reunification of Hong Kong with Mainland China, some people in Hong Kong were worried about the uncertainty ahead. After all, the concept of “one country, two systems” was without precedent anywhere in the world. It was suspected that certain individuals would try to take advantage of the situation and get rich fast, despite the large number of cases involving corruption that were being reported. There were some doubts in the community about the ability and the effectiveness of the Independent Commission against Corruption to keep the Hong Kong SAR one of the least corrupt places in the world after the reunification. To counter those concerns, the Commission set out to assure the general public, through media campaigns, that the corruption of the 1960s and 1970s would not return as long as the public continued to cooperate with the Commission in tackling the problem.

- **The mission continues.** After a long period of economic prosperity, coupled with the gradual reduction of reports of corruption, the social ill that once plagued the city has in recent years gradually faded. The prevailing social environment is such that there is some danger that the level of alertness may drop, particularly among members of the younger generation who have never experienced corruption. They may take it for granted that corruption is no longer a threat and may have trouble comprehending the fact that parents and grandparents fought a fierce battle to make the Hong Kong SAR free of corruption. To the Independent Commission against Corruption, it is important that the next generation should be made aware of the need, to continue anti-corruption efforts. A large share of the resources in education has, in recent years, gone to fostering integrity and honesty among youth. That will continue to be the case in the years to come.

**Television drama series.** The Independent Commission against Corruption, shortly after its inception, at a time when television was the most powerful media for reaching the masses, ventured into producing television drama series based on real corruption cases. That was one of many innovative publicity efforts made by the Commission. The television drama series turned out to be an astounding success and to date, it remains one of the most popular television programmes, its ratings comparable to those of commercial productions. In those biennial television series, the dire consequences of corruption are vividly portrayed and the professionalism and efficiency of the officers of the Commission are effectively conveyed. To ensure that the work of the Commission is accurately reflected, the actors portraying officers of the Commission are asked to dress, talk and carry out their investigations in a manner that is as close to real life as possible.

**The Internet.** The cyber-revolution has given the Independent Commission against Corruption another potent medium for interactive communication with the community. Internet surfers can gain access to the Commission in the virtual world; “best practice” packages for specific trades and industries; practical guides on how to deal with ethical dilemma and difficult situations in individual branches of industry. The Commission also has on its web site information on corruption cases that it has dealt with over the years.

As Internet browsing has become one of the most popular hobbies among members of the younger generation, the Independent Commission against Corruption has also launched a web site for teenagers through which interactive games and information are used to impart on positive values for young people.

**Face-to-face contact**
Despite the immense influence the media has in reaching the masses, the Independent Commission against Corruption believes that it is no substitute for face-to-face contact with the people it serves. As a mode of communication, face-to-face contact is best suited to explaining the goals and mission of the Commission and to obtaining feedback on its work. The Commission uses strategic network regional district offices to maintain direct contact with members of various segments of the community. The offices have two primary functions:

They serve as focal points of contact with local community leaders and organizations with whom the Commission’s regional officers organize various activities to disseminate the anti-corruption messages. The regional offices hold regular meet-the-public sessions to gauge public views on various corruption issues.

The offices, manned by persons trained to deliver the Commission’s messages to different sectors of the community, also serve as report centres. Members of the public can walk in and lodge a complaint about corruption. Experience shows that people usually feel more at ease in providing details pertaining to their complaints in less formal settings such as the offices.

In conducting their liaison work, community relations officers also adopt a focused approach, targeting certain segments of the community. Tailor-made briefings and training sessions are offered to civil servants and those practicing specific trades in the private sector, in order to raise their awareness of the anti-corruption law and the problems associated with corruption.

Educational programmes are arranged to develop an anti-corruption culture among young people and newly arrived immigrants.

Community relations officers reach between 200,000 and 300,000 people on average per year through 800 talks, activities and special projects. The 200 staff members meet with members of the community through meet-the-public sessions, training workshops at workplaces, school talks and seminars designed for businesses and professionals.

In addition to managing the public trust and empowering the public the Hong Kong SAR experience have also taught us that fighting corruption is an ongoing battle. The public needs to be constantly assured that the anti corruption agencies in charge are capable of carrying out its tasks effectively, without favour. The Commission in Hong Kong SAR is keenly aware of the continued need to maintain its level of professionalism in the face of the growing sophistication of criminal groups, aided in part by the globalization of trade and the digital revolution.

The extremely low incidence of corruption in the Hong Kong SAR could not have been achieved solely with the establishment of the Independent Commission against Corruption. Many other factors have been involved. Some of the more important factors include:

- **An integrated, holistic and evidence based approach to the problem.** The three-pronged strategy of investigation, prevention and community education has enabled the Independent Commission against Corruption to tackle the problem at its source. Hong Kong has also systematically monitored the trust level of the public using surveys and meetings with business and the victims of corruption.

- **A supportive public.** A supportive public makes it possible for the battle against corruption to be fought on all fronts, in every corner of the community. Without a supportive public, regardless of the human and financial resources involved, it would not have been possible to reduce corruption so quickly.

- **The rule of law.** The people of the Hong Kong SAR have treasured, respected and guarded the rule of law. That is important to efforts to convince the public that justice will be done.

- **Government commitment.** The commitment of the Government has translated into sufficient resources and adequate legal powers to hunt down the criminals involved in corruption.

The Hong Kong SAR has demonstrated that corruption can be contained.
**Preconditions and Risks**

The cost of an effective public awareness campaign is often underestimated. Powerful and permanent political and budgetary commitments are essential. Altering public thinking is the most difficult and expensive aspect of anti-corruption work. To be successful, given that public attitudes are usually not changeable from one day to the next, time and consistency in awareness raising are going to be necessary. Unfortunately, this level of dedication is the only way to achieve sustainable results. For instance in Hong Kong, SAR the ICAC has been educating the public for more than 25 years. In 1998 alone, it spent US$90 million to offer 2,700 workshops for public and private organisations and other public awareness projects.

**Related tools**

Public Education and Awareness Raising is also one of the basic tools that will be part of most anti-corruption strategies attempting to establish new institutions and measures relying on public trust and inputs. Access to information is therefore likely to be combined with any of the following tools:

- Access to Information
- Mobilizing Civil Society through Public Education and Awareness Raising
- Public Complaints Systems
- Anti Corruption Agencies relying on public inputs
- Citizen Charters and Code of Conducts
- Whistleblower legislation
- National and International Ombudsman
Tool 24 - Media Training And Investigative Journalism

Purpose

The media is often underestimated in its ability to shape public attitudes and influence national and international policy. Journalists play an important role interfacing between the public and the government. They have a responsibility to objectively report information fairly and honestly.

The purpose of this tool is to strengthen the credibility, integrity and capability of the media to provide unbiased and responsible coverage and broadcast of corruption cases and anti-corruption initiatives. This measure will ultimately lead to an increased risk of exposure to corrupt individuals and organizations. A strong media can also serve to increase the knowledge and trust-level between the public and its government regarding the government’s anti-corruption policies and measures. 62

Description

The critical role of the media require not only careful structuring of the relationship between anti-corruption officials, but also in many cases efforts to develop or enhance the capabilities of the media to ensure that they are able to function effectively as recipients of information about corruption, as autonomous assessors of that information, and in formulating and disseminating further messages based on that information for dissemination to the general population. Some of the critical issues in government-media relations are as follows.

- The autonomy of the media is essential, both to its ability to assess government information critically and objectively and to the credibility with which its reports are received by the population, which makes it important that contacts with the media are transparent, and do not compromise this essential autonomy, either in practice or in the perception of the public. Also critical to autonomy and objectivity is the separation of media ownership from government or political factions, or if this is not possible, ensuring that diverse media represent a full range of political opinion. Similarly, the staffing of individual media outlets should be multi-partisan, if possible.

- The role of the media in critically assessing anti-corruption efforts requires that it possess sufficient technical, legal, economic and other expertise to enable it to do so independently. In many cases other sources of expertise, such as retained professionals or academic experts can supplement the knowledge of general media reporters. Training, awareness-raising and technical briefing of media personnel in anti-corruption efforts may also be useful.

- The media should be encouraged to develop and enforce adequate standards of conduct regarding both professional competence and objectivity.

- Media presentations should clearly distinguish between factual and fictional presentations or programming and between news reporting, which reports on matters of fact, and analysis or editorial content, which comments on facts.

- The basic capacity of the media should be sufficient to ensure that they can reach as much of the population as possible. Where this involves the use of public resources (e.g., to enable coverage of remote areas), controls should be in place to ensure that the transfer of resources is not allowed to become an instrument whereby the government can exert influence on the media. The media is not only useful for raising public awareness by disseminating information regarding misuse of public power, but it can also contribute by providing the necessary support of the civil society to governments’ anti-corruption measures.

initiatives. Moreover, journalists, editors and newspaper owners can take on an active role in combating corruption by facilitating public debate on the need to introduce anti-corruption policies and measures.

- In order to educate the media about corruption, it is essential to raise its awareness of the causes, costs, levels, types and locations of corruption in their respective country. The ongoing efforts of all stakeholders in the fight against corruption should also be explained. Furthermore, it is crucial to teach journalists how to evaluate and monitor government activities and about achievements in the field of anti-corruption. Providing information about the standards of anti-corruption work in the region and at the international level is also important. All of these elements are fundamental to enable journalists to compare the validity of their governments’ politics with others and to report on them in the proper perspective.

- Media training should also focus on building an effective information network. This includes informing journalists about governmental and non-governmental institutions active in the field of anti-corruption, about specific areas of responsibility, contact addresses and all other available information. If possible, representatives of these institutions should be chosen to inform journalists about their work, both successes and failures. Creating an atmosphere of interactive exchange of ideas will contribute towards building trust, which should ultimately guarantee unbiased reporting and encourage the government institutions to ensure an open information policy.

Attention must be given to the commitment, responsibilities and risks involved with investigative journalism. Self-regulation should be promoted and the development and adoption of a code of conduct should be encouraged. Journalists’ knowledge of professional techniques to obtain information in an ethically proper fashion must also be enhanced. Means for controlling the credibility of sources of information must be discussed. Journalists must be encouraged to respect privacy and to check references, not only for the sake of correct reporting, but also in order to avoid the loss of credibility. They must be duly informed about risks involved with investigative journalism and about which measure they can take to limit these risks. They should also be informed about the possibilities available for seeking protection by government institutions.

**Preconditions and Risks**

Media training and training in investigative journalism will be a wasted effort if the media is not free and independent of political influence and if access to information is not sufficiently guaranteed. The media should be free to decide what stories are indispensable for publication and whether or not to delve deeper into researching for more detail. There should be no censorship and governments should not discriminate against media outlets by withdrawing advertising, denying access to newsprint, or using other means to restrict the work of the media. Thoroughly researched articles and radio programs reaching a broad cross-section of the public will deter participation in corrupt practices, and increase the risk, cost and uncertainty for those involved in corruption.

The media must also have integrity and credibility in the eyes of the public. Unfortunately, the media is often “for sale” to the highest bidder and in countries with systemic corruption, corrupt individuals and organizations often use the media as a tool to enhance their image or to suppress or confuse information about their activities. It is therefore often necessary to strengthen the media as an institution and to introduce checks and balances within the media itself. In some countries, professional journalist associations have been established to monitor the integrity of newspapers and journalists. Media councils can also do this monitoring.

Due consideration must be given to the particular risks to which investigative journalists are exposed. In recent years, murders of journalists have been attributed to their investigations of corruption cases. It is essential to facilitate their work and to reduce the risks involved. Several
institutions are running training courses in this area. However, the media itself is affected by corruption. Journalists accept payments to write articles against the political opponents of their paymasters while others are paid to prevent stories from appearing. The media itself needs to initiate mechanisms to make it possible for the media to police and monitor itself. This can be done by enforcing codes of conduct, and by establishing media councils that receive and respond to complaints about corruption or other unprofessional or unacceptable media practices.

**Related tools**

For the media to do its job when it comes to awareness raising and investigative reporting the following other tools would be useful:

- Access to Information Legislation
- Institutions overseeing the enforcement of access to information such as Anti Corruption Agencies (ACA)
**Tool 25 - Social Control Mechanisms**

**Purpose**

The purpose of the Social Control Mechanism is to help governments to work more efficiently and society to participate for forcefully in building an enabling environment for equitable and sustainable growth resulting in timely and cost effective services delivered to the public.

**Description**

Even under the best law enforcement systems, public officials do not always obey the law and follow government policy. To provide an external incentive for public officials to comply, social control boards have been created to focus on the monitoring and implementation aspects of anticorruption reforms. These groups are composed by civil society representatives with specialization in specific areas of public service delivery. Usually, specialized NGOs are incorporated in these boards. These civil society representatives usually seat in these boards side by side with government representatives and operate on a pro bono basis (e.g. Honduras, Costa Rica, Singapore, and Botswana). Countries in all regions ranging from Honduras in Central America to Singapore in Asia, Botswana in Africa, and most industrialized countries have all experimented with the use of social control mechanisms aimed at enhancing the quality of public services and reducing corrupt practices.

Anti-corruption reforms force governments and civil societies alike to find new ways to search for solutions and to define new strategies to create viable mechanisms for the viable and sure implementation of reforms associated with significant improvements in impact indicators.

For more than a decade, international organizations have promoted the principles of enhancing partnerships between civil societies and governments. However, most countries continue to navigate in uncharted waters because they have not been provided with specific strategies to develop an operational approach to ensuring social control mechanisms of anticorruption initiatives. It is time to address this need taking into account the specificity and historical background of each context and the obstacles encountered in the formulation of appropriate strategies.

The absence of the rule of law and the inaccessibility to the justice system for non-elites; the lack of accountability of government and the non-implementation of social, economic and cultural rights, are all barriers to the implementation of anti-corruption reforms as described in this Tool Kit. It is therefore critical not just to raise public awareness of the lawlessness that often plagues countries. It is also of fundamental importance to identify with rigour the serious shortcomings in the performance of the public institutions and the ways in which impunity undermines the rule of law. In this role, social control boards composed of members of civil society with a track record of social activism, technical capacity, and integrity are key to enhance the chances of avoiding blockages of anticorruption reforms due to state-related vested interests.

Today, democratic consolidation processes require new linkages between the spheres of civil society and political institutions. In this new context, strategies must be defined at the level of civil society, both to build awareness of anti-corruption measures and to find creative mechanisms to incorporate civil society in these government programs. Local civil society organizations in partnership with state agencies, universities or research centres have a decisive function in monitoring the delineation and implementation of reforms. Citizen participation must be facilitated to encourage civil society to voice its concerns and needs through panels of civil society representatives inserted within government institutions, to incorporate different viewpoints into the agendas of governments and to enforce the oversight of government agencies and practices. For this purpose, it is essential to create partnerships, networks and coalitions.
While governments have the responsibility to provide law and order for their citizens, this task also requires the collaboration of key social actors to fulfill this obligation. Such collaboration becomes particularly important when the institutional capacity of states is increasingly weak in the era of globalization, for diverse and different reasons in each country. More than ever, it is necessary to find ways to strengthen the capacity of local institutions to support bottom-up social control. Civil society organizations must also develop their capability to establish “early warning systems” to prevent systemic corrupt practices at the high political and administrative levels.

Education, monitoring and documentation are vital elements and necessary steps towards truly sustainable socially-controlled driven anti-corruption reforms. Communities should be encouraged to bring creativity into these processes, using testimony, community and city hall meetings, street theatre, art and informal dialogue fora. The results of monitoring and documentation can then be collected and shared to ensure the inclusion of the full spectrum of the community’s individual and collective efforts in order to provide a systematic attack at social corrupt practices. Vital to anti-corruption advocacy is the creation of mechanisms for accountability. In this respect, innumerable grassroots organizations in Latin America and Asia have succeeded in mobilizing resources and make them available to poor communities.

One of the possible strategies to fulfill these objectives is the establishment of a network of Anti-Corruption Observatories. A pilot project launched in December 2000 has been developed under the auspices of the International Law and Economic Development Center at the University of Virginia School of Law. These Observatories, established as a triangular cooperation among universities or research centers, civil society organizations and State institutions in charge of accountability, will contribute to building databases and to developing indicators on a selected set of anti-corruption practices to be monitored. Additionally, Observatories can serve as early warning systems.

Anti-Corruption Observatories help to build critical partnerships with existing State institutions (for instance, public prosecutors and auditing courts) so as to exercise “bottom-up” social control on the performance of governments and the effectiveness of their public policies to reach the poor as part of anti-corruption efforts.

Another valuable initiative intending to produce a blend of ethical thinking and action influencing public anti-corruption policies is the experience of anti-corruption education and the ongoing formation of a city-wide anti-corruption community in the city of Merida, Venezuela and in Limpio, Paraguay. In this process two international organizations civil society representatives have joined efforts with their local governments to establish a monthly monitoring system addressing surveys of public service delivery and samples of complaints related to public service delivery at the executive and legislative levels of the local government domains. Civil society representatives work on a pro bono basis while the governments in each case cover all logistic and operational costs of the survey and other documentation needs. Impact indicators used to assess the relative success / failure of measures include procedural times and complexity in service delivery, effectiveness in service delivery, accountability mechanisms establishing rewards/penalties for public officials, and degree of public trust in specific institutions.

The policy proposals presented in our case studies must also be aimed at showing how countries have managed to empower individuals, communities, and governments by disseminating knowledge and thus enhancing transparency within the public sector. This, in turn, results in greater government accountability, which is integral to building institutional capacity and improving service delivery with less corruption. These types of programs can help governments to work more efficiently and society to participate in building an enabling environment for equitable and sustainable growth resulting in timely and cost effective services delivered to its public.

Organizations in the public and private sector at the local and national level must adopt various measures if they are to achieve success in the fight against corruption. Economic development,
democratic reform, a strong civil society with access to information and presence of the rule of law appears to be crucial for the effective prevention of corruption. The following are measures or initiatives implemented at various levels within the public and private sectors of several countries. The measures have addressed policy and systemic issues as well as the behavioural and cultural aspect of institutional change. In this context, three strong-existing approaches have been harnessed to drive the anti-corruption movement:

- Decentralization with strong social controls
- High-level political will, and
- The introduction of enforceable internal and external checks and balance mechanisms.

**Decentralization with strong social control.** Local authorities tend to be more amenable to rapid change and more open to broader participation. The recent emphasis on integrity planning meetings at the district level in Uganda, Costa Rica, Chile, and Venezuela coincides with the increasing importance of the district in delivering decentralized services. The participatory workshops at the district level are experimenting with techniques for developing implementable and realistic action plans for the most important public services such as health, education, police and judiciary.

**Political will at national and municipal level.** The will to fight corruption at both national and subnational levels has been observed to ebb and flow with the electoral cycle. National and municipal leaders facing an election are more susceptible to civil society and international demands and more motivated to lead national or municipal efforts against political corruption. The longer a leader has been in power, the more she/he comes under pressure from peers, party, colleagues, clan and family members to tolerate corrupt behavior.

High-level political will is maximized when there is strong pressure from civil society. Outside facilitation can help: staff from specialized NGOs focusing on anti-corruption work have been highly visible and sustained. The administration is aware of the importance of the perceived integrity of the country for both private sector investment and continuing involvement of the international aid community.

**Increased checks and balances.** The third internal force than can increase the risk for public servants who intend to misuse their public powers for private gain, is an empowered civil society through social control mechanisms. By systematically feeding the country assessment back to the civil society through district and sub-county integrity meetings and social control boards, the civil society can be empowered to ask questions and demand change. The empowerment through increased awareness was especially effective in Venezuela and Uganda when the civil society got district-specific information that could be compared with a national average.

As an example of the above, our case study focuses on how Venezuela has applied social control mechanisms and succeeded in reducing their levels of systemic corruption within a pilot local government between 1998 and 2000. This was achieved by combining good public sector governance, political will, and technical training of civil society groups in the monitoring of a local government. Specifically, perceptual and objective indicators are shown below measuring the differences in the frequencies of corrupt practices and institutional effectiveness before and after reforms were implemented in five countries.

The failure of the State to internally control corrupt practices and its failure to impede the capture of policy-making bodies by the very vested private/public interests fostering corruption, has generated the need to incorporate civil society safeguards, designed to complement the state’s auditing capacities and to monitor specific institutions of the state on an ordinary basis. These social control mechanisms have been normally focused on budget planning and on public service delivery-related areas. These two areas were addressed by Venezuela in its pilot local government located in Merida (Campo Elias). The record of its success is mixed. Provided its members receive the appropriate training, the indicators of social control effectiveness impressive results as shown below. These social control mechanisms operated in Campo Elias as
bodies that interact with specific agencies of the public sector and were entrusted with the monitoring of public agencies’ performance and the channeling of suggestions and complaints related to service delivery. As such, these social control mechanisms did follow the integrated approach to empower victims of corruption, as explained in the Tool Kit and in other case studies above.

More specifically, social control “panels” or boards composed of civil society representatives were elected in Merida by neighborhood councils. In some cases, these representatives were sharing the social control board with representatives of the state. These civil society representatives were required to show a track record for integrity, social activism, and experience in dealing with the areas to be monitored by the social control board (e.g. utilities). Moreover, the civil society representatives’ roles, characteristics, responsibilities, and attributes were frequently formally legalized through local laws and ordinances.

The social control-related reform experiences of Venezuela provide best practices on how these civil society mechanisms have an impact on the frequency of corruption, transparency, access to institutions, and effectiveness in service delivery. Attention to the indicators of perceived frequencies of corruption, access to institutions, effectiveness in service delivery, and transparency within the municipal government in Merida (Venezuela) is shown below. Here, we can observe these impact indicators before and after selected internal institutional reforms were introduced to address the following areas:

(a) Simplification of the most common administrative procedures;
(b) Reduction of the degree of administrative discretion in service delivery;
(c) Implementation of the citizens’ legal right to access information within local state institutions; and
(d) The monitoring of quality standards in public service delivery through social control mechanisms supervising samples of delivered services.

Reforms in these areas were implemented through the monitoring of social control boards where at least half of its membership was composed of civil society representatives who were already trained in technical aspects dealing with the local government agencies involved (i.e. tax office, department of public works, health provision, and education department). In no case, civil society representatives were selected by the state and, in all cases, the social control boards included representatives from the institutions to be monitored. Surveys and institutional reviews were conducted in order to gather the perceptional and objective indicators respectively. These surveys monitored the levels of perceived effectiveness in service delivery, transparency in service delivery, public trust in service delivery, and accountability in service delivery. The results from implementing reforms in the aforementioned areas are as follows

**Chart 1. Two years percentage changes in corruption related indicators before and after social control mechanisms**

<table>
<thead>
<tr>
<th>Pilots</th>
<th>Frequency of Access</th>
<th>Access to Institutions</th>
<th>Effectiveness</th>
<th>Transparency</th>
<th>Administrative Complexity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Venezuela</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipality - Campo Elias</td>
<td>-9.1%</td>
<td>15.9%</td>
<td>7.3%</td>
<td>7.5%</td>
<td>-9.5%</td>
</tr>
</tbody>
</table>

**Chart 1** above shows the two-year percentage changes in perceived frequencies of corruption, effectiveness, transparency, access to institutions, and the users’ perspective of administrative complexity applied to the services provided by the municipal services in Campo Elias (Venezuela). The percentage changes reflect two-year variations at any time during the period...
1998-2000. These perceived frequencies were provided by direct users of these services at point of entry (i.e. at the exit point after interacting with the public sector institution involved). By observing the Chart 1 above, one can observe significant two-year drops in the frequencies of perceived corrupt acts, defined here as occurrences of bribery, conflict of interest, influence peddling, and extortion. As one can see, frequencies of corruption decrease by 9.1 percent. Moreover, an additional 15.9 percent of those interviewed perceived improvements in the access to municipal services. The two-year increase in the users’ perception of improvements in the effectiveness of service delivery equals 7.3 percent. Moreover, one can see that the two-year increase in the proportion of those users perceiving improvements in the transparency increase by 7.5 percent. A large number of studies have already shown a relationship between increases in an institution’s administrative complexity and higher frequencies of corruption. Each of the local agencies included in this case study provided data to calculate the differences in the administrative complexity applied to the most common procedure followed by users in each institution (e.g. building permits). The objective (hard data) indicator for each of the institutions involved here was calculated through a formula taking into account three factors: (i) average procedural times; (b) number of departmental sections involved in processing the service; and (c) number of procedural steps needed by users in order to complete the procedure. The changes in this administrative complexity indicator were calculated for the same 1998-2000 period. The percentage change decrease is shown in the last column of the Chart above. Within this analytical framework, the measure of administrative complexity in the delivery of the sampled services decreases by 9.5 percent.

It is noteworthy that in all these cases, the institutional heads of the pilots selected were all known for their integrity, political will, and capacity to execute previous reforms. It is key to previously select the most adequate ground to implement these reforms in an environment within which civil society representatives are also willing and able to receive technical training to monitor the results of these reforms and possess a basic level of organization within the social control boards. In most of these cases, social control boards were not just in charge of monitoring the above indicators, but they were also responsible for channeling and following any users’ complaints dealing with service delivery. These bodies met on a weekly to monthly basis. In all cases, local or national laws were enacted with the sole purpose of providing the institutional identity and formal legitimacy to these bodies. Finally, these social control boards provide an operational and implementation arm to the objectives and policies validated by civil society through national or local integrity meetings, focus groups, and national and municipal integrity steering committees.

The following is an account of a World Bank program in which an innovative and effective mix of building participatory civil society-local government institutional frameworks and applying best practices in public policy-making have yielded the impact detailed below. The experiences of the municipalities of Ibague (Colombia), Limpio (Paraguay), and San Jose (California) respond to the same pattern of institutional reforms to be described below.
CASE STUDY; CAMPO ELIAS IN VENEZUELA

The municipality of Campo Elias (Venezuela) has an area of 572 km². Of 20,000 people, the urban population comprises 89 percent and the remaining 11 percent is rural. In 1998, it was estimated that 39 percent of the population was living below the poverty level. In the past, corruption had adversely affected both the provision and maintenance of services, and the quality of life in Campo Elias. A survey conducted in July 1998 by the World Bank Institute, showed that the administrative and regulatory framework that previously existed in Campo Elias generated confusion and was inaccessible to the general population. Due to unpredictable procedures and the duplication of functions, there were no accountable or transparent institutionalised methods for the provision of public services. The lack of accountability and the unregulated discretionary behavior of local officials served as perverse incentives for corruption.

Public and private financial systems, as well as the public procurement system, were all vulnerable to corruption. Citizens often believed that bribery was the most effective way to request and receive services, and they viewed the public sector as an institution not for public service, but for personal enrichment. Moreover, citizens were not motivated to participate in the public sector because they judged such participation to be a utopian impossibility.

This program—which was implemented in April of 1998 and was completed in December of 1999—was designed to help encourage an efficient, accessible, and transparent municipal government in Campo Elias and required the joint efforts of WBI, the municipal government, and civil society in order to approach these goals.

A diagnostic study was conducted in order to identify problematic areas throughout Campo Elias. Using this study and the training received by the local government from WBI workshops, the mayor, her staff, and civil society worked in participatory working groups to prioritise areas for reform and develop a detailed action plan for governmental reform.

A social control board, composed of three members of civil society elected by workshop participants, were equipped by World Bank technical advisers with the knowledge and skills needed to implement a reform strategy in Campo Elias. The Bank funded the hiring of a technical coordinator in charge of advising the government on how, what, and where to implement reforms. The working groups themselves identified and confirmed the existence of critical problem areas to be addressed such as the lack of information and accountability in public policy making and the overly complex regulatory framework. The groups, composed of members of civil society and government officials working together, identified the problems, discussed reforms to be implemented, and defined expected results. All operational funds to be allocated to these activities were covered by the local government taking into account that the positions of the four members social control board were pro-bono.

This was an exciting initiative where, in essence, the citizens of Campo Elias (Venezuela) developed the entire action plan, making them an integral part of the program and giving them a major incentive to implement reform—they were indeed true stakeholders.

An action plan was successfully implemented. The action plan included technical assistance from the Bank to enhance accountability, transparency, cost-effectiveness, and credibility in the delivery of services. In order to achieve these standards, the following instruments were implemented: (i) simplification of administrative procedures, including the implementation of procedural manuals, (ii) Neighborhood Public Audiences, (iii) Public Budget Municipal Session, (iv) Public Accountability Committee, (v) Communal Control and Fiscalization Committee, (vi) local initial integrity assessment workshops.
Preconditions and Risks

The main opposition to reforms emanates from vested interests within the local governments and from political groups outside government. In general, four major areas of concern should be monitored and, if necessary, addressed.

Membership. As noted, the selection of members of social control boards must include not only the necessary range of expertise, but also serve to establish credibility in reforms to be implemented. This is particularly true in the early stages, before a board starts its work, as there is no record on which to assess credibility. The perception of having a board captured by the local, regional, or national governments must be avoided at all costs.

Setting of reasonable goals and expectations. As with larger national programmes, there is a tendency to underestimate the difficulty of the tasks ahead and set overly ambitious goals. These in turn fuel unreasonable expectations which, if not met, lead to frustration, cynicism and a loss of credibility which impede further progress and can even make the problem of corruption worse.

Failure to involve all key stakeholders. As with other bodies, it is essential that local social control boards identify and involve all interested parties as members or participants in their proceedings to ensure that all relevant interests are taken into consideration, to validate the work done and results obtained and to ensure that uninvolved stakeholders do not block or impede progress. It is important to include elements which are corrupt or perceived as being corrupt.

Failure to mobilize support for anti-corruption efforts. Of all national anti-corruption bodies, it is the social control boards which have the greatest contact with the population. Locally-based functions and those who provide and use them are often the most profoundly affected by corruption, and at the same time the hardest to educate and mobilize. It is critical that social control boards engage local populations in the anti-corruption programme, demonstrating the seriousness of the problem, the importance of the anti-corruption efforts, and what local populations can do to support these efforts. Civil society organizations at the local level should be enlisted in this effort wherever possible.

Related tools

A likely related tools to strengthen social control mechanisms could be:

- Establish, disseminate, discuss and enforce a Code of Conduct for public servants
- Establish and disseminate, discuss and enforce a Citizen Charter
- Establish an independent and credible complaints mechanism where the public and other parts of the criminal justice system can file complaints
- Establish a Disciplinary Mechanism with the capability to investigate complaints and enforce disciplinary action when necessary
- Conduct an independent comprehensive assessment of the governments levels, cost, coverage and quality of service delivery, including the perceived trust level between the public service and the public
Tool 26 - Public Complaints Mechanisms

**Purpose**

Objective of the public complaints mechanism is enable all persons, who have been confronted with corrupt practices or misadministration, to indicate this practices without any disadvantages.

Expected impact is to increase the rate of detection of corrupt practices. Improved public awareness by involving citizens in enforcing anti-corruption measures. Heightening public confidence in governmental anti-corruption efforts.

**Description**

Not only surveys, but also complaints of corrupt behaviour are indicators for the actual extent of corruption. At the same time, complaints enable investigation, prosecution or other sanctions. For this reason, the complaint mechanisms have to become permanent institutions and their number still has to increase. There should be different institutions to ensure that both, citizens and public servants can report corrupt behaviour without personal or financial disadvantages, for instance allegations of disloyalty, breach if friendship, self-promoting or bad judgement.

**External mechanisms.** External complaint mechanisms are thinkable in different forms. An example for such an external institution is the office of an Ombudsman.

**Internal reporting procedures.** Institutions with effective integrity programmes generally have well-developed procedures to deal with potential dishonesty and the complicating factors of supervisory and personal relationship. These procedures should impose on every member of the government establishment clear obligations and criteria as to what constitutes a reportable incident or allegation and to whom and how the report must be made. Each organization can develop rules suitable to its own culture and counterpart organizations. An ethic officer for the entire organization ma be designated as the primary point of referral or as an alternate contact when the allegation touches the supervisor who would be normally be the primary recipient. The channel of transmittal to the appropriate investigating authority should be clear, with time limits and explicit standards governing which allegations must be referred for review by a criminal justice authority.

Awareness and Comparison. Citizens must be informed at any time, where and how to report corrupt behaviour. This objective requires to establish new mechanisms, and to simplify the existing procedures. A computerized complaint programme would allows comparisons concerning reporting between different areas on a sub-national level.

**Precondition and Risks**

**Related tools**

A likely related tools to strengthen social control mechanisms could be:

- Establish, disseminate, discuss and enforce a Code of Conduct for public servants
- Establish and disseminate, discuss and enforce a Citizen Charter
- Establish an independent and credible complaints mechanism where the public and other parts of the criminal justice system can file complaints
- Establish a Disciplinary Mechanism with the capability to investigate complaints and enforce disciplinary action when necessary
• Conduct an independent comprehensive assessment of the government's levels, cost, coverage and quality of service delivery, including the perceived trust level between the public service and the public.
• Simplifying procedures of complaining,
• Raising public awareness where and how to complain (e.g. by campaigns telling to public what telephone number to call), and
• Introducing a computerized complaints system allowing the institutions to record and analyse all complaints and monitor actions taken to deal with the complaints.
Tool 27 - Citizen Charter

Purpose

Key objectives are to:

- Promote better government which provides high quality, efficient and effective public services and regulation, delivered in an accountable, open, accessible, and responsive way.
- Maintain and enhance professional and ethical standards of the Civil Service and non-departmental public bodies and to promote high standards of accountability and openness in the wider public sector.

Description

Principles

The Principles of the Charter are:

- Standards: explicit standards regarding quality, timeliness, cost, integrity, and coverage of services must be published and monitored. This is the service which individual users can reasonably expect. Performance against those standards must also be published.
- Information and Openness: full and accurate information must be made readily available in plain language about how the service is run, what it costs, how it performs and who is in charge.
- Choice and consultation: Where ever possible choice must be provided. There must be regular and systematic consultation with users, and their views must be taken into account before final decisions are reached on standards.
- Courtesy and helpfulness: Public servants must be courteous and provide helpful service. Services are available equally to all who are entitled to them and must be run for their convenience.
- Putting things right: if things go wrong, an apology, together with a full explanation and a swift and effective remedy must be made. Easy to use complaint systems must be publicized.
- Value for Money: Services must be efficient and economical, within the resources the country can afford. Independent validation of performance against those standards must be made.

Where do we find Citizen Charters? 63

As an example there are 40 national charters covering the major public services in England and Wales, Scotland and Northern Ireland, of which the most important are the Patient's, Parent's and Passenger's, as these are the public services which affect most people. Each charter sets standards, tells people what they can expect and what to do if they wish to complain. Each organization publishes information showing how well it has performed against the standard. For example, my local train station publishes information every month showing what percentage of train services have been on time. Every November, the Government publishes league tables of schools' performance, showing how well the students in every school in the country performed in that Summer's national examinations.

63 Citizens Charter, by Jim Barron, Head of the Office of Civil Services Commissioners, United Kingdom, Paper presented in Ukraine National Integrity Meeting, 1997
A more recent development has been the publication of standards by local bodies such as schools, hospitals and police forces. They cover the same items as the national standards, but are directed at showing how local organizations serve the local community. As an example, in UK there are now some 10,000 such standards.

**Charter Mark**

One of the key developments was the Charter Mark scheme. This is a form of quality assurance. Organizations are assessed against the six standards and have to show an area of innovation in customer service. If they match the overall standard, they are awarded a Charter Mark which they hold for three years. They then have to reapply.

As an example, in the UK in the first year (1991) 296 organizations applied and 36 Charter Marks were awarded. In 1997 945 organizations have applied, and the winners are about to be announced. Members of the public are invited to nominate organizations they think provide good service: in 1997 25,000 did.

The aim is to improve customer service. In the first year, I remember telling the a fire brigade in South Wales that they did not meet the standard. They were bitterly disappointed, particularly as the Police Service in the same area had been awarded a Charter Mark. We had a long discussion, and I am pleased to say that the fire brigade looked again at its service and made improvements. It applied again the following year and was successful.

**Complaints**

Another key development was the attention given to complaints procedures. A British Minister once described complaints as "the jewels in the crown" - not only could you correct the mistake, but you had an opportunity to see what had caused the complaint and make changes to your systems thus improving the service provided to the public. Trying to draw up a Court's Charter, and asking about complaints the reaction in the UK was that it was too complicated. It depended on whether you wished to complain about the police, the prosecution or the court administration and no one person had responsibility for or knew all the systems. After a heated discussion, it was agreed that members of the public could not be expected to understand this, and so one person in every court was given the task of dealing with complaints initially and pointing people in the right direction.

As an example in the UK a Charter Unit carried out a survey of complaint systems among a range of public service) and found much variation. Representatives of consumer groups were therefore asked to participate in a study to develop the key features of a good complaints procedure. This was published as an example of good practice, and organizations were invited to match their systems against it.

**The Citizen Charter Unit**

In the UK, this unit started out in 1991 with 10 people. The number grew rapidly to 30 and staffing remains at that level. The Citizen Charter Group in the UK worked with the Prime Ministers office to draw up the national charters. They also led studies into particularly topics, such as complaint systems. As the Charter took hold in the public imagination and among public services, the role of the unit changed. The Citizen Charter Group staff became more like facilitators, spreading good practice, through discussion with departments, working groups and the annual report and regular newsletters. Instead of assessing Charter Mark: applications themselves the scale of the scheme now means that the Citizen Charter Unit now manages a team of assessors who do the work on their behalf. But the core function of the unit remains' to think about the strategic purpose of the Charter and the way ahead.
The Advisory Panel

The Citizen Charter Unit in the UK, as an example, is helped by an Advisory Panel. The panel was first, again in the UK, appointed by Prime Minister to advise him on the Charter and how it should be implemented.

Each member has wide experience of customer service in the private or public sector, and is able to work closely with the unit on individual charters and the strategic development of the initiative.

Preconditions and Risks

Important preconditions for success:

- **Top level commitment.** In the UK, as an example, the Prime Minister held seminars of all Ministers and Permanent Secretaries every six months to ask them what progress they had made. Having to report in such a forum encouraged departments to take the initiative seriously and make sure that they kept up with the pace of other departments.

- **Public support.** The program was going with the grain of development in the public sector. Public services could see this and learn from wider experiences' though in some instances public services were ahead of what the private sector was doing.

- **Measurable performance standards.** The publications of standards and performance against them was key in the UK. People knew what to expect and how to complain. Organizations did not like to be shown publicly to be failing - schools league tables are a prime example of this - and this led to pressure for improvements,

- **Incentives.** Rewarding achievement through the Charter Mark scheme was also key. Paradoxically this was shown by failure. One large utility, which had been awarded Charter Mark, began to attract many complaints about its service. There was a great deal of speculation in the press about its award, and whether it should remain. Rather than risk applying again and failing, the utility decided to withdraw from the scheme. This served to emphasize that Charter Mark was an award worth having: indeed a number of private sector organizations applied for it, but of course they were eligible.

- **National and local charters.** The move to local charters was also important, as it stressed and encouraged the role of local providers in the local community. Central government may set out principles, but it cannot manage the many thousands of local services through which most people have contact with the Government.

Lessons learned from mistakes

- **Be realistic.** In the UK a Charterline was developed. The idea was to provide one telephone number which anyone could ring to find out about standards of service across the public sector and how to complain. Market research had showed there was the potential for such a service and a sophisticated call management system was developed in partnership with the private sector. When the Charterline was pilot tested, very few calls were received. The programme had been too ambitious as it (i) was trying to provide information on too many service; (ii) the cost of capturing that information and keeping it up to date was prohibitive and (iii) the public had not at that stage seen the difference that the Citizens Charter would make and so did not see the need for the service.

Related tools

Tools which may be required before Citizen Charter can be successfully implemented include:
• Tools which raise awareness of the code of conduct and the citizen charter and establish appropriate expectations on the part of populations, particularly those directly affected by the actions of those subject to the charter, such as publicity campaigns and the development and promotion of Citizen Charter and similar documents;

• The establishment an independent and credible complaints mechanisms to deal with complaints that the prescribed standards have not been met;

• The establishment of appropriate disciplinary procedures, including tribunals and other bodies to investigate complaints, adjudicate cases and impose and enforce appropriate remedies or other outcomes;

Tools which may be needed in conjunction with Citizen Charter include:

• Tools which involve the training and awareness-raising of officials subject to each citizen charter to ensure adherence and identify problems with the charter itself;

• The conduct of regular, independent and comprehensive assessments of institutions and where necessary, of individuals, to measure performance against the prescribed standards;

• The enforcement of the Citizen Charter by investigating and dealing with complaints, as well as more proactive measures such as “integrity testing”; and,

• The linking of procedures to enforce the charter with other measures which may identify corruption, such as more general assessments of performance and the comparison of disclosed assets with known incomes.

Citizen Charter can be used with most other tools, but areas of overlap and possible inconsistency may be a concern and should be taken into account when formulating specific provisions. This is particularly true of other rules which may apply to those bound by a particular citizen charter. Citizen charters should not be at variance with criminal offences, for example, and in some systems it may be advisable to reconcile other legal requirements by simply requiring those bound by the charter to obey the law, effectively incorporating all applicable legislative requirements and automatically reflecting any future statutory or regulatory amendments as they occur, for example. Care should also be taken to ensure that charter are consistent with other applicable codes of conduct, or that if an inconsistency or variance is intended, this is clearly specified.

Case Study 16: Hong Kong SAR’s Independent Commission Against Corruption

Recommended Further Reading


2. UN Manual for Anti Corruption Policy, Vienna 2002

Relevant Web Pages
Enforcement
V. ENFORCEMENT

Introduction

One key problem faced by those investigating corruption is that, unlike many traditional crimes such as robbery or murder, there is no clear victim to complain or overt occurrence likely to be reported by witnesses. In corruption cases, those with direct knowledge of the offence generally profit in some way, making them unlikely to report it. Corruption is not a “victimless” crime, but the only victim in many cases is the general public interest, which is not aware of the crime or in a position to report or complain about it. For this reason, any anti-corruption strategy should include elements intended to bring to light the presence of corruption. These include elements intended to encourage those who witness or are aware of corruption incidents to report them and incentives to complain about sub-standard public services which may be due to corruption, supported by more general education about corruption, the harm it causes and basic standards that should be expected in the administration of public affairs. Also included are elements that generate information and evidence of corruption in other ways, such as audit and inspection requirements. In some cases, there are relatively direct victims of corruption, such as the unsuccessful participants in a corrupt competition for a public contract or employment position, and strategies should also encourage these victims to be aware of the possibility of corruption and report it when suspected.

In encouraging those aware of corruption to report it, the greatest challenge is often the fact that those who are victimised directly are often vulnerable to intimidation or retaliation from the offenders, either because they belong to vulnerable groups, or because of the relationship to the offenders which made them aware of the corruption in the first place. Those who deal with officials in circumstances of physical or social isolation, such as new immigrants or residents of rural areas might be the subject of information campaigns about what standards to expect from officials and given the means to lodge complaints if the standards are not met, for example. Government agencies can set up channels that permit corruption to be reported internally.
Tool 28 - Guidelines for Successful Investigations into Corruption

**Purpose**

The following guidelines are meant to give members of the law enforcement community some general directions for investigating corruption.

**Description**

There are no universal rules for investigating corruption, but some of the following elements, if incorporated into national strategies, will help to develop investigative structures which can detect corruption and conduct effective investigations that produce information which can be used to develop and apply effective responses. Investigative results should be capable of supporting not only criminal prosecutions and other responses directed at those involved as individuals, but also measures intended to restructure or reorganise public or private administration to make it more resistant to corruption. The autonomy and security of investigations is important, both to encourage and protect those who report corruption or assist in other ways, and to ensure that the results of investigations – whether they find corruption or not – are both valid and credible.

**Education about corruption**

Before corruption can be reported, it must first be identified. This requires that the general population and specific target groups be educated about what constitutes corruption, the full range of forms of corruption, its true costs and consequences, and more generally about reasonable expectations for standards of integrity in public administration and private business practices. Many people have a very narrow appreciation of corruption and may not understand that behaviour they witness or engage in is harmful. Others may understand the harm, but lack motivation to take any action because the problem is seen as pervasive and unchangeable. In environments where corruption has become institutionalised and accepted, considerable educational efforts may be needed to change the popular perception that corruption is a natural or inevitable phenomenon and ensure that it is perceived as socially harmful, morally wrong, and in most cases, a crime. In many countries, similar efforts have proven successful in the past with respect to other forms of crime such as impaired driving, “white-collar” crime, and environmental crime.

**Opportunities to report corruption**

Those who have knowledge of corruption must be placed in a position where they are able to report it. This requires having officials charged with the responsibility for dealing with corruption, ensuring that they are properly trained in dealing with cases, that they are easily available to potential complainants or witnesses, and that those who might report corruption are aware of the existence of such officials and can readily contact them with information.

**Security against retribution**

Victims and witnesses will not come forward if they fear retribution, and precautions against this are commonly incorporated into instruments dealing with corruption and organized crime, where the problem is particularly acute. This is particularly true in cases of official corruption, where

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64 Recent international provisions dealing with intimidation or retribution include: *United Nations Convention Against Transnational Organized Crime* (GA/res/55/25, annex), articles 23 (requiring States...
those who have information are usually relatively close to a corrupt official, and the status of the official affords him or her opportunities to retaliate. Measures are usually formulated not only to protect the informant, but also the integrity and confidentiality of the investigation. Common precautions against this include guarantees of anonymity for the informant, assurances that officials accused of corruption will not have any access to investigative personnel, files or records, and powers to transfer or remove an official during the course of an investigation to prevent intimidation or other tampering with the investigation or evidence.

In cases where the informant is an “insider”, additional precautions may be taken because of his or her employment in close proximity to the offenders and because in some cases there may be additional legal liabilities for disclosing the information involved. Many countries have adopted “whistleblower” laws and procedures that protect insiders who come forward with information. These protections may apply to inside informants from both the public and private sectors. Additional protections in such cases may include shielding the informant from civil litigation in areas such as breach of confidentiality agreements and libel or slander, and in the case of public officials, from criminal liability for the disclosure of government or official secrets. Such protections may extend to cases where the information was incorrect, provided that it was disclosed in good faith.

Safeguards against abuses by the informants themselves may also be needed, particularly in cases where they are permitted to remain anonymous or are broadly shielded from legal liability. To balance the interests involved, legislation may limit legal protections to cases of bona fide good faith disclosures or create civil or criminal liability for cases where the informant cannot establish good faith or that the belief that malfeasance had occurred was not based on reasonable grounds.

In cases where the informant’s information proves valid and triggers official action, his or her anonymity often cannot be maintained, making retribution possible even after changes have been made to address the complaint. In such cases, legislation may provide for compensation, transfers to other agencies or employment removed from those involved in the case, or in extreme cases where the informer is in more serious danger, relocation and a new identity unknown to the offenders.

Independence and credibility of investigators and prosecutors

Independence from those under investigation is critical to the protection of victims, witnesses and informants, but it is also important that officials or bodies responsible for investigating corruption be independent or autonomous for other reasons. Functional independence ensures that investigations will be effective in identifying corruption by reducing the potential for tampering with investigations by corrupt officials, and ensuring that evidence obtained will be credible when used in criminal or disciplinary proceedings. It is also important as a means of...
instilling confidence in both the investigators and in the bureaucracies or agencies they investigate. Where the investigation is independent, populations have some assurance that if corruption exists it will be identified and eliminated, and that if investigators conclude that corruption does not exist or has been eliminated, the bureaucracy can be trusted.

The mechanics of functional independence vary from one country or justice system to another. Most systems incorporate elements of judicial independence to ensure the integrity of court proceedings, but the means of securing autonomy for the prosecutorial and investigative functions differ. In systems where criminal investigations are carried out by magistrates or other judicial officials, these functions also fall within the ambit of judicial independence. Where investigations and prosecutions are carried out by non-judicial personnel, judicial oversight may still play a role, but as this only applies to cases which come before the courts in such systems, other methods must be found to review or monitor key functions such as the conduct of investigations and the decisions which determine who is investigated and whether a prosecution is brought before the courts in each case.

The problem of quis custodiet ipsos custodes? Also arises in developing structures which separate anti-corruption investigations from other elements of government. The agencies involved must be sufficiently independent to protect their functions against undue interference, but must also be subject to sufficient oversight to prevent abuses and to identify corruption on the part of investigators and prosecutors should it occur. These are common problems in establishing law enforcement and prosecutorial agencies in any system, but are arguably more critical in dedicated anti-corruption agencies because those involved will almost certainly be the subject of attempts at bribery, coercion or other undue influences, often by very sophisticated and well-resourced corrupt officials or organized criminal groups. It is essential that investigators be subject to overall regulation and accountability for their activities, but that such oversight does not extend to interference with operational decisions such as whether a particular individual should be investigated, what methods should be used, or whether a case should be the subject of further action, such as criminal prosecution, once the investigation has concluded.

**Adequate training and resources for investigators**

Adequate training and resources are necessary both to ensure that reported cases will be dealt with effectively, and to encourage those aware of corruption to come forward with information. Informants will only assume the risk of reporting if they are confident that effective action against corruption will be the result. This confidence requires not only assurances that investigations will themselves be independent and free of corruption, but also that investigators are actually capable of detecting it, gathering evidence against offenders, and taking whatever measures are needed to eliminate it. The commitment of significant resources also sends a powerful signal that the highest levels of government are strongly committed to the prevention and elimination of corruption, which both deters offenders and encourages informants.

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67 See the Code of Conduct for Law Enforcement Officials contained in the annex to General Assembly resolution 34/169 of 17 December 1979. See also the guidelines on the role of prosecutors contained in the annex to resolution 26 of the Eighth Congress (Eighth United Nations Congress, pp. 188-194).

68 “Who will watch the watchman?”
The wide range of forms of corruption requires a wide range of specific skills and knowledge on the part of investigators, but most will find frequent need for legal and accounting skills in order to identify, preserve and present evidence, whether in criminal proceedings, disciplinary proceedings or other fora. Adequate capabilities also depend to a large degree on the presence of adequate resources to ensure that sufficient numbers of investigators are present and that they have the necessary skills and training to work effectively. Apart from personnel and funding, other resources, such as systems for the creation, retention and analysis of records, can also be important. Often the strongest evidence of high-level corruption will be a long-term pattern in complaints about lesser abuses, for example.

**Liaison with other investigative agencies**

Given the need for autonomy and independence and the extreme sensitivity of many corruption cases, a careful balance should be struck when establishing the relationship between anti-corruption investigators and other agencies. In environments where corruption is believed to be relatively pervasive and widespread, complete autonomy is advisable. Establishing an anti-corruption unit in a police force may not be advisable, for example, if there is a significant likelihood that the police themselves may be investigated or if they are suspected of corruption. On the other hand, it will be important that anti-corruption investigators interact effectively with other agencies. Information from tax authorities or agencies investigating money-laundering or other economic crimes may uncover evidence of corruption or of unexplained wealth which may have been derived from corruption, for example, and audits of government agencies may uncover inefficiency or malfeasance which is not due to corruption, but which warrants further investigation or reform by other agencies.

**Other means of detecting corruption**

While encouraging those who witness corruption to report it is clearly a major means of detection, other methods should not be overlooked. Many of these can also be considered as preventive in nature and are discussed in the previous part of this Manual. Others are examined in more detail in the following segments.

**Disclosure and reporting requirements**

Requiring that public officials make periodic disclosure of their assets both deters unjust enrichment and provides investigators and auditors with a powerful instrument to detect corruption by detecting the existence of unexplained wealth. Similarly, non-compliance with requirements to disclose actual or potential conflicts of interest may alert auditors or investigators to the possibility that the official intends to corruptly exploit undetected or undisclosed conflicts. Such measures may be effective even if the official is not honest in complying with the reporting requirements, since gaps and inconsistencies may well trigger more thorough investigations, and the official may ultimately be held liable not only for corruption per se, but for non-compliance with the reporting requirements themselves.

Sanctions against non-disclosure or false reporting should be approximately as severe as those against the underlying corruption, to prevent offenders from avoiding liability for corruption by committing the lesser disclosure and reporting offences.  

With respect to relevant recent international principles addressing this issue, see e.g., Principle 5, point 2 of the Global Forum on Fighting Corruption’s **Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials** (1999). For a more detailed analysis of this instrument, see UN document E/CN.15/2001/3 (Report of the Secretary General on Existing International Legal Instruments Addressing Corruption).”
least the possibility of dismissal or removal from office to ensure that corrupt behaviour can be ended even in cases where the inadequate disclosure is successful in concealing unjust enrichment and the underlying corruption. As noted in the previous Part, regular periodic disclosure is also preferable to requiring disclosure only on entering and leaving office, as this will detect corruption while it is still ongoing, reducing the harm caused to the public interest.

Audits and inspections

Audits of records, physical inspections of premises or items, or interviews with potential victims, witnesses or others who may have relevant information can be used both proactively as a means of monitoring the quality and integrity of public administration and identifying possible abuses, and reactively as a means of investigating those already suspected of corruption or other malfeasance. Audits may be conducted on an internal or local basis, but overall anti-corruption strategies should provide for a central, national audit agency. Such agencies require adequate resources and expertise, and in order to audit senior levels of government, they must enjoy a substantial degree of autonomy approaching if not equal to judicial independence. This independence should extend to decisions about which officials, sectors or functions should be audited, how audits should be carried out, the drawing and formulation of conclusions about the results of audits, and to some degree the publication or release of such conclusions.

Auditors and their investigative staffs should have the power to conduct regular or random audits to ensure overall deterrence and surveillance, as well as specific targeted audits directed at individuals or agencies suspected of malfeasance. In many countries, the mandate goes beyond suspected malfeasance, as auditors are also responsible for identifying and addressing cases of waste or inefficiency deriving from problems other than crime or corruption. Where problems are identified, auditors generally have the power to recommend administrative or legal reforms to address institutional or structural problems, and can refer cases to law enforcement agencies or criminal prosecutors if criminal wrongdoing is suspected.

Auditors should be supported by legal powers such as requirements that compel individuals or agencies being audited to cooperate, but auditors should not be allowed to become law enforcement agencies. In most countries, once criminal offences are suspected, higher standards of procedural safeguards are applied to protect the human rights of those involved, but once the procedural requirements have been met, criminal investigators are authorised to use much more intrusive powers to detain suspects and gather evidence. Maintaining the distinction between auditors or inspectors and criminal investigators ensures that the former retain the legal powers needed to monitor relatively broad areas of public administration in order to identify corruption and inefficiencies and to propose systemic or structural solutions. When individual malfeasance is uncovered as a result, it can then be referred to other agencies, which have the necessary powers, resources and expertise to conduct criminal investigations and prosecutions.

“Sting” or “integrity testing” operations

70 In some countries, human rights protections limit the use of general inspections or require additional procedural safeguards once a crime is suspected.

71 In many justice systems, a person cannot be compelled to assist investigators once he or she is suspected of having committed a criminal offence. Article 14(3)(g) of the International Covenant on Civil and Political Rights (GA/res/2200A of 12 December 1966, UNTS#14668) establishes the right of a criminal suspect “…Not to be compelled to testify against himself or to confess guilt”, which is interpreted in many national human rights instruments as a general right against self-incrimination. Where such suspicions are established to an appropriate standard, however, criminal investigators gain powers to engage in more intrusive powers of search and seizure in order to obtain the necessary evidence.
A more controversial – but also unquestionably effective – means of identifying corrupt officials is the use of decoys or other integrity-testing tactics. These involve undercover agents who offer officials opportunities to engage in corruption in circumstances where evidence of their reaction can be easily and credibly gathered. Depending on local policy or legal constraints, officials may be targeted at random or on the basis of evidence or reason for specific suspicion of corruption.

The criticisms of these tactics are substantial. Arguably, even the most honest official might yield to temptation if the offer is sufficiently convincing, and the willingness to do so when approached may not necessarily establish that he or she is inherently corrupt or that similar transgressions have occurred in the past. This problem underlies restrictions intended to prevent “entrapment” in some countries. Usually in such countries, undercover agents are permitted to create opportunities for a suspect to commit an offence, but not to offer any actual encouragement to do so. Police officers might be occasionally exposed to undercover agents in circumstances where a corrupt officer would normally solicit a bribe to see if this occurs, for example, but the undercover agents would be prohibited from actually offering bribes.

These tactics represent a powerful instrument for both deterring corruption and detecting and investigating offenders. As they do not necessarily require any inside information or assistance, they can be used quickly against any official at virtually any level who is suspected of corruption. If the suspect is corrupt, they quickly provide highly-credible evidence, usually in the form of audio- or videotapes, photographs and the personal testimony of the investigators involved, which may form the basis of a criminal prosecution or serve as the justification for other investigative methods such as electronic surveillance or the search of financial records. If the suspect is not corrupt, his or her refusal also tends to reliably establish, provided that adequate confidentiality precautions are take to ensure that investigative targets are not warned beforehand and that undercover agents are well-trained and competent.

Electronic surveillance, search and seizure and other investigative methods

Techniques such as wiretapping or the monitoring of electronic communications and search and seizure have limited use in the initial detection of corruption in many countries because human rights safeguards usually prohibit their use unless there is already substantial evidence that a crime has been, or is about to be, committed. As noted in (b) above, procedural protections and questions relating to the competence of investigators and control over the use of intrusive investigative methods will usually also restrict the use of such methods to criminal law enforcement agencies, as opposed to more general surveillance agencies such as auditors, inspectors or ombudsmen.

Where evidence of criminal wrongdoing justifies their use, however, these are well-established and proven methods of gathering the evidence necessary to identify and link offenders and establish criminality in criminal prosecutions. Electronic communications using telephones, fax machines, e-mail and other technologies may be intercepted and recorded as evidence, and physical premises, computers, bank or financial records, files and other sources of evidence may be physically or electronically searched. Searches may target virtually any location at which there is a reasonable expectation of finding evidence, including locations associated with the suspected offender or third parties. Thus, search warrants or similar documents could be obtained to search not only the bank accounts of persons suspected of taking bribes for example, but also those suspected of paying them. Similarly, they may be used for any offence, including

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72 Article 17(1) of the *International Covenant on Civil and Political Rights* (GA/res/2200A of 12 December 1966, UNTS#14668) provides that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence…”, which has been interpreted in many domestic constitutional and legal provisions as requiring prior authorization by a judicial or other independent authority based on adequate grounds to believe that a crime has been or will be committed and that the invasion of privacy is needed to prevent the crime or gather evidence of it.
not only initial corruption offences, but also related crimes such as the concealment or laundering of the proceeds of corruption.

In some cases, intrusive investigative methods being used to investigate other crimes may also uncover previously-unsuspected corruption, particularly in organized crime cases, where offenders often try to corrupt officials or obstruct justice in order to shield their other criminal operations from detection or criminal liability. Corruption and the obstruction of justice are both offences for which international cooperation can be sought between countries that are parties to the United Nations Convention against Transnational Organized Crime73.

Other forms of electronic surveillance, such as the use of video or audio recordings may also be used as evidence in corruption cases. Procedural safeguards and restrictions based on privacy rights may not apply where these are used in circumstances where there is no privacy to protect, such as public places or communications channels which are open broadcasts or where participants are warned that conversations may be monitored. Depending on national laws, it may be possible to routinely or randomly monitor communications between public officials and those they serve, if such a warning can be given and if this is not inconsistent with the public function being performed.

If this is feasible from a standpoint of human rights, technical and cost considerations, it will create a powerful deterrent, since corrupt officials always face the possibility that their conversations may be recorded and used as evidence if corrupt transactions take place. Where resources limit the extent of monitoring, a system of universal notification combined with occasional random monitoring may still provide an effective deterrent.

The detection of fraud and other forms of economic corruption may also be accomplished or assisted using forensic accounting techniques. These generally consist of examining financial records for patterns that are unusual or at variance with the patterns or norms established by other records. Such things as abnormally high balances in accounts used for discretionary spending, abnormal fluctuations in balances, payments which are unusually high or unusually frequent, records kept in formats which make them difficult to read or interpret, or any other pattern of spending or record keeping which cannot be attributed to operational requirements may suggest the presence of corruption or other economic crime. Basic forensic tests may be applied by auditors as part of the process of screening for evidence of corruption, or by criminal investigators who suspect particular individuals or agencies and are gathering evidence.

The time-honoured practice of interviewing suspects and possible witnesses also remains a major investigative tool, once corruption is suspected. The investigative skills needed are similar to those for other forms of criminal investigation, although specialised knowledge of corrupt practices and related matters will generally be an advantage. Given the concerns about retribution against witnesses or informants, it will also generally be important that investigators interview contacts in a secure, confidential environment, take steps to protect any information gained and the identity of the source from disclosure, and be able to conduct interviews in a manner which will reassure informants.

**Choice when disposing corruption cases**

Cases where corruption on the part of individuals is identified can be dealt with in several ways:

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73 GA/res/55/25, annex, articles 8 (general corruption) and 23 (obstruction of justice). The obligation upon States Parties to criminalize corruption sets out various forms of corruption applicable to the corruption of any “public official” for any purpose. The obligation regarding obstruction of justice is more specific, covering only corruption which seeks to interfere with investigative or judicial proceedings relating to Convention offences, but it extends to both positive (e.g., offering an “undue advantage”) and negative (e.g., force, threat or intimidation) inducements.
• By criminal or administrative prosecutions, which lead to incarceration, fines, restitution requirements or other punishments;
• By disciplinary actions, which lead to employment-related measures such as dismissal or demotion;
• By bringing or encouraging civil proceedings, in which those directly affected, or in some cases the State, seek to recover the proceeds of corruption or civil damages; and,
• Remedial actions such as the retraining of individuals or restructuring of operations in ways which reduce or eliminate opportunities for corruption.

Generally, the same detection techniques, investigative procedures and evidentiary requirements will apply regardless of the process chosen, although criminal prosecutions usually entail higher standards of reliability and probative value for evidence because of the serious penal consequences for offenders. The decision about whether to apply criminal sanctions or to seek less-drastic remedies can be exceedingly difficult, balancing moral and ethical considerations against pragmatic costs and benefits, and is itself susceptible to corruption in systems which embody relatively broad prosecutorial discretion.

Criminal prosecutions may not be desirable or possible in the following circumstances:

The conduct may not be a crime

In some cases, behaviour might be considered as “corrupt” for the purposes of a national anti-corruption programme or the internal programmes of a company or government agency, but not be the subject of a criminal offence. Alternatively, it may be conduct which has been overlooked in the development of the criminal law, or conduct such as purely private-sector malfeasance which is seen as corrupt, but which does not sufficiently harm the public interest to warrant criminalisation.

Available evidence may not support prosecution

As noted above, the evidence and burden of proof in criminal prosecutions involve relatively high standards because of the penal consequences involved. In some cases, there may be sufficient evidence to justify lesser corrective measures, but not to support a criminal prosecution. Where this occurs, authorities must generally decide whether the circumstances warrant the additional delay, effort and expense needed to gather sufficient evidence to proceed, or whether measures such as disciplinary or remedial action should be pursued instead. One cost factor in such cases is the cost of leaving a corrupt official in place long enough to complete a full criminal investigation. Another consideration is the possibility that evidence of past corruption has been lost, making prosecution impossible.

Prosecution may not be in the public interest

In some cases the conduct may amount to a crime, but official discretion may be exercised not to prosecute the offender on the basis that the public interest is better served by some other course of action. Where large numbers of officials are involved, for example, the costs of prosecution include not only litigation costs, but also the costs of incarceration or other punishment, and the loss of expertise and costs of replacing the convicted officials. Discretionary decisions on this basis can be extremely problematic. On one hand, officials may face high costs of prosecuting offenders on a case by case basis, but if a decision is made not to prosecute, it may create the impression that the justice system itself is corrupt, which encourages corruption in other sectors and seriously erodes any deterrence value in criminal justice measures. Where such a decision is made, it is important that it be well documented and made in the most transparent way possible to prevent actual corruption and dispel any public perception of corruption.
Criminal prosecutions and punishments effectively remove corrupt officials from any position where they can commit further offences, and deter both the individuals involved and others in similar positions. Since most corruption is economic in nature and is pre-planned rather than spontaneous, general deterrence is likely to form a significant part of the criminal justice component of anti-corruption strategies. The high financial and human costs impose practical limits on the extent of such prosecutions, however, and attempting large numbers of prosecutions as part of an anti-corruption drive may pressure investigators or prosecutors to engage in improprieties that effectively distort or corrupt the criminal justice system itself.

In formulating anti-corruption strategies, it is important that criminal prosecution and punishment be seen as only one of a number of options, and that other possibilities, ranging from preventive measures such as education or training and the incorporation of security measures to administrative or disciplinary sanctions which remove offenders at a lesser cost to them and society also be considered, and where appropriate, applied.

Case management

Managing investigations

Corruption investigations tend to be large, complex and expensive, however, and to ensure the efficient use of resources and a successful outcome the elements and personnel involved must also be managed effectively. Such management should be seen not only as a matter of administrative necessity, but also part of the overall strategy of protecting the integrity of the investigation and ensuring public confidence in its outcome. As part of an ongoing anti-corruption strategy, some management issues may be dealt with as matters of standing practice or procedure, while others will require attention or review on a case-by-case basis.

Teams working on specific cases will generally require expertise in the use of investigative techniques ranging from financial audits or other inspections to intrusive techniques. If legal proceedings are not excluded as an outcome from the outset, experience in assembling such cases and legal expertise in areas such as the law of evidence and the human rights constraints on such things as search and seizure may also be needed. In large, complex investigations, teams of investigators may be assigned to specific target individuals or aspects of the case. One group might be engaged in the tracing of proceeds, for example, while others interview witnesses or maintain surveillance of suspects.

It is essential that all of these functions be conducted in accordance with an agreed strategy and coordinated under the supervision of an investigative manager or lead investigator who receives timely information about the progress of investigators on a regular and frequent basis. The interviewing of witnesses or conduct of search and seizure operations will generally disclose the existence of an investigation and to some degree its purpose, and should not be undertaken until other measures which are only effective if conducted without alerting the targets have been concluded. On the other hand, such procedures may become urgent, if it appears that proceeds will be moved out of the jurisdiction or evidence destroyed unless rapid steps are taken. Coordinating these factors in order to maximise effectiveness require competent and well-informed senior investigators. Given the magnitude of many investigations, human and financial resources will also often become a concern, and lead investigators will often have to seek out the necessary resources and allocate scarce resources to areas of the investigation where they will be most effectively used.

Investigative management must be flexible, capable of quickly adapting both strategy and tactics to take account of experiences and information as they accumulate. While investigators usually develop theories about what individual pieces of information mean and how they fit together, these theories often require amendment as investigations proceed, and investigators must always be open to alternative possibilities and information or evidence which does not appear to be
consistent with the theory being pursued at any given time. Investigations initiated into particular incidents of corruption will often turn up evidence of other, hitherto unsuspected corruption, or other forms of improper or criminal activity.

Management of information

Internal information

This flexibility should be supported by effective information management, in which information is made available to those who require it as quickly as possible, and then retained in a format which is cross-referenced and quickly accessible so that it can be reviewed as needed and so that links to other relevant information are made apparent. Assessment of the relative sensitivity or confidentiality for each piece of information should also be done and linked to the information itself. This sensitivity may not be obvious to those not familiar with the information. Disclosure of facts that may seem insignificant in the context of an ongoing investigation, for example, may inadvertently disclose or help identify a source or informant who had been promised anonymity, for example, reducing the credibility of investigators and their ability to obtain similar information in future cases.

Media relations

Another critical element of information-management is media-relations. Ensuring that information is passed to the public media is important to ensuring transparency and the credibility of investigations. More fundamentally, media scrutiny and publicity is essential to raising public expectations, public awareness of the presence of corruption or substandard practices, and to generating political pressure for measures against corruption. Public awareness of the existence of anti-corruption investigators is also an important means of encouraging and assisting those who witness or suspect corruption to report it and provide evidence. Ensuring that the media have access to accurate and authoritative information may also be important as a means of reducing the tendency to report information that may be incorrect or harmful to the investigation or persons or agencies being investigated.

Measures should be taken to ensure that any information released for publication has been carefully reviewed, both to ensure accuracy, and to eliminate disclosures that could be harmful to the investigation. It is also important to ensure that only specified individuals release such information or participate in press conferences and similar activities to ensure that information is properly reviewed and that all information given the media is consistent. Those in contact with the media must also be competent, both in media-relations and in the subject matter they will discuss, and should not comment on matters which are beyond their expertise.

Managing the security of investigations and investigators

The management of security is also a critical function. As noted in the previous segment, protecting the confidentiality of informant and other sources is often the only way to ensure cooperation, and the leakage of sensitive information may warn targets, allowing them to modify their behaviour, conceal or destroy evidence, or make attempts to corrupt or disrupt the investigative process. Maintaining effective security requires an assessment of the full range of attempts that might be made to penetrate or disrupt anti-corruption investigators, both in general and in the context of specific investigations. Attempts may be directed at obtaining information or denying information to investigators by disrupting, distorting or destroying it, or at the intimidation or even murder of the investigators themselves. The following areas should be assessed.
Physical premises

The premises where investigators base their work and store information should be chosen with a view to the ability to control entry, exit and access to exclude unauthorised persons, and resistance to attempts using force or stealth to gain entry when unoccupied. Where premises are part of larger law-enforcement or other government establishments, they should also be isolated from the remainder of the establishment in which they are located. Threats to destroy information or evidence by destroying the premises themselves using methods such as arson or explosives may also require consideration. Also important is security against various forms of electronic surveillance in the form of concealed microphones, transmitters and similar apparatus. This entails both premises that reduce the possibility of such surveillance and regular inspections or “sweeps” to detect devices that may have been installed since the last inspection.

Personnel Security

Personnel security consists of two major threats. The physical safety and security of personnel must be assessed and protected in order to ensure that competent investigators can be employed and to frustrate any attempts to disrupt investigations by threatening, intimidating or actually harming personnel. Investigations may also be disrupted if key personnel are corrupted or intimidated or if corrupt individuals succeed in gaining employment for that purpose. Generally, employees should be screened by examining their past history, family ties or other relationships to identify factors that suggest vulnerability to corruption. Threats to physical safety should be regularly assessed and when identified, vigorously pursued by other law enforcement agencies. Other protective measures may include advice with respect to security precautions, anonymity, and arming investigators.

Information, documents and communications

Most of the security concerns raised by investigations revolve around the possibility that critical information will fall into the hands of investigative targets, frustrating attempts to obtain evidence against them. Addressing these concerns requires management of each investigation so that steps which generate public attention are not taken prematurely, that documents are used, stored and transported in secure conditions, that access to copying equipment is limited and monitored, and that channels of electronic communication including wire- and wireless telephones, fax machines, radios, electronic mail and other media are made resistant to unauthorised interception or monitoring. Where the physical security of channels cannot be ensured, this will often entail the use of encryption or similar technologies to ensure that those who can receive data cannot decipher and read them.

Relationships with other agencies

Anti-corruption agencies must still ultimately be accountable for their activities, which requires some degree of timely disclosure of information to political or judicial bodies responsible for their oversight. When such disclosure should be made may vary and can be a difficult issue. As a general principle, investigations should only be externally reviewed after they have concluded, but this will not prevent some harm from occurring if abuses occur sooner, and in some cases this may include irreversible consequences. In such cases, it may be appropriate to permit investigators to consult more senior officials such as judges for advice or direction, and many systems make some provision for this.

Threat assessment
Threats to the security of investigators and investigations should be assessed both in general terms and in the context of each specific investigation. Relevant factors will include the numbers of individuals suspected, whether they are organised or not, the sophistication of the corruption suspected, the sophistication of the individuals or group targeted, the magnitude and scope of the corruption and its proceeds, whether the targets are involved in crimes other than corruption, and whether there is any specific history of violence or attempts to obstruct investigations or prosecutions.

**Managing transnational or “grand corruption” cases**

Cases which involve “grand corruption” or which have significant transnational aspects raise additional management issues. For example, cases where very senior officials are suspected raise exceptional concerns about integrity and security and are likely to attract extensive media attention. Large-scale and sophisticated corruption is well-resourced and well-connected, making it more likely that conventional sources of information will either not have the necessary information or evidence, or that they will be afraid to cooperate. Senior officials may be in a position to interfere with investigations. The magnitude of proceeds in grand corruption cases make it more likely that part of the overall case strategy is the tracing and forfeiture of the proceeds, and where they have been transferred abroad, obtaining their return. Allegations that senior officials are corrupt may also be extremely damaging in personal and political terms if they become public and later turn out to be unsubstantiated or false.

Transnational elements are more likely to arise in grand corruption cases. Senior officials realise while in office that there is no domestic shelter for the proceeds which will not be located once they are out of office, and generally transfer very large sums abroad, where they are invested or concealed. In many cases, the corruption itself has foreign elements, such as the bribery of officials by foreign companies seeking government contracts or the avoidance of costly domestic legal standards in areas such as employment or environmental protection. The offenders themselves also often maintain foreign residences and flee there once an investigation becomes apparent.

Generally, transnational or multi-national investigations require much the same coordination as do major domestic cases, but the coordination and management must be accomplished among law enforcement agencies that report to sovereign governments with a potentially wide range of political and criminal justice agendas. This will generally involve liaison between officials at more senior levels with their foreign counterparts to set overall priorities and agendas, and more direct cooperation between investigators within the criteria set out for them. From a substantive standpoint, investigative teams in such cases will generally be much larger and will involve additional areas of specialisation such as extradition, mutual legal assistance and international money laundering.

**Case Selection Strategies and Techniques**

Given the extent of corruption, the range of cases likely to exist, the range of possible outcomes, and the limits imposed by human and financial resource constraints, most national anti-corruption programmes will find it necessary to make priority choices about which cases to pursue, and what outcomes to seek. This involves the exercise of considerable discretion that should be carefully managed to ensure consistency, transparency and the credibility of both the decision-making process and its outcomes. A major element of this process is the setting and, where appropriate, publication of criteria for case-selection. These will ensure that like cases are dealt with similarly, and reassure those who make complaints and members of the general public that decisions not to pursue reported cases are based on objective criteria and not on improper or corrupt motives.
The interaction of criteria will vary from case to case, but criteria that should generally be considered include the following.

**Seriousness and prevalence of the other corruption alleged**

Assuming that the fundamental objective of a national anti-corruption strategy is to reduce overall corruption as quickly as possible, priority may be given to cases that involve the most common forms of corruption. Where large numbers of individuals are involved, these will often lead to proactive outcomes such as the setting of new ethical standards and training of officials, rather than criminal prosecutions and punishments.

**Legal nature of the alleged corruption**

Broadly speaking, corruption could be categorised as including criminal or administrative corruption offences such as bribery, related criminal offences such as money-laundering or obstruction of justice, and non-criminal corruption. As previously discussed, the legal nature will often affect both the availability and choice of outcomes. Conduct that is not a crime cannot be punished as such for example. This same nature will often determine which agency deals with it and how it is prioritised.

**Cases which set precedents**

Cases that raise social, political or legal issues that, once resolved in the context of an initial “test” case, can be applicable to many other cases to follow, may be given priority. Examples of this include dealing publicly with common conduct which has not been perceived as corruption in order to change public perceptions, and cases which test the extent of criminal corruption offences, either setting a useful legal precedent or establishing the need for legislation to close a legal gap or correct a problem. In the case of legal precedents, time-consuming appeals may be required which is another reason for starting the process as soon as a case that raises the necessary issues is identified.

**Viability or probability of satisfactory outcome**

Cases may be downgraded or deferred if an initial review establishes that no satisfactory outcome can be achieved. Examples of this include cases in which the only desirable outcome is a criminal prosecution, but the suspect is deceased or unavailable, or essential evidence has been lost. Part of the assessment of such cases should include a review of possible outcomes to see if other appropriate remedies might be achievable.

**Availability of financial, human and technical resources**

The overall availability of resources is always a concern in determining how many cases can be dealt with at the same time or within a given period, and the tendency for cases to change as investigations proceed require periodic reassessment of case-loads. Generally this will not be related to the setting of priorities with respect to the type of case taken up or the priority of individual cases, but there are exceptions. A single major case, if pursued, may result in the effective deferral of larger numbers of more minor cases, for example, and unavailability of specialised human expertise may make specific cases temporarily impossible. This makes the assessment of costs and benefits important, before any decisions are made. “Grand corruption” and other transnational cases raise substantial costs in areas such as travel and foreign legal services, but may also raise the need to make examples of corrupt senior officials for reasons of deterrence and credibility, and to recover large proceeds hidden both at home and abroad.
Criminal intelligence criteria

As national anti-corruption programmes gain overall expertise and knowledge and deal with numbers of individual cases, intelligence information should be gathered and assessed. This will usually include open research and assessment of overall corruption patterns, leading to conclusions about which are the most prevalent or which case the most social or economic harm. It will also include the gathering of confidential information about patterns and links between specific offenders or organised criminal groups. Both of these will assist in identifying cases in which the allocation of high priorities and significant resources will end the activities of criminal groups or bring about other far-reaching improvements. In some cases, investigations may also be given priority in areas where intelligence is needed, in order to develop sources and gather information.

Investigative Techniques

Some of the following techniques have proven highly efficient in the investigation of widespread large-scale corruption. In particular, various types of financial investigations into suspected corrupt individuals are often the most direct and successful method of proving criminal acts.

Focus Investigations. If the results of a corruption investigation suggest that corruption and bribery in a certain public service is widespread, it is advisable to concentrate on the systematic checking of the assets of all possible bribe takers (See Financial Investigations & Monitoring of Assets). However, this exercise may not yield enough information to warrant further investigation. For example, certain government functions are prone to inviting widespread corruption in terms of the number of officials receiving the bribes but in relatively small money amounts. Branches involved in licensing and permitting are good examples. A high volume of potential bribe-givers, the public in this case, visits these branches on a daily basis. Quite often, the frustrations of applying for a driver's license, or getting permission to construct a new home, or requesting copies of documents or just about any other service to the public becomes a quagmire of government 'red tape' and delay. This sort of environment breeds bribery as a means to quickly solving the frustration and delay of 'red tape'. In such cases, an investigation into the working files of the branch will be more effective and efficient than investigating financial records of employees. Before devoting efforts in any investigation, it is important to evaluate the most cost-effective means of deploying staff and focusing investigative energies.

Terms of Reference. Before starting investigations, clear and comprehensive terms of reference (TOR) should be drafted. They should contain a comprehensive list of all the resources needed (human, financial, equipment) to conduct the investigations. Particular consideration should be given to the possible need of additional resources to maintain the secrecy of the investigation. The suspect corrupt civil servant might have connections to other civil servants who might alert them to investigations or they might even be members of the criminal justice system and thus have access to restricted information. It is therefore essential at the outset to evaluate methods to ensure the confidentiality of the investigation. Steps taken to protect the secrecy of the investigations could include:

- Renting non-police or undercover locations and making them secure;
- Use of fictitious names to purchase or rent equipment; and
- Use of stand-alone computer systems not tied into any other governmental operation.

Policy Document. In addition to the TOR, a policy and procedures document must be created containing a clear description of the facts giving rise to the investigation, all decisions rendered during the investigation with their justifications and reasons for the involvement / non-involvement of the senior management of the institution for which the suspect works. It should be noted that there can be hidden costs involved with the investigation such as loss of morale
within the target institution and their potential loss of public trust. Every investigation must be evaluated on a case-by-case basis with regard to its cost and benefit to the government and the public.

Selection of the Investigative Team. The selection of an effective team will be crucial to the success of an investigation. Its members should possess the specific investigative skills needed, should have proven integrity and high ethical standards and be willing to undertake the work. Their backgrounds should be thoroughly checked, including their social and family ties and lifestyle. The team must be made aware of the personal implications of the investigation, in particular when undercover work needs to be conducted. Skills that are typically needed to conduct large-scale corruption investigations include financial investigative skills, undercover and surveillance skills, information technology skills, interviewing and witness preparation abilities, excellent report writing skills and the ability to analyse intelligence.

Intelligence and Analysis. Both are vital in corruption investigation. During the course of investigation, fragments of information, or intelligence, is collected. This intelligence must be analysed in order for the investigator to piece together fragments of information in order to have a clear picture of the relationships and events that taken together can constitute proof of criminal activity. Unlike other crimes such as theft or murder, where a complainant with some interest in uncovering the crime comes forward, crimes of corruption and bribery are committed in the shadows with both parties benefiting from the crime. This unique relationship, since neither party believes they are victims of any crime, prevents authorities from knowing that a crime has taken place. It is unlikely that either party is going to report the crime. For this reason, corruption investigation is especially challenging and difficult. Intelligence gathering and analysis is therefore critical in uncovering corruption. In addition, a constant analysis of the results will help to redirect and adjust efforts and will serve to help allocate resources efficiently.

Proactive Integrity Testing. Although this activity might initially require considerable preparation and resources, it can produce rapid results that serve as an excellent deterrent. Close monitoring and strict guidelines are essential to avoid the danger of entrapping a target. Any decision to use integrity testing must have a sound and defensible basis. The test itself must be fair to the target so that can be defended in court as reasonable and fair (see Integrity Testing). All integrity testing should be electronically recorded in the interest of fairness to the target and for accurate evaluation of criminal responsibility by judge and jury. Conviction’s resulting from integrity testing must be based clearly on the necessary mens rea, or criminal intent, on the part of the accused. The government must not engage in convincing anyone to commit a crime they are not predisposed to commit. More than in any other area of policing, the public must be protected from false accusations or behavior tending to entrap an individual into committing and offence he or she would not have otherwise committed but for the encouragement of the police.

Multi-faceted Approach. Rather than following only one investigative path, it is advisable to pursue reasonable leads that might prove useful. It is not unusual that seemingly insignificant information becomes vital in proving criminal activity. This also applies to statements and documents. They should be carefully analysed and cross-referenced using the names, places and all other information that can help to provide information and may serve to confirm the validity of evidence gathered.

Identify Middleman and Facilitators. Middlemen are often involved in committing corruption on behalf of others. For example, politicians often provide the necessary link between bribe givers and bribe takers, and international businessmen facilitate the creation of slush funds, commit the actual bribe transaction and help to launder the proceeds of corruption.

Financial Investigation. One of the most successful ways to produce evidence against corrupt public officials is to conduct financial investigations to prove that they spend or possess assets beyond the means of their income (see Financial Investigations and Monitoring of Assets). This will help to produce a preponderance of evidence of corruption, and can identify those illegal assets that might later be confiscated. However, suspects are unlikely to place the bounty from a
bribe into their daily bank accounts and instead may transform the proceeds into other forms of property. Therefore, financial investigations should also concentrate on the lifestyles, expenditures and property of the suspected persons. In this respect, it might be extremely helpful to look not only at what has actually been spent, but also to compare the amounts of money deposited into the bank accounts of suspects with deposits from previous years. Efforts should also be focused on identifying whether the suspected corrupt person maintains foreign accounts. The existence of such an account can be suspicious alone and indicate that funds are being hidden. In order to be effective, financial investigations should be extended to the suspected persons’ family members and those living in the same household: experience shows that they are often used as conduits for corruption proceeds.

Identification of Slush Funds. In order to avoid paying bribes directly out of the corporate bank account, it is common practice for larger organisations to create so-called slush funds, i.e. funds that do not appear in official corporate accounts and records. Money needed to pay bribes can be taken from these funds as needed. The methods adopted to create these funds are very similar to techniques used to launder money. One common method is where the costs of services or goods are falsified and funds used to pay for these alleged services or goods are transferred into the slush fund account. It is usually extremely difficult to prove the actual receipt of this money as, for example, in the case where consultants are hired and schemes enacted where monies paid are actually returned to the slush fund in cash.

Investigation into the Slush Fund. Once a slush fund has been identified, the investigation should be broadened to include all payments made out of this fund. All individuals with access to the funds should be identified. Companies and private persons that have ongoing business with the state and are found paying a bribe on one occasion are most likely to have done so on several occasions.

Court Orders. If court orders are needed to carry out specific covert evidence gathering activities, particular care should be given to the particular judge receiving the request. It is not unusual that politically and socially connected suspects and other suspects having connections to the criminal justice system might have contacts with the judge issuing the order.

Suspension. During the period of investigation, a decision might be made to suspend suspects from their official duties. In particular, if they are involved in making important decisions and a subsequent conviction may negatively influence the validity of their decisions, actual or perceived, it may become necessary to remove them from any approval processes. When the suspect is employed by an institution of the criminal justice system, measures should be taken to prevent him from “networking” after any suspension. Colleagues of the suspected persons should be given strong warnings about relating information to the suspended colleague who should be authorized to contact only one specific supervisor within their organisation.

Witnesses. A comprehensive interviewing strategy should be designed. It should include measures to overcome obstructive lawyers, witness protection, ensuring the credibility of the witness and to avoid suspected illegal managing of witnesses. Witnesses often have a criminal background themselves and therefore might not be very credible. It is essential that witnesses admit their involvement in prior criminal acts, particularly if they are involved in the acts of corruption for which the suspects are being investigated. Nothing is more damaging to a prosecutor’s case than for an important witness to be exposed to the jury as a criminal. The personal background of the criminal witness must be offered to the jury as soon as possible in the proceedings. Witnesses must be protected against threats. The most cost-effective means to do this is to protect the identity of witnesses for as long as possible. The best way to avoid allegations of illegal enquiry methods or promises made to witnesses by the investigating team is to electronically record all interviews.

Preparation of Court Presentation. It is essential that as many facts as possible are corroborated. In particular, if witnesses are used, it is important to obtain secondary evidence, where possible, to support their credibility. In those systems where the police are not required by law to conduct
investigations under the direct supervision of a public prosecutor, it is crucial to involve the Prosecutor’s Office at a very early stage.

Media Strategy. During investigations and court proceedings, a clear media strategy should be elaborated that assigns one person to interface with and report to the media. All other personnel and investigators involved should be made aware of the potential damage that may be caused to the successful outcome of the investigation and prosecution if they make comments to the media. This also applies to the witnesses. In the case where a public official is accused, the senior managers of the institution in which the accused works should be informed of the risks of commenting to the media.

International Focus. Cases of grand corruption often include international aspects. For example, the bribe giver may be a foreign investor, the slush fund might be located in a country other than that where the bribe is paid, or the bribe might be transferred directly into a recipient’s foreign bank account. Investigators and prosecutors should therefore be trained on mutual legal assistance and exchange of information procedures at the international level.

**Preconditions and Risks**

The following factors contribute to successful investigations:

Independence of the Prosecutor, both Internally and Externally. Especially in cases of investigations into high-level corruption, political interference can interfere with investigations and prevent prosecution if executive branches of government directly control the Prosecutor’s Office. The judicial police should report directly to the prosecutor in order to integrate investigation and prosecution, to ensure mutual loyalty and to protect the investigations from being jeopardised by undue political interference in the work of the investigating police team.

Secrecy of the First Stages of the Investigation. There should be no obligation to inform the suspect about the investigation during its early stage. When a suspect has knowledge of an investigation prior to the time the police can secure sufficient evidence, the suspect might destroy evidence and warn other targeted persons to do the same.

Strong Investigative Powers. Strong investigative powers are fundamental for successful investigation. In particular, the ability to order searches and seizures without court authorisation, ability to remove banking secrecy during investigations and the ability to request preventive detention and telephone interception have proved extremely helpful.

Plea-Bargaining and Summary Proceedings. The possibility of making recourse to plea bargaining and summary proceedings have been extremely helpful in increasing efficiency during what are normally long and complex proceedings. Plea-bargaining has also been successfully used to help identify other criminal activity as reported by suspects wishing to reduce the severity of a potential conviction.

Seeking the Support of the Media and General Public Support. Several factors are likely to place investigation and prosecution of corruption at risk. These include:

- **Statutes of Limitation.** Given the complexity of investigations into “victimless” crimes such as corruption, statutes of limitation often expire before the accused is charged with a crime. Therefore, an extension or exception to a statute of limitation should be considered especially in those cases where the lengthiness of the investigation is due to factors beyond the control of the government.

- **Inefficient International Cooperation.** Requests for information and for mutual legal assistance should be submitted as soon as possible since experience shows that even well meaning collaborating jurisdictions normally give the lowest priority to requests for assistance.
A likely related tools could be:

- Establish, disseminate, discuss and enforce a Code of Conduct for public servants
- Establish and disseminate, discuss and enforce a Citizen Charter
- Establish an independent and credible complaints mechanism where the public and other parts of the criminal justice system can file complaints
- Establish a Disciplinary Mechanism with the capability to investigate complaints and enforce disciplinary action when necessary
- Conduct an independent comprehensive assessment of the government’s levels, cost, coverage and quality of service delivery, including the perceived trust level between the public service and the public
- Simplifying procedures of complaining,
- Raising public awareness where and how to complain (e.g. by campaigns telling to public what telephone number to call), and
- Introducing a computerized complaints system allowing the institutions to record and analyse all complaints and monitor actions taken to deal with the complaints.
Tool 29 - Financial Investigations and The Monitoring of Assets

Purpose

Financial investigations, in addition to assessments of directly or indirectly owned assets, are an extremely efficient tool for pro-active and re-active investigations into corruption. The information gained from such investigations might be used either as a starting point for further investigation or as back-up evidence for corruption allegations.

Description

Initial Target (Group) Restriction. When financial investigations are used in a traditional law enforcement context, for example, after a suspect has been caught and his crime identified, the target of the financial investigation is already well defined. Specifically, the suspect’s finances should be investigated to uncover additional evidence of the crime. Investigative accountants can be used to unravel even complex and confusing financial crimes especially where they have a specific target on which to focus their efforts.

In cases where an anti-corruption agency or similar institution desires to use financial disclosure information or other indicia of one’s finances and purchasing power to uncover potential corruption, the task is much more difficult. This sort of pro-active monitoring aimed at targeting indicators of corruption, for example, living beyond one’s means, requires clever use of available resources and careful consideration as to who will be targeted and why. Of course, where resources are not limited, it is possible to thoroughly investigate each and every official or group. Since this scenario is unlikely in just about every jurisdiction, selective and efficient allocation of resources is necessary.

Where monitoring resources are limited, rigorous evaluation in the selection of a target group should include the likelihood of uncovering corruption. For example, if available data suggests that employees of the driver’s license issuing office have solicited bribes, it may be tempting to launch a review of financial disclosures filed by the employees assigned to that office. However, such an exercise will most likely be a waste of time and energy. The money amount of bribes paid to such employees is likely small and, in all probability, is used as ‘pocket money’ and not deposited into a bank account or used to make large purchases. Investigators should instead direct their efforts towards reviewing disclosures by employees whose public duties expose them to a higher money level of potential bribes. While it is probable that a larger percentage of the employees in a licensing office solicit bribes versus the percentage of employees, for example, in a procurement office, for the purpose of allocating pro-active financial investigative resources, there is a greater likelihood of uncovering indicia of corruption by reviewing financial disclosures of procurement office employees.

Evaluation of Key Life Style Indicators. Prior to in-depth asset and life style monitoring, a target’s lifestyle should undergo initial screening to determine whether further investigation should be undertaken. This might be restricted to a few significant assets that are given priority over others, such as homes, second houses or holiday homes, means of transport and other items of significant value.

Initial Screening Methods. The initial methods used should be limited to acquisition of readily accessible information, such as public registers and direct observation. The latter has proven to be more accurate since corrupt officials tend to disguise their acquisitions by registering property in the names of others.

Target Definition. Once initial grounds for suspicion have been found and a concrete target for further investigation has been identified, the screening should not be limited to the suspected persons, but should also target persons with whom they have strong ties, such as spouses and
family members. Quite frequently, corruption proceeds are deposited into bank accounts belonging to husbands or wives (less frequently to children, brothers or parents). This same scheme to disguise actual ownership is often used for the registration of property.

Life Style Indicators. Investigators should focus on owned or rented residential homes, including short-term vacation rentals, cars, boats, planes, holiday trips, recreational expenses (for example restaurants), clothing expenses, the purchase of works of art and antiques, the purchase of jewels, medical expenses and other large purchases in general. These parameters are usually used to verify whether an in-depth asset assessment is justified.

Sources of Information. The instruments used to investigate disproportionate living standards include public registers and contracts that can indicate excessive availability of money or property (for example, a contract for the lease of a particularly expensive house). Bank and company documentation might contain further information. In addition, verification of expenses incurred by the public officials or persons close to them has proven extremely effective in uncovering indicators of corruption.

Third Party Protection. In-depth investigations into the origins of third party property should only be made when there are elements to reasonably justify the suspicion that third parties possess property that belongs to the suspected corrupt official.

**International Investigations.** Unlawfully received money is frequently hidden in foreign bank accounts registered under false names or corporations. Illegal property is also sometimes registered in foreign jurisdictions using false identities while the corrupt official enjoys the property. For example, vacation homes and boats are examples of property whose ownership can be disguised by the use of registration under a false name or corporation. Depending upon whether or not the jurisdiction in which the funds are deposited has signed a Mutual Legal Assistance document, it can be very difficult to obtain assistance from that jurisdiction in identifying and recovering stolen assets.

**Alternatives to Enhance Monitoring.** Some jurisdictions have introduced measures that place the burden on public officials to account for their assets. Where it can be shown that the living standards of public officials exceed their known lawful income and when they are unable or unwilling to account for the discrepancy, such excess property can be confiscated. This measure does not reverse the burden of proving illicit enrichment but simply provides that where there is a preponderance of evidence that an official possesses ill-gotten property, it is up to them - and not the prosecuting agency – to produce satisfactory explanations as to the origins of the excess property (see Facilitating the Gathering of Evidence in Corruption Cases – Easing the Burden of Proof).

**Preconditions and Risks**

National laws must provide for comprehensive registration of assets and identification of the beneficial owners of such assets. It must also empower the monitoring agency to gain access to official registers and to company and bank documentation. Anonymity of ownership is the natural enemy of transparency and accountability. If a country’s legislation does not provide for transparency in this regard, financial monitoring and investigative efforts will likely not produce meaningful results.

**Related tools**

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Tools which may be required before declaration of assets can be successfully implemented include:

- A code of conduct that spells out who has to declare their assets and how it is expected to be done.
- The establishment of an independent and credible complaints mechanisms to deal with complaints that the prescribed standards have not been met;
- The establishment of appropriate disciplinary procedures, including tribunals and other bodies to investigate complaints, adjudicate cases and impose and enforce appropriate remedies or other outcomes;

Tools which may be needed in conjunction with codes of conduct include:

- Tools which involve the training and awareness-raising of officials subject to each code of conduct to ensure adherence and identify problems with the code itself;
- Assessments of institutions and where necessary, of individuals, to
- The enforcement of the code of conduct by investigating and dealing with complaints, as well as more proactive measures such as “integrity testing”; and,
- The linking of procedures to enforce the code of conduct with other measures which may identify corruption, such as more general assessments of performance and the comparison of disclosed assets with known incomes.
Tool 30 - Integrity Testing

Purpose

Integrity testing is an instrument that enhances both the prevention and prosecution of corruption. The objectives of integrity testing are to:

- Determine whether or not a public civil servant or branch of government engages in corrupt practices and;
- Increase the actual and perceived risk for corrupt officials of being detected thereby deterring corrupt behaviour

Description

Sting operations

A more controversial – but also unquestionably effective – means of identifying corrupt officials is the use of decoys or other integrity-testing tactics. These involve undercover agents who offer officials opportunities to engage in corruption in circumstances where evidence of their reaction can be easily and credibly gathered. Depending on local policy or legal constraints, officials may be targeted at random or on the basis of evidence or reason for specific suspicion of corruption.

These tactics represent a powerful instrument for both deterring corruption and detecting and investigating offenders. As they do not necessarily require any inside information or assistance, they can be used quickly against any official at virtually any level who is suspected of corruption. If the suspect is corrupt, they quickly provide highly credible evidence, usually in the form of audio- or videotapes, photographs and the personal testimony of the investigators involved, which may form the basis of a criminal prosecution or serve as the justification for other investigative methods such as electronic surveillance or the search of financial records. If the suspect is not corrupt, his or her refusal also tends to reliably establish, provided that adequate confidentiality precautions are take to ensure that investigative targets are not warned beforehand and that undercover agents are well-trained and competent.

The criticisms of these tactics are substantial. Arguably, even the most honest official might yield to temptation if the offer is sufficiently convincing, and the willingness to do so when approached may not necessarily establish that he or she is inherently corrupt or that similar transgressions have occurred in the past. This problem underlies restrictions intended to prevent “entrapment” in some countries. Usually in such countries, undercover agents are permitted to create opportunities for a suspect to commit an offence, but not to offer any actual encouragement to do so. Police officers might be occasionally exposed to undercover agents in circumstances where a corrupt officer would normally solicit a bribe to see if this occurs, for example, but the undercover agents would be prohibited from actually offering bribes.

Integrity Testing

Integrity testing has been used effectively to ‘test’ whether public officials resist bribe offers and refrain from bribe solicitation. Integrity tests have proved to be an extremely effective and efficient deterrent to corruption.

Targeted and Random Integrity Testing. Integrity testing can be used to verify the integrity, or dishonesty, of an employee in a specific situation. A scenario is created in which a public civil servant, for example, is placed into a typical everyday situation where he has the opportunity to use his discretion in deciding whether or not to engage in criminal or other inappropriate
behavior. The employee may be offered a bribe by an agent provocateur or be presented with an opportunity in which to solicit a bribe.

Integrity testing can also be used as a “targeted test” to help verify the genuineness of an allegation or suspicion of corrupt behavior. Members of the public, criminals or other officials may have provided information to law enforcement alleging that a certain person or even an entire branch of government is corrupt. Quite frequently, complainants include those who allege that a corrupt official has solicited them for a bribe.

When used as a random test, for example, where law enforcement has actively identified groups of officials or entire operations particularly susceptible to corruption, random testing can be used to ascertain the degree of corruption present. When carried out in secret, very reliable data can be gathered which will assist in accurately gauging the true extent of corrupt practices within the group selected. After reliable baseline data has been established, corrupt targets identified and other secret use of the data has been completed, integrity testing can be used as an effective deterrent to corrupt behavior. Public notification that such testing will be carried out at random and with consistency serves to greatly deter corruption.

**Fairness.** In democratic society, it is unacceptable that government would engage in activities that encourage individuals to commit crimes. However, it is quite acceptable for government to observe whether or not one will commit a crime under ordinary and everyday circumstances. For this reason, integrity testing must be carried out with the strictest discipline. Integrity testing, as such an aggressive government effort, demands that audio and visual recording of the actual test be made to show that the accused person was not acting with any motivation other than his own free will. This measure will also help to ensure that government has sufficient evidence to pursue a successful prosecution.

As an additional safeguard to both the government and the person subjected to testing, witnesses should be placed in the vicinity of the test to augment what may or may not be seen and heard on the recording devices. Both random and targeted tests must be as realistic as possible in order not to expose the test-taker to a greater temptation than that to which they are normally exposed. In order to ensure the fairness of the test and for its acceptance by both those subjected to it and the general public, the methods and scenarios used should be evaluated and approved by competent authorities. The test should be carefully prepared to include detailed intelligence work about the types, situations, forms and amounts of bribes that the tested person might be exposed to.

**Regular Repetition.** Experiences in various police forces where integrity tests have been carried out, such as the London Metropolitan Police, the Police of Queensland, Australia and the New York Police Department, have shown that it is not enough to “clean up” an area of corruption when problems appear. Instead, systems must be developed that help to ensure that follow-up testing is undertaken. The most desirable situation possible includes publication of the fact that consistent integrity testing of all government branches is performed at unknown intervals. Even where this is not possible, the object is to convince potential bribe takers that integrity testing is performed regularly.

**Preconditions and Risks**

**Integrity Testing and Constitutional Concerns.** Although integrity tests can be extremely effective as an investigative tool as well as an excellent deterrent, courts do not always easily accept this method of collecting evidence. Notwithstanding this fact, there are substantial reasons for their use. It is one of the most effective tools for eradicating corrupt practices in government services in an extremely short time. In particular, in cases of rampant corruption and low trust levels by the public, it is one of the few tools that can promise immediate results and can help to restore trust in public administration. Legal systems that provide for “agent provocateur” scenarios should try and ensure that they are never designed to instigate conduct that makes criminals out of those who might otherwise have reacted honestly in a given scenario. It is
therefore important to ensure that the degree of temptation not be extreme and unreasonable. Many criminal law systems exclude evidence of an agent provocateur when the provocation is considered to be excessive.

*Appropriate Public Service Salaries.* If public service salaries are extremely low, there is the risk that integrity testing will not be accepted as fair play by either the tested person or by the general public. In this case, the tests will be counter-productive and can serve to damage the morale of those in public service.
Tool 31 - Electronic Surveillance Operations

Purpose

Electronic surveillance encompasses all information gathering, or intelligence gathering, by use of electronic means. This can include covert activities such as video recording, wiretapping or eavesdropping, and also includes the use of audio and video recorders and transmitters secreted on or in the presence of collaborating witnesses and informants for the purpose of consensual recording of activities.

The difference between covert and consensual is that covert surveillance, as we will use the term, is undertaken where none of the parties whose activities are being observed is aware that law enforcement is secretly listening and/or watching. Consensual recordings always involve the knowledge and consent of at least one of the parties to a conversation or activity.

Description

Electronic surveillance, as an investigative tool, is often the only method available to investigators powerful enough to pierce the veil of secrecy shielding corrupt activities from discovery. The most commonly used form of electronic surveillance is consensual in nature and involves the assistance of collaborating witnesses, whistle blowers and victims of extortion and other corrupt offers. This is because in most democratic societies, the public enjoys a right to privacy from government intrusion and has the expectation that their words and actions are not subject to interception by the police. Where one of the parties to a corrupt or criminal conspiracy decides to expose the enterprise using electronic means to secure evidence, society tolerates that government invades an otherwise private affair. However, society does not easily tolerate when government secretly and with no consent or knowledge by any of the parties, decides to ‘spy’ on the conversations and activities of citizens.

This intoleration towards government’s covert activities stems from distrust on the part of society towards government in general. Past abuses of government authority arising from political interests, personal vendetta’s and other nefarious motivations have served to instil enough distrust on the part of the public to the point where society is unwilling to entrust the government with the unbridled authority to ‘spy’ on the activities of the citizenry. In America, for example, the Constitution protects citizens from “unreasonable searches and seizures” by the government. Although this provision of American law was written over 200 years ago, the principal remains as strong today as when it was first written. Its applicability to electronic surveillance can be stated quite simply. Given that democratic society expects to have freedom of speech and movement, and that government is supposed to protect the citizenry from any and all threats to democratic principals, society considers it to be unreasonable for government to search using electronic means to uncover behaviour it proscribes and to then seize such evidence by recording it. This helps to account for the fact that only 1190 court approvals for covert wiretapping operations in the US were granted for all of the year 2000. Approximately 75 per cent of those approvals were for drug trafficking investigations.

Covert Interceptions and Recording

This category of electronic surveillance includes wiretapping, eavesdropping and video surveillance operations. Covert interceptions of private citizens’ words and activities are

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75 4th Amendment to the Constitution of the United States, also known as the Bill of Rights, 1791
76 Report of the Director of the Administrative Office of the United States Courts, April, 2001
arguably the most invasive and aggressive sort of government intrusion into one's privacy. Notwithstanding this fact, it is sometimes the only method available to law enforcement to collect sufficient amounts of evidence against criminal enterprises. The extreme sensitivity with which the public views this law enforcement effort demands that strict guidelines and oversight of covert operations be firmly in place. Covert interceptions should be used as a last resort and only after it has been shown that all other efforts at evidence collection have failed or are likely to have no effect.

Wiretaps and eavesdropping are generally illegal in most countries. In the US, the federal government and more than thirty state governments have legalised interceptions by law enforcement of wire, oral and electronic communications. In all of these jurisdictions, however, very strict guidelines must be followed before a judge will grant a court order authorising such interceptions. The guidelines are designed to help assure protection of citizen rights to privacy and Fourth Amendment rights while, at the same time, allowing for the use of wiretaps during investigations of serious criminal activity and for foreign intelligence.

Due to technological advancements in electronic communications over the past 20 years, state statutes have been modified to keep pace with these advances in telecommunications. For example, New Jersey has amended its electronic surveillance statute to include cellular telephones, cordless telephones, digital display beepers, fax transmissions, computer-to-computer communications, and traces obtained through "caller-ID".

**Application for Court Order**

All government wiretaps and eavesdropping should require a court order based upon a detailed showing of probable cause. To obtain a court order, a three-step process should be involved. First, the law enforcement officer responsible for the investigation must draw up a detailed affidavit showing that there is probable cause to believe that the target telephone or other communication device is being used to facilitate a specific, serious, indictable crime. Second, an attorney for the federal, state, or local government must work with the law enforcement officer to prepare an application for a court order, based upon the officer's affidavit. At the national level, the competent judicial officer must approve the application. At the state and local level, the application should be made and approved by the principal prosecuting attorney of the state or political subdivision. The government attorney should be authorised by a statute of that state to make such applications.

Third, the attorney must present the approved application ex parte (without an adversary hearing) to a judge who is authorised to issue a court order for electronic surveillance. A state or local police officer or national law enforcement agent should not be allowed to make an application for a court order directly to a judge.

Typically, a court order should only be requested after investigation and the use of a "Dialed Number Recorder" (DNR). The DNR is used to track the outgoing calls from the suspect's phone or other communication device in order to demonstrate that the suspect is communicating with known criminals. In the case of eavesdropping, it is similarly important to ascertain with precision the likelihood that the person or group under investigation will gather in a certain place to discuss criminal activity. Any request for a court order should contain the following information:

- (a) The identity of the investigative or law enforcement officer making the application and the high-level government attorney authorizing the application;
- (b) The facts and circumstances of the case justifying the application, including details of the particular offence under investigation, the identity of the person committing it, the type of communications sought, and the nature and location of the communication facilities;
• (c) Whether or not other investigative procedures have been tried and failed or why they would likely fail or be too dangerous;
• (d) The period of time for the interception
• (e) The facts concerning all previous applications involving any of the same suspects or locations;

Issuance of a Court Order

Before a judge can approve an application for electronic surveillance and issue a court order, the judge must determine that:

• (a) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offence covered by the law;
• (b) There is probable cause for belief that particular communications concerning that offence will be obtained through such interception;
• (c) Normal investigative procedures have been tried and have failed or reasonably appear unlikely to succeed or to be too dangerous;
• (d) There is probable cause for belief that the facilities from which, or the place where the communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offence, or are leased to, listed in the name of, or commonly used by such person.

In addition to showing probable cause, one of the main criterions for determining whether a court order should be issued is whether normal investigative techniques have been or are likely to be unsuccessful. Electronic surveillance is a tool of last resort and should not be used where other less intrusive methods of investigation could reasonably be used instead. Such normal investigative methods usually include visual surveillance, interviewing subjects, the use of informers and telephone record analysis. However, these techniques often have limited impact on an investigation. Continuous surveillance by police can create suspicion and therefore be hazardous; further, surveillance alone will not disclose the contents of a personal meeting nor a telephone conversation. Questioning identified suspects or executing search warrants at their residence can substantially jeopardise an investigation.

Informants are useful and should be sought out by police, but the information they provide does not always reveal all of the players or the extent of an operation, and great care must be taken to ensure that the informants are protected. Moreover, because informants are often criminals themselves, they may not be believed in court. Telephone record analysis is helpful, but does not reveal the contents of conversations nor do they always reveal the identities of parties. Other methods of investigation that may be tried include undercover operations and stings. But while effective in some cases, undercover operations are difficult and dangerous, and sting operations are costly and not always successful.

If the judge approves the application, then a court order is issued specifying the relevant information given in the application, namely, the identity of the person (if known) whose communications are to be protected, the nature and location of the communication facilities, the type of communication to be intercepted and the offence to which it relates, the agency authorised to perform the interception and the person authorising the application, and the period of time during which such interception is authorised. A court order may also require that interim status reports are made to the issuing judge while the wiretap or eavesdropping is in progress.

Minimization

Once the covert electronic recordings begin, the law enforcement officers should limit interception of communications to the offences specified in the court order. Before the
surveillance actually begins, a government attorney should convene a meeting with the officers who will participate in the case to ensure that recorded material conforms to the crimes alleged in the enabling affidavit. Turning off the recording equipment and then performing a spot check every few minutes to determine if the conversation has turned to the subject of the court order usually accomplishes minimisation. This avoids picking up unrelated gossip. Special problems may arise where criminals communicate in codes that are designed to conceal criminal activity in what sounds like uninteresting or unrelated discussion. If an intercepted communication is in a code or foreign language, and someone is not simultaneously interpreting the code or foreign language, then the conversation can be recorded and minimisation deferred until an expert in that code or language is available to interpret the communication. Should a wiretap or eavesdropping effort fail to meet the minimisation parameters, all of the evidence obtained from the wiretap could be inadmissible.

**Recording**

All intercepted communications are to be recorded when possible. As a practical matter, law enforcement officers make working copies of the original tapes. In many instances at the national and local level, the originals are delivered to the prosecutor's office and maintained in the prosecutor's custody.

The case officer should screen conversations that tend to prove that a crime has been, is being or will be committed. A compilation of the relevant conversations, together with the corroborating surveillance reports often provide probable cause for search warrants and/or arrest warrants.

**Termination of Covert Electronic Surveillance**

In order to continue an interception beyond the limit set by the original court order, the responsible law enforcement officer, through a government attorney, should apply for and be granted an extension based upon a new application and court order. When the period of a court order, or extension, expires, the original tapes must be made available to the issuing judge and should be sealed under court supervision. The tapes should be maintained in such fashion for a period of years.

**Consensual Recording Operations**

Unlike covert electronic surveillance operations, consensual operations involve the cooperation of at least one party who is trusted by the criminal target. This government collaborator might be a person who is being extorted or victimised in some manner, may be an ostracised member of a criminal enterprise with a personal vendetta, or might be a criminal who is trading information for leniency from the court. The vast majority of electronic surveillance operations involve these sorts of collaborators. With respect to corruption investigations and other so-called victimless crimes, the time needed to complete the criminal arrangement is usually not critical and most often involves the payment of cash money between the parties. This fact is important for anti-corruption investigators. For example, most cases of mid- and higher level bribery usually require that substantial amounts of money be assembled. In the case where a government inspector demands a bribe from a citizen or where the citizen conversely offers the bribe, there is often sufficient time for the honest citizen or government employee to notify the appropriate authorities before the actual transaction takes place. In the case of the collaborating criminal seeking leniency, he can usually control to some extent the timing of his meetings with the targeted criminals. This flexibility presents the opportunity for law enforcement officials to prepare the cooperating person to respond to the corrupt offer in such a way as to provide legal recourse to the authorities. For example, electronic surveillance methods could be used to record the bribe offer or solicitation.
Anti-Corruption Legislation
VI. ANTI-CORRUPTION LEGISLATION

Tool 32 - International and Regional Legal Instruments

Introduction. Some corruption is transnational in nature or has transnational elements, while other forms are purely national or domestic, but affect domestic capabilities, standards of living and even social, economic and political stability to the extent where they have become international concerns, particularly on the part of governmental, intergovernmental and non-governmental entities responsible for international development. Growing concern about corruption as an international problem increased through the 1980s and 1990s to the point where a number of instruments and other documents have been developed. These include binding legal instruments, which set concrete requirements or standards which are in the nature of legal obligations, binding on States Parties to the instrument concerned in international law; normative legal instruments, which set standards which are legal in nature but which are not legally binding; normative instruments, which set standards which are not legal in nature (e.g., the allocation of resources to combat corruption); and other documents or instruments, which may contain such things as political commitments, mandates for the creation of instruments or other actions against corruption, recommendations and similar terms.

United Nations instruments and documents

The United Nations Convention against Corruption

While there have been many developments in international law, the picture remains incomplete. Legal instruments that are binding in nature are not universal or global in their application, and efforts of a global nature are thus far not legally binding. Some substantive issues, such as those arising from transnational private-sector corruption and the repatriation of the proceeds of corruption, and particularly proceeds of “grand corruption” cases, have yet to be addressed. 77 During 1999-2001 efforts have begun to develop a binding international legal instrument which would be global in both its approach to the subject-matter and in its geographical application. The actual negotiations, scheduled to occur in 2002-2003, are expected not only to produce the specified instrument, but also to provide a valuable forum in which all Member States of the United Nations can assemble to discuss corruption issues, to develop effective measures against corruption, and to build broad international consensus in support of such measures.

The United Nations Convention against Transnational Organized Crime

The United Nations Convention against Transnational Organized Crime 78, is principally focused on the activities of “organized criminal groups”, but recognizes that corruption is in many cases both an instrument and an effect of organized crime activity, and that a significant portion of the corruption associated with organized crime is sufficiently transnational in its nature to warrant the development of several provisions in the Convention. The Convention is a binding international legal instrument, although the degree to which each provision is binding depends

77 The question of recovering assets in “grand corruption” cases has recently become the subject of international discussions. See Report of the tenth session of the United Nations Commission for Crime Prevention and Criminal Justice, E/2001/30, paragraphs 17-24, and GA/res/55/188, calling for the international cooperation against the illicit transfer of proceeds and in repatriating such funds to their countries of origin, as well as for consideration of this problem in the negotiation of the forthcoming United Nations Convention against Corruption.

on the language used. 79 It is presently open for signature and ratification, and may achieve the necessary number of ratifications (40) to come into force during 2002 or 2003.

The Convention establishes four specific crimes to combat activities which are commonly used in support of transnational organized crime activities: participation in organized criminal groups, money-laundering, corruption, and obstruction of justice. States Parties are required to criminalize these activities, as well as to adopt legislation and administrative systems to provide for extradition, mutual legal assistance, investigative cooperation, preventive and other measures, as necessary to bring existing powers and provisions up to the standards set by the Convention. In addition to establishing a corruption offence (Article 8), the instrument also requires the adoption of measures to prevent and combat corruption (Article 9).

The criminalisation requirements include central provisions that are binding on States Parties and supplementary ones that are discretionary. The mandatory corruption offences capture both active and passive corruption: “…the promise, offering or giving…” as well as “…the solicitation or acceptance…” of any “undue advantage”. In both offences the corrupted person must be a “public official” 80, the advantage conferred must be linked in some way to acting or refrain from acting in the course of official duties, and the advantage may be conferred directly or indirectly. States Parties are also required to criminalize participation as an accomplice in these offences. In addition to the mandatory offences, States Parties are also required to consider criminalizing the same conduct where the person promising offering or giving the benefit is in one country and the public official who solicits or accepts it is in another. They are also required to consider criminalizing other forms of corruption. In cases where the public official involved was involved in a criminal justice system and the corruption was directed at legal proceedings, the Convention offence relating to the obstruction of justice would also generally apply.

In addition to the criminalisation requirements, the Convention also requires the adoption of additional measures against corruption. The text calls for “…legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials”. It does not specify details of the measures to be adopted, but does require further measures to ensure that officials take effective action, including ensuring that the appropriate authorities possess sufficient independence to deter inappropriate influences on them.

Other Convention provisions, notably the articles establishing the money-laundering offence and providing for the tracing, seizure and forfeiture of the proceeds of crime may also prove useful in specific corruption cases. The Convention requires States Parties to adopt, to the greatest extent possible within their domestic legal systems, provisions to enable the confiscation of any proceeds derived from Convention offences and any other property used in or destined for use in a Convention offence. Courts or other competent authorities must have powers to order the disclosure or seizure of bank, financial or commercial records to assist in tracing, and bank secrecy cannot be raised as an obstacle to either the tracing of proceeds of crime or the provision of mutual legal assistance in general. Once proceeds or other property have been confiscated, they can be disposed of in accordance with the domestic laws of the State which has confiscated them, but that State is required to give “…priority consideration…” to returning them to a

79 The core obligations to create criminal offences and for cooperation in the areas of mutual legal assistance and extradition are generally binding, but other provisions incorporate additional conditions, limits or discretion on the part of the States Parties. The obligations to create criminal offences (articles 5, 6, 8 and 23), for example, use the language “…shall adopt…”, whereas other articles use language such as “…shall take appropriate measures within its means…” (article 24), or “…shall consider…” the obligation in question (article 28).

80 Article 8, paragraph 4 provides that “public official” includes any person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party concerned. See also travaux preparatoires note, A/55/383/Add.1, paragraph 19.
requesting State Party in order to facilitate compensation of victims or return of property to its legitimate owner. 81

The application of the Convention is generally limited to cases that involve an “organized criminal group” and events that are “transnational in nature”. This does not apply to the corruption offence itself, which must be enacted by countries in a format which criminalizes the specified acts of corruption whether they involve organized crime and transnational aspects, or not. The requirements of transnationality and organized criminal group involvement would have to be met, however, to invoke the various international cooperation requirements in corruption cases. 82 Where these requirements are met, a wide range of assistance and cooperation provisions would apply to assist in investigations and ultimately, to secure the extradition or prosecution of offenders among States that are Parties to the Convention. 83

The Plan of Action for the implementation of the Vienna Declaration on Crime and Justice Meeting the Challenges of the Twenty first Century (Corruption)

The Vienna Declaration on Crime and Justice, the political declaration of the Tenth United Nations Congress on Crime Prevention and Criminal Justice, dealt with a full range of the major crime issues confronting the Congress, including corruption. Paragraph 16 of the Vienna Declaration calls for enhanced international action against corruption, building on the Code of Conduct and Declaration against corruption and bribery (below), as well as regional instruments. 84 On endorsing the Vienna Declaration, the General Assembly requested the Secretary General to prepare plans of action for the implementation and follow up of the commitments in the Declaration, for the consideration and action of the United Nations Commission for Crime Prevention and Criminal Justice. Plans of Action were duly completed at the tenth session of the Commission, including a Plan of Action against corruption. 85

The Plan of Action is divided into national and international actions. The national actions called for include:

• Various efforts in support of the proposed United Nations Convention against Corruption;
• Various measures to combat domestic corruption, including
• The assessment of the extent of domestic problems;
• The development of national strategies and action plans;
• National offences, powers and procedures to deal with corruption and related problems;
• Strengthening of domestic institutions, including institutional independence;
• Institutions and structures to foster transparency;
• The development of expertise in anti-corruption measures; and,
• Various measures to combat transnational corruption, including
• Signature, ratification and implementation of international instruments;

81 Article 14, paragraph 2. The travaux preparatoires will also make reference to the use of confiscated assets to cover the costs of assisting and protecting witnesses in organized crime cases. See A/55/383/Add.1, paragraph 25.
82 A broader standard also applies to mutual legal assistance, which is often needed to establish the involvement of transnational organized crime as a prerequisite of applying other Convention provisions.
83 Where a country does not extradite a fugitive because the individual is one of its nationals, there is an obligation to prosecute the case in the same manner and with the same priority as if it was a domestic case.
85 E/CN.15/2001/14/Rev.2, paragraphs 5-9. Also included in the final Report of the Commission, E/CN.15/2001/30/Rev.1
• Ensuring that domestic capacity exists to assist other States in transnational corruption cases;
• Raising the awareness of officials;
• Providing material and other assistance to other States, directly and via the United Nations Global Programme against Corruption; and,
• Reducing the opportunities for those engaged in corruption to transfer and conceal proceeds in other countries.

In addition to the Plan of Action against corruption, the text produced by the Commission also contains Plans of Action against transnational organized crime and money laundering. The first calls for ratification and implementation of the United Nations Convention, which as noted above, contains a series of provisions dealing with, or relevant to the fight against corruption. The second sets out a series of national actions, including national laws criminalizing money-laundering in all its aspects; the implementation of effective regulatory, administrative and investigative provisions; and support for international initiatives in this area. It does not deal with the question of the repatriation of proceeds recovered in other countries, but this is discussed in relation to corruption by paragraph 8, subparagraph (f) of the Plan of Action against Corruption.

The texts of the plans of action are not legally binding. The text of the various plans specifies that “...States will endeavour, as appropriate...” to support the specific actions called for in each plan, and the resolution whereby the plans were submitted to the General Assembly invites governments to carefully consider and use the various plans for guidance in their efforts to formulate legislation, policies and programmes in the subject-areas dealt with. 86

The United Nations International Code Of Conduct For Public Officials

Following consideration of corruption issues by the fifth (1996) session of the United Nations Commission for Crime Prevention and Criminal Justice, the General Assembly adopted the International Code of Conduct for Public Officials. 87 The Code emphasizes the loyalty of officials to the public interest, the pursuit of efficiency, effectiveness and integrity, the avoidance of bias or preferential treatment, and ensuring responsible administration of public funds and resources. It calls for the avoidance of conflicts of interest by disqualification or non-participation where a private interest conflicts with a public responsibility while in office and with respect to previous offices. It also calls for the disclosure of assets, refusal of gifts or favours, and the protection of confidential information obtained in the course of public office. It also discusses issues arising from conflicts between partisan political activity and the public interest, calling for the avoidance of political activity by public officials and then outlining exceptions to this principle. Officials should not engage in major political activity unless the office itself is political (e.g. an elected office). More routine political activities should be limited to those that do not impair the function of the office or confidence in it, a flexible balance that would vary depending on the nature of both the political activities and the public office involved. The Code of Conduct is written in relatively general terms, for the guidance of legislative and administrative measures, and is not legally binding on U.N. Member States.

The United Nations Declaration against Corruption and Bribery in International Commercial Transactions

86 Draft resolution of Finland and Germany as amended and adopted by the Commission, E/CN.15/2001/L.13
During the same session, the General Assembly also adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions. Where the Code of Conduct is concerned with public sector corruption, the Declaration deals with both the private and public sectors. It calls for the enactment and enforcement of laws prohibiting bribery in international transactions; and laws criminalizing the bribery of foreign public officials; laws ensuring that bribes are not tax deductible. It also calls for international cooperation in areas such as investigation, prosecution and extradition and for countries to ensure that bank secrecy is not an obstacle to such cooperation. It proposes a partial definition of bribery which includes both active and passive bribery, but which is limited to cases involving “…any public official or elected representative…”, and which is limited to breaches of a public duty respecting an international commercial transaction. Neither “public official” nor “international commercial transaction” is defined. The Declaration also calls for the development accounting standards and practices to improve transparency and business codes, standards or best practices which prohibit “…corruption, bribery and related business practices” in international commercial transactions. The text is in the nature of a political commitment and not a legal obligation, with actions to be taken through institutions at the national, regional and international level, and subject to each State’s constitution, fundamental legal principles, national laws and procedures.

Instruments and documents of the Organization for Economic Co-operation and Development (OECD)

The OECD’s mandate includes a number of areas which are affected by domestic and transnational corruption or which may be relevant to anti-corruption strategies. These include general work in areas such as economic reform, good governance and sustainable development, and specific concerns such as international trade regulation, import-export structures, taxation policies and laws, and measures against money laundering. In this context, the OECD is responsible for several legal instruments, as well as other documents such as assistance materials prepared regarding specific countries or regions or specific issues, and the reports of the many meetings and conferences sponsored by the OECD which deal with corruption and related issues.

**OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**

The OECD General Council adopted an advisory instrument, the Revised Recommendation on Combating Bribery in International Business Transactions on 23 May 1997, which called for, *inter alia*, effective measures to deter, prevent and combat the bribery of foreign public officials, including the adoption of appropriate criminal offences in domestic law.

It then concluded the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 21 November 1997. The instrument is in the nature of a series of binding legal commitments on the States Parties, and came into force following

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89 Further information, including the texts of the OECD instruments, can be obtained from: OECD, 2 rue André Pascal, F-75775 Paris Cedex 16, France, or on-line at www.oecd.org.
90 OECD document C(97)123/FINAL.
91 OECD document DAFFE/IME/BR(97)20. This document compiles several relevant texts, including the Convention itself, the OECD’s Commentaries and its Council Recommendations on combating bribery and excluding the tax deductibility of bribes.
ratification by five of the ten OECD countries with the largest economies, on 15 February 1999. 92

As of early 2001, 27 countries had ratified the convention and a further 7 countries were considering or in the process of ratifying it.

The OECD Convention, as its name implies, is relatively narrow and specific in its scope. Its sole focus is the use of domestic law to criminalize the bribery of foreign public officials. It applies to both active and passive bribery, but does not apply to forms of corruption other than bribery, bribery which is purely domestic, or bribery in which the direct, indirect or intended recipient of the benefit is not a public official. It also does not include cases where the bribe was paid for purposes unrelated to the conduct of international business and the gaining or retaining of some undue advantage in such business.

The obligation to criminalize 93 includes any case where the offender offers, promises or gives “…any undue pecuniary or other advantage …to a foreign public official…” to induce the recipient or another person to act or refrain from acting in relation to a public duty, if the purpose was to obtain or retain some business or improper advantage in the conduct of international business. States Parties are required to ensure that incitement, aiding and abetting or authorizing bribery are also criminalized and that the offences apply to corporations and other legal persons. Attempts and conspiracies, which pose a problem for some legal systems, must be criminalized if the equivalent conduct of bribing a domestic public official is criminalized. Prosecutorial discretion is recognized, but the Convention requires that it be exercised on the basis of professional rather than political criteria. 94

Punishments must be “effective, proportionate and dissuasive”, and of sufficient seriousness to trigger the application of domestic laws governing mutual legal assistance and extradition. Any proceeds or property of equivalent value must either be the subject of powers of seizure and forfeiture or the imposition of equivalent monetary sanctions. Bribing foreign public officials must also trigger national money laundering laws to the same extent as would the equivalent bribery of a domestic official. In addition to criminal penalties, the instrument also requires measures to deter and detect bribery in the form of accounting practices and safeguards to prevent domestic companies from concealing bribes paid to foreign officials, as well as appropriate civil, administrative or criminal penalties to ensure compliance. 95

Since the OECD Convention came into force, the OECD Working Group on Bribery in International Business Transactions has adopted a rigorous process of assessing the status of implementation and compliance with its terms. Countries assess their own progress as well as that of other States Parties. Since 1999, their peers have reviewed 21 of the 34 States Parties. For each of these countries, the Working Group adopted a report, including an evaluation, which was made available to the public subsequent to the OECD meeting. The Working Group, in its June 2000 Report, expressed satisfaction about the state of overall compliance.

Revised Recommendations of the OECD Council on Combating Bribery in International Business Transactions

92 The measure of economic size is export share, set out in OECD document DAFFE/IME/BR(97)18/FINAL. See Convention article 15.
93 Article 1.
94 Article 5. The text also refers to the 1997 revised recommendation, which states that investigations and prosecutions should be allocated adequate resources and priority.
95 [info for OECD report here]
The OECD Council has also issued a series of non-binding recommendations dealing with bribery in international business transactions. The original text, adopted in 1994, was reviewed and further revised in 1997, based on the OECD’s research and experiences in dealing with this problem. It represents consensus within the OECD countries, but as a non-binding document, it is able to go beyond the text of the Convention, making recommendations which are both more specific and more flexible in allowing countries to tailor the measures proposed to their domestic legal systems and national priorities for combating particular aspects of the corruption problem.

The first substantive recommendation, to the effect that countries “…take concrete and meaningful steps…[to adopt] …criminal laws…”, for example is accompanied by an Annex setting out agreed common elements for criminal laws to assist national drafters and common elements of procedure to assist law enforcement and prosecutors in applying such laws. Some of these, such as the elements of a basic bribery offence, are similar to those found in the OECD Convention, others, such as the criteria for exercising prosecutorial discretion, are covered in greater detail. The following measures are recommended, each being accompanied by text giving additional detail or explanations:

- The creation and application of criminal laws;
- The creation and application of tax laws, regulations and practices;
- Appropriate company and business accounting practices;
- Banking, financial and other relevant provisions;
- The denial of public subsidies, licenses, government procurement contracts or other public advantages as a sanction in bribery cases;
- In addition to criminalisation (above), ensuring that bribery is illegal under civil, commercial and administrative laws; and,
- Providing for international cooperation in investigations and other legal proceedings.

Recommendation of the OECD Council on the Tax Deductibility of Bribes to Foreign Public Officials

Having determined that many of its transnational bribery cases involved companies or other corporate interests paying bribes to secure some foreign advantage, or in some cases to offset actual or perceived advantages on the part of competitors using similar tactics, the OECD chose taxation policies and laws as a key element in the fight against this problem. Corporations are primarily motivated by the overall financial implications of a proposed activity or transaction, and tax implications are a significant factor in this consideration. In most countries, corporate taxes are levied against profits, allowing the corporate taxpayers to deduct expenses incurred in generating such profits, such as research and development, negotiation, shipping and other costs. The bribery of foreign officials can constitute a significant cost, particularly if the officials involved are large in numbers or occupy very senior positions.

The 1996 recommendation itself is to the effect that countries address this problem by ensuring that foreign bribes are not allowed as deductible business expenses for tax purposes. This may have been largely overtaken by the 1997 recommendation and the Convention, however, since these advocate the criminalisation of such bribery, and in most countries costs incurred in the commission of a crime would be excluded as a general policy under pre-existing tax laws. The Convention and its commentaries do not refer to tax measures specifically, although the Convention does call for “additional civil or administrative sanctions” against bribe-payers and for business accounting practices which would make it impossible to conceal the true nature of

96 Revised Recommendation of the Council on Combating Bribery in International Business Transactions, OECD Council, 23 May 1997, included in OECD document DAFFE/IME/BR(97)20. See also OECD document C(94)75/FINAL.
bribery expenses. 97 The 1996 recommendation that bribes not be allowed as tax deductions is re-stated as Recommendation IV of the 1997 Revised Recommendations.

Council of Europe Instruments and Documents

The Council of Europe was actively engaged in the development and adoption of anti-corruption measures, many of which are open to adoption or accession by non-European countries, or which may be useful as precedents for other countries developing national or regional legal provisions of their own. In 1999, the Council established GRECO, the Group of States against Corruption to strengthen capacities to fight corruption, monitor compliance with international instruments and other documents and similar measures. 98

Criminal Law Convention on corruption (1998)

The Committee of Ministers of the Council of Europe adopted the text of the Criminal Law Convention on Corruption99 in November 1998. In addition to European countries, it is also open for signature and ratification by other, non-member States that participated in its negotiation. Other States can also join by accession once the instrument is in force, provided certain preconditions, including the consent of all of the contracting States that sit in the Council’s Committee of Ministers. 100 As of October 2001, the Convention was not in force, only nine of the required fourteen States having ratified it. The Convention is drafted as a binding legal instrument.

The Convention applies to a broad range of occupations and circumstances, but is relatively narrow in the range of actions or conduct that States Parties are required to criminalize. 101 It contains provisions criminalizing a list of specific forms of corruption, and extending to both active and passive forms of corruption, and to both private-sector and public sector cases. The Convention also deals with a range of transnational cases: bribery of foreign public officials and members of foreign public assemblies is expressly included, and offences established pursuant to the private-sector criminalisation provisions would generally apply in transnational cases in any State Party where a sufficient portion of the offence to trigger domestic jurisdictional rules had taken place. The majority of offences established are limited to bribery, which the instrument does not define. Trading in influence and laundering the proceeds of corruption must also be criminalized, but the instrument does not deal with any of the other forms of corruption, such as extortion, embezzlement, nepotism, or insider trading, and it does not seek to define or criminalize corruption in general.

The Convention requires States Parties to ensure that they have specialized “persons or entities” dedicated to the fight against corruption, and that such persons or entities have sufficient independence, training and resources to enable them to operate effectively. 102 It also provides for the protection of informants and witnesses who cooperate with investigators, the extradition of offenders, mutual legal assistance and other forms of cooperation. 103 The tracing, seizing, and

97 Article 3, paragraph 4 and article 8.
98 Council of Europe resolution (99)5, 1 May 1999.
99 European Treaty Series #173.
100 See Article 33.
101 The criminalisation requirements are found in Chapter II, Articles 2-14. Aiding and abetting must also be criminalised under Article 15, and corporate liability is required under Article 18.
102 See Article 20.
103 Articles 22 and 25-31.
freezing of property used in corruption and the proceeds of corruption are also provided for, but
the text is framed in terms of international cooperation and does not deal with the return or other
disposal of recovered proceeds. 104 Mutual legal assistance may be refused if the request
undermines the fundamental interests, national sovereignty, national security or ‘ordre public’ of
the requested Party, but not on the grounds of bank secrecy. 105

Civil Law Convention on Corruption (1999)

The Civil Law Convention on Corruption of the Council of Europe is the first attempt to define
common international rules for civil litigation in corruption cases. Where the Criminal Law
Convention seeks to control corruption by ensuring that offences and punishments are in place,
the Civil Law Convention requires States Parties to ensure that those affected by corruption can
sue the perpetrators civilly, effectively drawing the victims of corruption into the Council’s anti-
corruption strategy.

Generally, this has the advantage of making corruption controls partly self-enforcing by
empowering victims to take action on their own initiative, but it also entails some loss of control
on the part of government agencies. Some potential litigants may effectively be excluded by lack
or resources, lack of access to legal counsel or similar factors, and corporate civil litigants, who
have the means to bring a civil action, will usually decide whether to sue, settle or discontinue
proceedings based on business or economic criteria which may not accord with the government’s
overall anti-corruption strategy. Creating a civil cause of action may also create some potential
for conflicting or parallel civil and criminal proceedings, and rules for resolving such problems
might be needed where they do not already exist.

As with the Criminal Law Convention, the Civil Law Convention is drafted as a binding legal
instrument. Civil law provisions must be enacted which ensure that anyone who has suffered
damage resulting from corruption can recover “…material damage, loss of profits and non-
pecuniary loss.” 106 Damages can be recovered against anyone who has committed a corrupt act,
authorized someone else to do so, or failed to take reasonable steps to prevent the act, including
the State itself, provided that a causal link between the act and the damages claimed can be
proved. 107 Where appropriate, courts also have the power to declare contractual obligations
resulting from corruption to be null and void, where the consent of any party to the contract has
been “undermined” by corruption. 108 The instrument also requires Parties to “cooperate
effectively” in civil cases, take steps to protect those who report corruption, and to ensure the
validity of private-sector accounts and audits. 109 The Civil Law Convention is narrower that its
criminal law counterpart in the scope forms of corruption to which it applies, extending only to
bribery and similar acts, but applies to such acts in both private- and public-sector
circumstances. It is not in force, having been ratified by only three of the necessary 14 countries.

The twenty guiding principles for the fight against corruption (1997)

The Council of Europe Committee of Ministers adopted a resolution setting out “Twenty
Guiding Principles for the Fight against Corruption in November of 1997. 110 The principles are

104 Article 23.
105 Article 26, paragraphs 2 and 3.
106 Article 3, paragraph 2.
107 Articles 4 and 5.
108 Article 8.
109 Articles 13, 9 and 10.
110 Resolution (97)24 of 6 November 1997. The principles were developed by the Multidisciplinary Group
multidisciplinary, covering the use of criminal and civil law measures, civil prevention, administrative reforms, transparency measures, and research, and are directed at encouraging individual countries to consult one another and coordinate national measures as a further precaution against transnational corruption problems. Attention is also drawn to the links between corruption and other forms of crime, particularly money-laundering and organized crime.


Similar to the United Nations’, the Council of Europe has developed and adopted a model code for the conduct of public officials. The language of some of the individual standards is of a mandatory nature, but the document itself is in the nature of a recommendation and is intended as a precedent for countries drafting their own mandatory codes of conduct. Many of the standards set deal with subject matter which is similar to the United Nations text, but the Council of Europe text is much broader, covering a wide range of aspects of public service conduct, rather than only those which are linked to anti-corruption measures or policies. Article 6, for example, which deals with arbitrary actions, is broad enough to cover problems such as general discrimination as well as conduct which is specifically biased by corrupt influences. The more important elements from an anti-corruption standpoint include:

- Avoidance of conflicts of interest (articles 8 and 13-16);
- Duties to act loyally (article 5), legally (article 4), and impartially (article 7);
- Dealing with gifts, improper offers and other forms of influence (articles 18-20); and,
- Accountability of public officials (articles 10, 25).

Of particular interest are Articles 13-16, which deal with conflicts of interest in more detail than most other instruments. The provisions discuss the possible range of conflicts which may arise, and place positive obligations on the official involved, who will often be the only person aware of the existence of a conflict, to identify and disclose potential conflicts, take appropriate steps to avoid them, and to comply with any legal or operational decisions taken by others to resolve the conflict. The Code notes that potential sources of frequent or regular conflicts may be incompatible with some areas of public activity altogether, but it does not discuss any specific means of resolving such conflicts. The need for controls to balance between legitimate forms of protected partisan political activity and conflicts between partisanship are also discussed. These deal with public officials in general, but not with those who serve by reason of their election to partisan political positions.

**European Union Instruments and Documents**

**Convention of the European Union on the protection of its financial interests and protocols thereto**

on Corruption, established as a result of the 1994 Malta Conference of the European Ministers of Justice.

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112 Article 15.

113 Article 15 simply requires the public official involved to identify and disclose such conflicts, and seek the approval or superiors for situations that may raise general conflicts. The only practical means of addressing such conflicts are usually either requiring the official involved to divest or disassociate himself from the private conflicting interest or to discharge or reassign the official to ensure that the public duties do not conflict. This is discussed in Part 4.1.h. of this Manual.

114 Article 1, paragraph 4 excludes from the term “public official” those elected to office, members of the government and holders of judicial office.
The Convention (1995) and its two Protocols (1996 and 1997) represent an attempt on the part of the European Union to address forms of malfeasance which are harmful to its own financial interests. They are legally binding and address corruption and other financial or economic crimes as well as related conduct, but only insofar as the conduct involved affects the interests of the E.U. itself. The Convention deals with a list of conduct designated as “fraud affecting the European Communities’ financial interests”.

The first Protocol deals with active and passive corruption, the second with money laundering and the confiscation of the proceeds of fraud and corruption as set out in the previous instruments. The forms of active and passive corruption dealt with in the first Protocol generally consist of bribery and similar conduct, in which some promise, benefit or advantage is solicited, offered or exchanged in return for undue influence on the exercise of a public duty. The forms of fraud set out in the Convention itself cover other areas of corruption, such as the submission of false information to a public authority to induce it to pay funds or transfer property it would not otherwise have done. The first Protocol distinguishes between the criminal conduct of officials, who can commit “passive corruption” by requesting or receiving bribes or similar considerations, and others, who commit “active corruption” promising or giving such considerations for improper purposes. The other instruments simply require States Parties to incorporate (“transpose”) the principles set out into their national criminal law, which would generally result in offences applicable to everyone who engaged in the conduct prohibited. Generally the question of liability of legal persons such as corporations would be covered by the same principle. Article 3 of the Convention further calls for specific individual criminal liability for the heads of businesses or those exercising control within the business to be held criminally liable in cases where the business commits a fraud offence.

**Convention of the European Union on the fight against corruption involving officials of the European Communities or officials of Member States**

This Convention incorporates essentially the same terms as the 1995 Convention on the protection of financial interests (above), but only deals with conduct on the part of officials of the European Community and its Member States. The conduct to which it applies is essentially bribery and similar offences, which States parties are required to criminalize. It does not deal with fraud, money laundering or other corruption-related offences.

**Joint Action of 22 December 1998 on corruption in the private sector by the Council of the European Union**

The Joint Action of 22 December 1998 incorporates many similar provisions to the proceeding European instruments, but there is one fundamental difference. Here the focus is on corruption in the private sector. The obligation is to criminalize both active and passive corruption conducted “in the course of business activities”, which would include cases where neither the pay or nor the recipient of a bribe was connected in any way with public administration, as well as cases where the “business activities” involved business with government. The underlying policy is to use the criminal law of Member States to combat private sector practices on the basis that these distort free competition within the common market, thereby raising the possibility of economic damage to others not involved in the

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activity. The text is drafted in binding legal terms, and Member States are required to bring forward proposals for implementation within two years of its entry into force.

Instruments and documents of the Organization of American States (OAS): The Inter-American Convention against Corruption

Inter-American Convention against Corruption

The principal focus of the anti-corruption strategy of the OAS has been the 1996 Inter-American Convention against Corruption. The Inter-American Convention is drafted as a binding legal instrument, although some specific provisions contain language that limits or provides some element of discretion with respect to application. Generally, the obligations to criminalize acts of corruption are mandatory, while States Parties need only consider others, such as the implementation of certain preventive measures. The instrument has been in force since 6 March 1997, having been ratified by 20 OAS countries. Countries that are not OAS members may also become Parties by acceding to it.

The Inter-American Convention is broader in scope than the European and OECD instruments, which focus primarily on bribery and its variations, but is still limited to conduct which is committed by or which affects “...a government official or a person who performs public functions...”, both of which are defined. In addition to passive and active bribery, the Convention also applies to any acts or omissions done by the person or official for the purpose of illicitly obtaining any benefits; and the fraudulent use or concealment of property derived from corruption. It is open to States Parties to apply it to other forms of corruption if the countries involved so agree. The instrument also applies to attempted offences and to various forms of participants such as conspirators and those who instigate, aid or abet offenders. States Parties are required to adopt these acts or omissions, as well as transnational bribery and illicit enrichment (below) as domestic offences, and to ensure that adequate provision is made to facilitate the required forms of cooperation, such as mutual legal assistance and extradition.

The questions of transnational bribery and illicit enrichment are dealt with separately. Faced with constitutional difficulties on the part of some States, these offences are made subject to the Constitution and fundamental principles of the legal system of each State Party, acknowledging that constitutional constraints might preclude or limit full implementation. Where this is the case and a State Party does not establish offences for these reasons it is still obliged to assist and cooperate with other States Parties in such cases “...insofar as its laws permit.” Transnational bribery and illicit enrichment are also designated as “acts of corruption”, making them subject to the other provisions of the instrument.

The transnational bribery provision requires that States Parties “…shall prohibit and punish…” the offering or granting of a bribe to a foreign government official by anyone who is a national,

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118 See article 2 paragraph 2 and article 3 paragraph 2.
119 OAS General Assembly resolution AG/res.1398 (XXVI-0/96) of 29 March 1996, annex. All OAS instruments are available in Spanish, English, French and Portuguese.
120 Argentina, Bahamas (Commonwealth), Bolivia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, United States of America, Uruguay and Venezuela.
121 Article XXIII.
122 Article I.
123 Article VI.
124 Article VII.
habitual resident, or a business domiciled in their territory. The language is broader than that of the equivalent provisions of the OECD Convention, covering not only bribery where the purpose relates to a contract or business transaction, but also any other case where the bribe relates to “any act or omission in the performance of that official’s public functions.” The illicit enrichment provision simply requires the establishment of an offence the accumulation of a “significant increase” in assets by any government official if that official cannot reasonably explain the increase in relation to his lawful functions and earnings.

In addition to the foregoing criminalisation requirements, which are essentially mandatory, States Parties are also asked to consider a series of further offences. If adopted, these also become “acts of corruption” under the Convention, and trigger its cooperation requirements even among States that have not done so.

- Improper use of confidential information by an official;
- Improper use of government property by an official;
- Seeking any decision from a public authority for illicit gain; and
- Improper diversion of any state property, monies or securities.

The Convention creates a series of preventive measures, although as noted above, these are not mandatory:

- Standards of conduct for public functions and mechanisms to enforce them;
- The instruction of government personnel on responsibilities and ethical rules;
- Systems for registering the incomes, assets and liabilities of those who perform public functions;
- Government revenue and control systems that deter corruption;
- Tax laws that deny favourable treatment for corruption-related expenditures;
- Protections for those who report corruption;
- Oversight bodies to prevent, detect, punish and eradicate corruption; and,
- The study of further preventive measures.

As with several other instruments, bank secrecy cannot be invoked as a reason for not cooperating, but where information protected by bank secrecy is disclosed, it cannot be used for purposes outside the scope of the initial request without authorization from the State which provided it. The fact that an act of corruption involved political motives or purposes does not necessarily make any offences involved “political offences” so as to exempt them from legal assistance and extradition procedures. The Convention does not require States Parties to create retroactive crimes, but it does apply to acts of corruption committed before it came into force.

Mechanism for follow-up on implementation of the Inter-American Convention against Corruption

125 Article VIII.
126 Article XI.
127 Article III.
128 Article XVI.
129 Article XVII.
130 Article XIX.
Following the coming into force of the Inter-American Convention, the first Conference of States Parties was held from May 2-4 2001 in Buenos Aires to establish a mechanism to follow up on the implementation of the instrument. It called for the establishment of a mechanism to promote implementation, follow up on specific Convention commitments, facilitate technical cooperation activities and facilitate harmonization of relevant national laws. A committee of experts is established to conduct technical analysis of their Convention and its individual provisions as implemented by States Parties. Its reports and recommendations would then be reviewed by the Conference of States Parties, which represents all of the countries involved and would have the authority to implement recommendations. The committee of experts would select countries impartially for review, obtain information using a questionnaire, and prepare a preliminary report. Each country reviewed would be notified in advance, and given an opportunity to review preliminary report texts. Ultimately, the Conference of States Parties would review final reports, which would then be published. The Committee of experts, which is called upon to adopt and disseminate its own procedural rules, is directed to make provision for the appropriate participation of civil society in this process.

**Future Convention against Corruption**

In recent years, the international community has demonstrated an unprecedented awareness of the gravity of corruption. Responding to the call of addressing corruption in a coordinated manner, the international community became engaged in the negotiation and the elaboration of several international legal instruments within different organizations, such as the Council of Europe, the European Union, the Organization of American States and the Organization for Economic Cooperation and Development.

With the exception of the OECD, all the other intergovernmental organizations under which the existing international legal instruments have been developed are regional. One remark that can be made in this connection is that countries facing similar problems and sharing, at least to a certain degree, similar legal practices have developed these instruments. These characteristics are reflected in the approaches taken and the choices made in these instruments. However, while the OECD Convention is the only instrument having comprehensive geographical coverage, the scope of the instrument remains rather limited. The instrument tackles solely a specific part of the global problem of corruption; i.e. the so-called "supply" side of the bribery of foreign public officials. Similar considerations must be made with regard to the United Nations Convention against Transnational Organized Crime. While comprehensive in its geographical scope, this instrument remains limited with regard to substantive scope.

**Preconditions and Risks**

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131 OAS General Assembly resolution AG/RES.1784 (XXXI-O/01), 5 June 2001, and Summary Minutes of the Conference of States Parties, annexed.
Tool 33 - National Legal Instruments

Description

Criminal Law

Sanctioning of corruption and related acts Corruption has been defined as the abuse of (public) power for private gain. This would include acts such as bribery, embezzlement and theft of public resources by public officials, fraud damaging the state and extortion, as well as the laundering of the proceeds from such activities. Certain other behaviours such as favouritism and nepotism, conflicts of interest and contributions to political parties may, under specific conditions, be considered worth sanctioning by means of administrative or criminal law. The difficulty of defining these types of acts as corruption lies in the fact that only from time to time do they actually cause damage either to the state, the individual, or to the public at large. Often the harm they cause consists mainly of a negative perception that ultimately results in a decrease in trust of the public towards the State.

Another measure worth considering is the criminalisation of the creation of slush funds, that is the accumulation of assets “off the books” with the purpose to use such funds to pay bribes. In many national legal systems, the creation of slush funds is not necessarily illegal. 132

There is an increasing tendency, both at the international and national levels, to criminalize the possession of unexplained wealth by introducing offences that penalize any (former) public servants who are, or have been, maintaining a standard of living or holding pecuniary resources or property that are significantly disproportionate to their present or past known legal income and who are unable to produce a satisfactory explanation for this. Several national legislators have introduced such provisions and, at the international level, the offence of “illicit enrichment” or “unexplained wealth” has become an accepted instrument in the fight against corruption. 133

An alternative to criminalisation of unexplained wealth could be to provide, instead, for administrative sanctions that do not require the unconditional presumption of innocence and that do not carry the stigma of conviction or make a person liable to imprisonment. Examples would be loss of office, loss of licenses and procurement contracts, and exclusion from certain professions, etc. 134

Since legal persons, in particular corporate entities often commit business and high level corruption, normative solutions must be developed regarding their criminal liability. This desire has been recognized by many jurisdictions and is provided for in some international legal instruments. Companies that do not have any risk of being dissolved and loosing their assets if they engage in, or tolerate, criminal activities of their staff, are unlikely to strengthen compliance with the law. This is especially true if there are incentives to not comply with the law, as is often the case in the context of corruption. Both, the UN Convention against Transnational Organized Crime and the Criminal Law Convention of the Council of Europe foresee establishing (criminal) liability of legal persons for the participation in the offences of active and passive corruption and money laundering.

132 Art. 8 of the OECD Convention and Art. V. of the OECD Recommendation (Note 3). See also the Report of the Expert Group Meeting on Corruption and its Financial Channels (Paris, 30 March to 1 April 1999), I.E.14 (k).
133 For example, Hong Kong SAR Prevention of Bribery Ordinance Section 10; Botswana Corruption and Economic Crime Act, Art. 34; Organisation of American States, Inter-American Convention against Corruption, Art. IX; National Law of the Republic of Indonesia on combating the criminal act of corruption No. 31/1999, Art. 37
134 For example, Italian Law No. 575/ 1965.
Confiscation of the proceeds of corruption

Confiscation of the proceeds of corruption should be obligatory and where proceeds per se cannot be confiscated, confiscation should be ordered for the equivalent value of the proceeds. In this regard, consideration for easing the evidentiary requirements needed in order to establish the illicit origin of the proceeds of corruption should be allowed. Various national legislators have introduced such provisions. They are all based on the concept that a public officials’ property should be confiscated if they maintain standards of living, or if they control or possess pecuniary resources or property, that are disproportionate to their present or past known sources of income, and if they fail to give a satisfactory explanation in this regard. The official is in the best position to explain how he or she came into these excessive possessions. Jurisprudence in most legal systems agree that courts can require defendants to establish (at least on the balance of probabilities) the existence of facts “peculiarly within their own knowledge”. Such is the case with personal possessions. This does not reverse the burden of proof but simply establishes rules for the gathering and evaluation of evidence that allows the court to base its decision on a realistic foundation. Unexplained wealth that is totally out of proportion with past and present sources of income points to some sort of hidden income. Although such wealth may be totally legal (such as inheritance, gifts from wealthy relatives, or a win on the lottery) it is likely to be illegal if the owner cannot – or is unwilling to - provide a satisfactory explanation for it.

Both the Convention against Transnational Organized Crime and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 provide a useful model with respect to easing the onus of proof and provides a procedural mechanism that can be of immense significance in anti-corruption efforts. The approach has both tactical and strategic appeal. As a tactical weapon, it offers a means of forfeiture that requires relatively few resources and involves little risk of unfairness or error. Placing the burden of identification and explanation of assets on the possessing official is tantamount to conducting psychological and tactical warfare against corruption. The constant fear of being required to account for ill-gotten possessions should give rise to a state of anxiety that would have a deterrent effect.

In easing this burden of proof and shifting the onus of proving ownership of excessive wealth onto the beneficiary, careful consideration must be given to the principles of due process, which in many jurisdictions are an integral part of the constitutional protection of human rights. To ensure consistency with constitutional principles, no change would be made in the presumption of innocence or the obligation of the prosecuting authority to prove guilt. What may be established is a procedural or evidentiary rule of a rebuttable presumption. Some countries, such as Italy and the United States, in order to overcome constitutional concerns, provide for the

135 German Criminal Code Art. 73d, Singapore, Corruption Confiscation of Benefits Act, Art. 5; Art. 34a Norwegian General Civil Penal Code
136 Other states like Italy also enriched their legal framework with special administrative procedures that allow for forfeiture and confiscation of assets independently of criminal conviction. Art. 2 ter of the Law 31 May 1965/ No. 575 foresees the seizure of property that is owned directly or indirectly by any person suspected of participating in Mafia-type associations when its value appears to be out of all proportion to his or her income or economic activities, or when it can be reasonably argued, based on the available evidence, that the said goods are the proceeds of unlawful activities or the use thereof. The seized property consequently becomes subject to confiscation if its lawful origin cannot be proved.
137 The United States Anti-Drug Abuse Act 31 U.S.C. § 5316 foresees a so-called "civil confiscation". Differently from criminal confiscation, this type of measure does not require proof beyond reasonable doubt of the illicit origin of the property to be confiscated, but considers a probable cause to be sufficient. The rules of evidence of criminal procedure are not applicable. If the illegal origin is probable, the burden of proof shifts to the owner who has to prove the legal origin of the property. However, civil confiscation has been strongly criticized for violating the rights of defense and of private property.
Anti-Corruption Legislation

possibility of civil or administrative confiscation. Unlike confiscation in criminal matters, this type of legislation does not require proof of illicit origin “beyond reasonable doubt”.

Instead, it considers a high probability of illicit origin and the inability of the owner to prove to the contrary as sufficient to meet this requirement. However, the more these sanctions resemble criminal penalties, the more they lead to criticisms based on human rights. It is interesting to note that Germany, in order to overcome concerns raised with regard to the presumption of innocence, has re-introduced the property penalty recalling medieval penal proceedings. This provision, as the name indicates, does not enable the confiscation of property of illegal or apparently illegal origin, but establish a real penalty that applies independent of the actual origin of the concerned assets. By introducing this provision, the legislature has tried to avoid any limitation of the presumption of innocence.

Laws to facilitate the detection of corruption

Although corruption is not a victimless crime per se, unlike most crimes, the victim is often not easily identifiable. Usually, those involved are beneficiaries in some way and have an interest in preserving secrecy. Clear evidence of the actual payment of a bribe can be exceptionally hard to obtain and corrupt practices frequently remain unpunished. The traditional methods of evidence gathering will often not lead to satisfactory results. Additional laws are needed providing for more innovative evidence gathering procedures, such as integrity testing, amnesty regulations for those involved in the corrupt transaction, whistleblower protection, abolition and/ or limiting of enhanced bank, corporate and professional secrecy, money laundering statutes, and access to information.

Money laundering statutes

Money laundering statutes can contribute significantly to the detection of corruption and related offences by providing the basis for financial investigations. Identification and recording obligations as well as the reporting of suspicious transaction, as it is also required by the UN-Convention against Transnational Organized Crime, will not only facilitate detection of the crime of money laundering but will also help identify the criminal acts from which the illicit proceeds originated. It is therefore essential to establish corruption as a predicate offence to money laundering.

Identification by financial institutions of the true beneficiaries of a transaction can often be difficult. Criminals engaged in money laundering typically use false identities. Financial institutions must refrain from entering into business relations where true identification is questionable and in particular when identification is impossible because of the use of company schemes that are mainly designed to guarantee anonymity. Furthermore, all relevant information regarding the client and the transaction need to be registered. In order to make this a manageable task, the obligation should exist, at a minimum, where the transaction exceeds a certain value or where the client wants to enter into a permanent business relationship with the institute, for example when opening an account. Regardless of the value of the single transaction, financial operators should be obliged to report such transactions that give rise to reasonable suspicions that the assets involved in the transaction derive from one of the predicate offences of money laundering. The reporting obligation should be established independent of the institute actually executing the transaction.

In order to support financial institutions in implementing this obligation, “Red Flag Catalogues” indicating instances in which they should pay special attention to transactions having no apparent economic or obvious lawful purpose, should be provided to them. Criteria relating to corruption/money-laundering will be different from those “red flags” pointing towards drug-money laundering. It is possible to make distinctions between high-risk areas, industries and
persons, and risky transactions. It might therefore be advisable to include in the traditional lists of “red flags” those situations that point to possible corruption proceeds.

The above obligations should not necessarily be limited to institutions entitled to execute financial operations. Instead, it should also be considered to extend the obligations to other businesses that are typically conducting transactions of considerable value, such as broker/dealers in gold, company shares and other precious commodities.

The statute should also provide for sufficient penalties for violation of the obligations. In some jurisdictions it might be considered to provide for procedures that ensure the adequate protection of the bank personnel.

**Limitation of bank and professional secrecy as well as the introduction of adequate corporate laws**

Banking secrecy laws are a serious obstacle to successful corruption investigations. The Convention against Transnational Organized Crime and the Drug Convention address the issue of bank secrecy in the context of confiscation. Efforts at reducing secrecy of account ownership has resulted in some traditional tax havens adjusting procedures to allow more access to accounts and greater possibility of confiscation, while other jurisdictions have used the opportunity to capture a greater share of the international market by offering enhanced bank secrecy.

However, bank secrecy is not the only obstacle to investigations. Accounts opened in the name of a company often provide for the true beneficiaries to remain anonymous. Banking laws and regulations that prevent information on the true identity of beneficiaries from being obtained have been identified as a source of concern at various international fora, such as the Paris Expert Group on Corruption and its Financial Channels and the OECD Working Group on Corruption.

**Access to information legislation**

Access to Information Laws usually adopts four methods to achieve its objective. It usually provides that (1) every government agency is required to publish an annual statement of its operations, (2) a legally enforceable right of access to documented information held by the government be recognized, subject only to such exceptions as are reasonably necessary to protect public interests or personal privacy. (3) A person’s right to apply to amend any record containing information relating to them which, in their opinion, is incomplete, incorrect, out of date or misleading be recognized and (4) independent bodies provide a two-tier system to appeal against any refusal to provide access.

**Administrative Law**

Judicially-supervised administrative procedures, involving the citizens’ right to a hearing, notice requirements and a right to a statement of reasons for a public official’s decision, are all effective mechanisms for preventing and controlling corrupt practices because they give civil society a tool to challenge abuse of authority. This is also an effective mechanism for citizens to challenge non-transparent policymaking.

By creating judicially enforceable procedural administrative rights, politicians decentralize the monitoring function to their constituents, who can bring suits to place public pressure in cases of politicians of bureaucratic abuse of power. In these cases, one could state that administrative...
substantive laws and procedures are means of ensuring accountability and act as instruments of political control of the state. They serve the purpose of monitoring and disciplining public officials.

There are also some drawbacks that need to be taken into account when introducing administrative law as an anti-corruption tool. First, extensive administrative procedures may entail a slower, less flexible administration. At the same time, these procedural rights that extend to politicians’ opponents may be used for political purposes in order to gain electoral advantages.
Tool 34 - Dealing with the Past; Amnesty and Other Alternatives

Purpose

The purpose of tools such as amnesty, reconciliation and other alternatives to endless debate concerning past wrongs is to avoid the possibility that new anti-corruption initiatives will be overwhelmed by the past. Imposing amnesty, for example, will help to ensure compliance with newly created laws by offering a chance to make a new start. Anti-corruption initiatives, especially those aimed at strengthening the investigation and prosecution of corruption, have a better chance to succeed if they make a fresh start, break with the past and signal a change of climate.

Description

Parties to offences can be encouraged to come forward and offer evidence. This inevitably gives rise to the question of amnesty. In Central and Eastern Europe, legal provisions can grant immunity from prosecution to bribe-givers who report the crime within 24 hours. However, this provision has historically not operated effectively, if at all. In the US, the first actor involved in an offence sanctioned by the Securities and Exchange Commission who “blows the whistle” is commonly granted immunity. This arrangement can introduce an element of risk into the corruption equation: since all of the involved persons are dependent on each other’s continuing silence, each has absolute power over the other.

Granting Amnesty. By declaring that matters occurring before a certain date will not be prosecuted requires that legal provisions be implemented. This amnesty should take effect when the new law comes into force or when a new anti-corruption authority becomes operational. However, exceptions to broad amnesty should be contemplated in cases where the crime is so offensive as to require investigation and prosecution regardless of whether doing so will overburden the newly implemented anti-corruption authority. Since selection of unforgivable matters can be delicate, some important parameters should be taken into consideration.

- The person or persons making the decision to proceed regardless of amnesty towards other crimes must have the trust of the public;
- The decision to proceed must be definitive.

The mechanism used for determining such exceptional cases should have the trust of the public. The responsible committee should comprise people of high integrity and who enjoy the trust of the public. All allegations regarding cases of corruption that occurred before the effective date of the amnesty should be analyzed by the committee and then either forwarded for further investigation or filed.

Truth and Reconciliation. A process of “truth and reconciliation” would require a public admission of the act to be forgiven and the redistribution of the proceeds in exchange for immunity from prosecution. Public forgiveness without restitution of the proceeds of the corruption would probably not be accepted by the community. It may be the case that those reporting their crimes are unable to make full restitution. In such cases, the possibility of not insisting on full restitution should be considered. Instead, the current property of those requesting truth and reconciliation could be taxed, regardless of its actual origin. The percentage to be paid in tax should also be determined. Criminals who admit their involvement in corrupt practices may consider an admission to be a chance for clearing up their past criminal activities in a relatively “cheap” way. The public should be made aware of the need for and advantages of this reconciliation mechanism. If this sort of ‘plea bargaining’ was not permitted, it is likely that many past offences will be unreported and opportunities to collect at least partial repayments will never materialize.
In addition to admitting to the corruption offences, amnesty-seekers should have to identify all other persons involved in the offences. In addition, they should be encouraged to reveal any other information in their possession regarding corrupt practices.

Recovered monies and property should be paid into an “integrity fund” which could be used to provide higher incentives for the public service in general and to support governments’ anti-corruption strategies.

**Preconditions and Risks**

It is advisable to use amnesty, reconciliation and other forms of dealing with the past rather than the traditional criminal justice system if:

- The government is creating a newly organized anti-corruption agency;
- Corruption has been, or still is, systemic and the large number of cases will probably paralyse the new agency; and
- Many of the public servants, because of their low salaries, were forced to use corrupt practices in order to survive

Although the approach of making a fresh start will have moral, practical and political implications, if this is not addressed at the outset, the entire new anti-corruption strategy may be at risk.

First, in new environments characterized by changed rules and different expectations, it can be difficult to judge the acts committed in the old environment according to new standards.

Second, newly developed public awareness can cause heightened expectations that government is serious about fighting corruption. From a pragmatic point of view, there is a real danger that a new anti-corruption authority will be overwhelmed by complaints concerning matters alleged to have occurred years ago. Attempts to investigate past allegations of corruption are not as likely to produce concrete evidence as more recent allegations. Witnesses forget facts, documents can be difficult to locate and the actors may no longer be in the jurisdiction. It might therefore be preferable to use available resources to address present and future cases.

Third, the political will to defeat corruption is likely to be undermined by influential persons who might be adversely affected by effective anti-corruption action.

Therefore, a provision to investigate “old” offences could be included in the new law and could appear as follows:

“Investigation of pre-[date] offences

1) Notwithstanding section [ ], the [anti-corruption authority] shall not act as required by that section
   a) With respect to alleged or suspected offences committed before [date] except in relation to –
   b) Persons not in [the country] or against whom a warrant of arrest was outstanding
   c) On [date];

2) Any person who has been interviewed by an officer of the police or of the [anti-corruption authority] and to whom allegations have been put that he has committed an offence referred to in this [law];

3) An offence which the [defined and established committee] on reference by the [head of the anti-corruption authority] considers sufficiently serious to warrant action.
4) A certificate in the hands of the chairman of the committee stating that the committee considers an offence sufficiently serious to warrant action shall be conclusive evidence of that fact.

The decision of the committee under subsection 1(c) shall be final and not liable to questioning in any legal proceedings.”

Without the exceptions the provision would read:

“Notwithstanding section [ ], the [anti-corruption authority] shall not act as required by that section in respect of alleged or suspected offences committed before [date].”
Tool 35 - Standards to Prevent and Control the Laundering of Corruption Proceeds

Purpose

The prevention and control of money laundering activities has two main aims: to protect the stability of the international financial system; and to facilitate law enforcement activities.

Description

The connection between corruption and the laundering of its proceeds is not new and has been highlighted on several occasions in the past. In 1997, the United Nations General Assembly expressed concern (in Resolution A/RES/51/59) about the links between corruption and other serious forms of crime, in particular organized crime and economic crime, including money laundering. Since then, the UN Commission on Crime Prevention and Criminal Justice has addressed the connection between corruption and money laundering in its annual sessions. 139

Other international agencies have also been active in this area. Both the OECD’s Convention on Combating Bribery of Officials in International Business Transactions and the Council of Europe’s Criminal Law Convention on Corruption address both transnational corruption and the laundering of its profits. 140

The link between money laundering and corruption is not only related to the laundering of corruption proceeds, but goes much further. Money laundering as such produces a corruptive effect on national and international financial systems. Nevertheless, for most banks and bankers the decision of whether or not to refuse criminal proceeds is based exclusively on financial considerations. As long as the possible returns outweigh the risks for both the banks and bankers, money laundering will continue to erode and undermine the financial system. Although banks recently have - or at least pretend to have - recognized the financial advantages to be made from complying with this change of mind-set, this is still not reflected in the actual practice of carrying out business, and in particular in the internal reward system. As long as the financial system continues to reward its employees for attracting new business but does not award them for being cautious when dealing with clients, the flow of illegal proceeds will continue to corrupt individuals and institutes alike. 141

Due to the close link between corruption and money laundering, various international fora have noted that a comprehensive anti-corruption strategy must also include actions to prevent and control the laundering of corruption proceeds. 142

The particular connection between money laundering schemes, under-regulated financial systems and corruption is also being given increased intention. The expert group meeting on corruption and its financial channels, held in Paris in April 1999, stated clearly that money laundering methods are not only being used in a phase post delictum, but also during even

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before the bribe money is actually paid. Bribe givers and bribe takers are bound by confidentiality of a covert arrangement and seek to dissociate the origin of the bribe money from its destination. It was further noted that in order to camouflage the origin and destination of bribes, the respective financial flows are channeled through states and territories that do not possess a comprehensive and effective system to detect money laundering and similar illegal transactions. Their financial sectors are generally inadequately regulated and supervised, their legislation does not guarantee the judicial authorities’ access to information, while their corporate laws allow the founding of shell companies and trusts to conceal the true identity of the beneficiary of transactions and the actual owners of funds. 143

The actual transaction of bribe money is the most significant element of the offence of corruption. Once this money is transferred into an under-regulated financial system, investigators will find it extremely difficult – if not impossible – to gather evidence. Especially in cases of bribery of foreign public officials, it is most likely that this disguised method will be used. This represents a serious obstacle for the efficacy of the OECD Convention and other binding international instruments.

In their attempts to contain money laundering, national legislators and international organizations have emphasized that a comprehensive approach is needed that combines preventive (regulatory) and sanction-oriented measures. 144 The objective of the first measures is to prevent the abuse of the financial system for money laundering purposes, and to create a paper trail, which is a precondition for successful investigative work. The second component of the approach depends heavily on the criminal sanctioning of the various forms of money laundering, including the laundering of corruption proceeds.

**Regulatory Approach**

The following rules have been developed with the aim of preventing money laundering. 145 However, they also follow a much broader agenda. Their primary goal is to establish a paper trail for all (including all legitimate) businesses and thereby to create “structures of global control” in the financial sector. 146 As regarding corruption prevention, the more difficult it becomes to hide and launder corruption proceeds, the greater the deterrent effect of anti-laundering legislation.

**The “Know your Customer” Rule (KYC).** The KYC aims at preventing financial institutes from doing business with unknown customers, but could acquire an entirely new dimension if it were applied to the beneficial owner. 147 When it is impossible to identify the beneficial owner because company schemes are used that are mainly designed to guarantee anonymity (such as IBC’s, trusts, Anstalten, Stiftungen and joint accounts) financial operators should be clearly obliged not to enter into business relations. Although, when done seriously, this requirement is very demanding, it could provide a relatively manageable way to deal with companies incorporated in under-regulated financial centers. It would allow IBC’s etc. to be isolated without having to blacklist the uncooperative financial centers, an approach that is still a source of controversy. 148

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143 *id.*

144 *id*


148 Report of the Expert Group Meeting on Corruption and its Financial Channels (Paris, 30 March to 1


Due Diligence. The term “due diligence” refers to three additional relevant provisions:

- The obligation to be even more diligent in unusual circumstances; 149
- The obligation to keep identification files and records on the economic background of unusual transactions; 150 and
- The obligation to inform the competent authorities about suspicious transactions. 151

These rules have been promoted at the international and national level for quite some time now. However, large-scale money laundering cases continue to occur, even in those countries that have adopted the rules and in those financial institutes that advertise their compliance with those rules.

Revise Existing Red Flag Catalogues. The obligation to “pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose” 152 is especially relevant. A series of criteria may lead to a transaction or business pattern seeming unusual, and it is almost certain that the criteria relating to corruption/money-laundering will be different from those “red flags” pointing towards drug-money laundering. It is possible to make distinctions between high-risk areas, industries and persons, and risky transactions. It might therefore be advisable to include in the traditional lists of “red flags” all those situations that point to possible corruption proceeds. For example, recent discussions among experts has led to the idea that regulations should be promulgated requiring financial institutions to report on account activity of all higher level politicians and government leaders. These indicators should encourage financial operators to apply special caution when dealing with large sums originating from areas with endemic corruption. Even greater caution should be exercised when the client or beneficiary performs an important public function, whether it be a head of state, minister, or party leader. Furthermore, clients involved in specific business sectors, such as the arms trade, should be asked to answer additional questions relating to the background of the transactions, the origin of the funds and their destination.

Sensitize Financial Operators. In order to sensitize financial operators and create a stimulus for financial institutions, money-laundering cases could be simulated. This form of integrity testing could help:

- To make financial operators more attentive; and
- To identify training needs.

In addition, disincentives and sanctions should be introduced for institutes or their personnel that fail the test.

Protection of Bank Personnel. Bank personnel that have used “whistleblower” anonymity to report suspicious transactions should be guaranteed protection.

Identify Non-complying Financial Institutions and Operators. Integrity testing could also be used as a pro-active approach to identify financial institutions and operators that, due to lack of will or capacity, do not comply with the rules of “due diligence” and “know your customer” or are actively involved in the laundering of monies. 153 Such institutions should then receive administrative sanctions. Depending on the seriousness of the failure to comply, the compulsory

April 1999), I.C.6 (e).

152 FATF R.14.
administration of the institute and the temporary or permanent exclusion of the responsible financial operator from exercising the financial profession might be considered. If there is a suspicion that an institute is involved in money laundering, similar tests could also be used to gather supportive evidence. These must, however, guarantee the right to a fair trial and the presumption of innocence.

**Criminal Law**

The following criminal law provisions are relevant to fighting corruption/money-laundering.

- **Make Corruption a Predicate Offence to Money Laundering.** In most legal systems, corruption has not yet been made a predicate offence to money laundering. Although the FATF recommendations and the currently negotiated UN Convention against Transnational Organized Crime have extended the scope of the criminal offence of money laundering to all serious offences, they still leave it up to each country to determine which offences are considered serious enough. This issue deserves to be studied from a technical rather than a political perspective. It might turn out to be a crucial instrument for making large-scale transnational bribery more risky and costly. 155

- **Introduction of Minimum Standards on International Co-operation.** In particular, the application of the clause “A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy” should be promoted (This clause is contained in Article 12, paragraph 6 of the UN Convention against Transnational Organized Crime and in Article 9, paragraph 3 of the OECD Convention.) However, the most difficult topic in international co-operation is still how to secure prompt and effective assistance without forcing Member States to depart from their fundamental legal principles and from safeguarding human rights. Again, here the instruments developed in the context of the Council of Europe could be a very valuable resource.

- **Criminalize the Creation of Slush Funds.** In many national legal systems, the creation of slush funds is not necessarily illegal. The diversion of funds “off the books” might represent a breach of the accounting rules of one country and perhaps even of its criminal law. However, there is no guarantee that countries that have not signed the OECD instruments against bribery, and especially the under-regulated financial centres, would be ready to react to this diversion of funds. It is therefore necessary to promote the criminalization of slush funds at both the international and national levels.

- **Introduction of Criminal Liability of Companies.** The criminal liability of companies is a complementary but essential rule for increasing the risk for private enterprises of tolerating their staffs’ involvement in corrupt practices, money laundering or other economic or financial crimes. Companies that do not run any risk of being dissolved and

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155 See the Paris Conclusions, p. 4.


157 See p. 4 of the Paris Conclusions.

158 Art. 8 of the OECD Convention and Art. V. of the OECD Recommendation (Note 3).

159 See also the Report of the Expert Group Meeting on Corruption and its Financial Channels (Paris, 30 March to 1 April 1999), I.E.14 (k).

160 Report of the Expert Group Meeting on Corruption and its Financial Channels (Paris, 30 March to 1 April 1999), I.C.6 (b) and I.E.14 (c).
loosing their assets if they engage in, or tolerate, the criminal activities of their staff, are very unlikely to strengthen compliance with the law, especially if there are high incentives not to do so, as is often the case with corruption and money laundering.

**Private Company Regulations**

Promotion of Adequate Company Regulations. Inadequate company regulations that prevent the disclosure of information on the true identity of beneficiaries from being obtained have been identified as a source of concern at various international fora, such as the Paris Expert Group on Corruption and its Financial Channels and the OECD Working Group on Corruption. This is an area in need of more extensive study. However, new laws on meaningful registers might prove unnecessary if clients in the financial sector are made to provide thorough identification. Some of the provisions described above already apply to all FATF Member Countries and - with minor modifications - to the Caribbean Financial Action Task Force (CFATF). Indirectly, through the United Nations and OAS model codes, they have also been exported to other areas of the world. In some regions they have been picked up and embedded in binding international or national law. To some extent, the details may have been delegated to the self-regulation bodies of the financial industries. And the worldwide coverage goes way beyond the banking sector and includes all sorts of financial intermediaries. However, at this point, the challenge is no longer to merely ensure the adoption of the FATF recommendations at the global level, but also to enforce them through proper training, controls and sanctioning.

**Measures at the International Level**

There are at least four different ways to promote harmonized substantive standards for under-regulated financial centers. 

**Step-by-Step Approach.** The under-regulated financial centers should be encouraged to join initiatives that promote a step-by-step approach to reach compliance with the FATF recommendations. Groups like the OECD Working Group on Bribery or the UN Global Offshore Forum have been established for this purpose. Under-regulated financial centers should be convinced to introduce the standards without having to join such working groups, for example in the context of regional participant groups.

**Listing of uncooperative jurisdiction.** Under-regulated financial centers could be encouraged to make an effort to comply with international legislation or, alternatively, be listed as uncooperative if they continue to ignore international anti money laundering statutes. Some international bodies are pursuing this or a similar approach to pressuring uncooperative offshore centers. However, legal obstacles are only partially responsible for a lack of cooperation. Many studies suggest that the insufficient responsiveness to mutual legal assistance requests and police cooperation inquiries seem to depend mainly on factual rather than legal obstacles. Law

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162 See III.4 of the Limassol Conclusions.

163 See the Council of Europe Convention 141 (see above note 3) and the EC Directive of 1991.

164 UNODCCP, *Financial Havens, Banking Secrecy and Money Laundering*, Vienna, 29 May 1998. Control and Crime Prevention has created the Global Offshore Forum, an initiative aimed at denying criminals access to the global offshore financial services market for the purpose of laundering the proceeds of their crime.

enforcement agencies experience reluctance in responding to international legal aid requests, and not only in the so-called offshore centers.\textsuperscript{166}

Isolation of Uncooperative Jurisdictions. As an alternative to coercion, insistence on strict customer identification for all financial operations by institutions in the OECD and the FATF areas, including the identification of beneficial owners, could indirectly isolate the unwilling under-regulated financial centers. However, the rules established on identification would require some clarification. No financial institution could simply rely on identification made by another financial institution domiciled in an under-regulated OFC. The identification would have to be repeated even in business relations with correspondent banks domiciled in such locations (perhaps with the exception of subsidiaries, if these are subjected to the same standards as the mother bank).\textsuperscript{167}

\textbf{Preconditions and Risks}

Any initiative to create a binding international legal instrument has to take into consideration to what extent existing initiatives already contain the measures identified above. In this context, attention should be paid in particular to: General Assembly Resolutions 51/59 and 51/191; the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Organization of American States’ Inter-American Convention against Corruption; the Principles to Combat Corruption in African Countries of the Global Coalition for Africa; the Council of Europe’s Criminal and Civil Law Conventions on Corruption and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; the 40 Recommendations of the Financial Action Task Force; and the recommendations of the UN Expert Group on Corruption and its Financial Channels, the UN Expert Group on Corruption held in Buenos Aires in 1999, the Global Forum against Corruption; and the work done by the Multidisciplinary Group on Corruption of the Council of Europe.

Several international organizations have recently focused on the issue of under-regulated financial centers. The perspectives vary according to the mandate of the organization.

\textbf{Ad hoc Working Group of the Financial Stability Forum.}

The Financial Stability Forum established an Ad-hoc Working Group on OFC’s on 14 April 1999, in which several European, American and Asian states as well as the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organization of Securities Commissions and the OECD are participants. Its primary interest is to evaluate the risks OFC’s pose for the stability of the world’s financial system (by addressing prudential and market integrity concerns). It does, however, endeavor to develop a methodology to assess compliance with international standards. Its final report was published in April 2000.

\textbf{UN International Financial Centre Initiative.}

The UNODCCP has promoted this initiative to deny criminals access to international financial services for the purposes of laundering the proceeds of crime. It does this by ensuring that all centers have internationally accepted anti-money laundering measures in place and that the supervision and regulation of financial institutions reflect these standards.

\textbf{The Financial Action Task Force (FATF).}


\textsuperscript{167} See III.5 of the Limassol Conclusions.
The forty recommendations of the FATF, updated in 1996, cover a central part of the concerns in regulating the financial sector. Apart from its regular work, it has established an ad hoc group on “non-co-operative jurisdictions.”

**The Council of Europe**

The Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of Proceeds from Crime, its Convention on Mutual Legal Assistance in Criminal Matters and its Criminal and Civil Law Conventions on corruption\(^{168}\) - together with the Group of States against Corruption (GRECO) Agreement Establishing the Group of States Against Corruption\(^{169}\) - contribute considerably to a legal framework of co-operation.

**The European Union.**

The European Union is primarily approaching the issue of corruption with a view to protecting its financial interests. Therefore, its work on OFC's is set in the context of preventing tax fraud.\(^{170}\) Further input may be expected from the EU initiatives to combat serious organized crime, especially in the area of international co-operation.\(^{171}\)

With all these initiatives at the international and regional levels regarding the issue of offshore centers, there is the great danger of duplication. Close coordination and information sharing are therefore essential if duplication of efforts and wasting resources is to be avoided.

\(^{168}\) See Note 3.

\(^{169}\) GRECO, Strasbourg, 12 May 1999.

\(^{170}\) See Note 3 of the “Euroshore” Programme and the projects for a “Corpus Iuris,” a core criminal code on EU-fraud.

Tool 36 - Legal Provisions to Facilitate the Gathering and Use of Evidence in Corruption Cases – Easing the Burden Of Proof

Purpose

The purpose of this tool is to increase the risk for corrupt public officials of being convicted in a court of law.

Description

Unlike most crimes, corruption offences usually have no obvious or complaining victim. More often than not, those involved are beneficiaries having an interest in preserving secrecy. Clear evidence of the actual payment of a bribe can be exceptionally hard to obtain and corrupt practices frequently remain largely unpunished. While evidence of specific corrupt acts is often lacking, circumstantial evidence is frequently available.

Since, in some countries, criminal phenomena such as organized crime, drug trafficking, corruption and money laundering have reached dimensions that undermine the very basis of their economic, political and social systems, the time may have arrived where government should consider easing its burden of proving guilt to gain conviction of the accused. Furthermore, due to growing globalization, the fight against these crimes has increasingly become the responsibility of a larger number of countries within the same geographical region, if not of the world community. The steadily growing number of regional and international initiatives and instruments to streamline the fight against these crimes - such as the 40 recommendations of the FATF against money laundering, the OECD and OAS Conventions against corruption, the UN Convention against drug trafficking and the UN Convention against Transnational Organized Crime - are clear signs of increasing world-wide intolerance of these crimes.

With respect to easing the burden of proof necessary to convict corrupt individuals, the current practice of evidence gathering and evaluation found in most of our courts, independent of their legal tradition, does not differ significantly from the above-proposed measure of easing the burden of proof. Conviction is a reaction to an event that took place in the past. Only the accused themselves will know what really happened, while all the other players in the criminal procedure rely on probabilities. Conviction becomes possible once these probabilities are high enough to leave no reasonable doubt that a certain event took place and in a certain manner.

Increase the Significance of Circumstantial Evidence. With the increase of the levels of corruption and the complexity of methods used to transfer bribes, in many societies there is a growing need for a legal framework to increase the effectiveness and efficiency of the investigation, prosecution, conviction and sanctioning of corrupt practices. Laws should be made enforceable by increasing the significance of circumstantial evidence.

In this regard, national and international legislative bodies have introduced a number of alternatives. What they all have in common is that they focus on the results of criminal acts rather than on the illicit practice at its root. Two main strategies can be identified in this context. One aims at criminalizing inexplicable wealth while the other focuses on facilitating the confiscation of such wealth.

Criminalizing the Possession of Inexplicable Wealth. There is an increasing tendency to criminalize the possession of unexplained wealth by introducing offences that penalize any (former) public servants who are, or have been, maintaining a standard of living or holding pecuniary resources or property that are significantly disproportionate to their present or past known legal income and who are unable to produce a satisfactory explanation for this. Several national legislators have introduced such provisions and, also at the international level,
offence of “illicit enrichment” or “unexplained wealth” has become an accepted instrument in the fight against corruption. 172

Criminal Confiscation of Inexplicable Wealth. Various national legislators have introduced confiscation provisions requiring a less challenging evidentiary basis. They are all based on the concept that public officials’ property should be confiscated if they maintain standards of living, or if they control or possess pecuniary resources or property that are disproportionate to their present or past known sources of income, and if they fail to give a satisfactory explanation in this regard. The beneficiary of excessive wealth, and nobody else, is in the best position to explain how they came into these possessions. The jurisprudence of most legal systems agrees that courts can require defendants to establish (at least on the balance of probabilities) the existence of facts “peculiarly within their own knowledge”. Such is the case with personal possessions.

Property Penalty and other Measures to Remove the Illegally Earned Goods. Due to the strong constitutional protection of the presumption of innocence and of private property in some legal traditions, legislators have been forced to produce more innovative approaches. Some Member States have decided to (re)introduce instruments which very much recall medieval penal proceedings. In particular, the “property penalty” and similar tools have been adopted in various Member States. These provisions, as the name indicates, do not confiscate property of illegal or apparently illegal origin, but establish a real penalty that applies independently of the actual origin of the concerned assets. By introducing this provision, the legislature has tried to avoid any limitation of the presumption of innocence. Where one can’t or is unwilling to explain the origins of his property, the government presumes that its origins were illicit.

Civil and Administrative Law Confiscation. Some countries, Italy 173 and the United States 174 for example, also provide for the possibility of civil or administrative confiscation in order to avoid concern about unconstitutionality. Unlike confiscation in criminal matters, this type of legislation does not require proof of illicit origin “beyond reasonable doubt”. Instead, it considers a high probability of illicit origin and the inability of the owner to prove the contrary, as sufficient to meet this requirement. However, the more these sanctions resemble criminal penalties the more they lead to criticisms based on human rights.

Disciplinary Action. Another alternative is to leave the criminal law context aside and provide, instead, for administrative sanctions that do not require an unconditional presumption of innocence and that do not carry the stigma of criminal conviction. Examples would be loss of office, loss of licenses and procurement contracts, and exclusion from certain professions, etc. 175

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172 For example, Hong Kong SAR Prevention of Bribery Ordinance Section 10; Botswana Corruption and Economic Crime Act, Art. 34; Organisation of American States, Inter-American Convention against Corruption, Art. IX

173 Other states like Italy also enriched their legal framework with special administrative procedures that allow for forfeiture and confiscation of assets independently of criminal conviction. Art. 2 ter of the Law 31 May 1965/ No. 575 foresees the seizure of property that is owned directly or indirectly by any person suspected of participating in Mafia type associations when its value appears to be out of all proportion to his or her income or economic activities, or when it can be reasonably argued, based on the available evidence, that the said goods are the proceeds of unlawful activities or the use thereof. The seized property consequently becomes subject to confiscation if its lawful origin cannot be proved.

174 The United States Anti-Drug Abuse Act 31 U.S.C. § 5316 foresees a so-called "civil confiscation". Differently from criminal confiscation, this type of measure does not require proof beyond reasonable doubt of the illicit origin of the property to be confiscated, but considers a probable cause to be sufficient. The rules of evidence of criminal procedure are not applicable. If the illegal origin is probable, the burden of proof shifts to the owner who has to prove the legal origin of the property. However, civil confiscation has been strongly criticized for violating the rights of defence and of private property.

175 For example, Italian Law No. 575/ 1965.
Preconditions and Risks

Each of the measures described above is likely to be criticized as violating basic human rights. Most probably, the legislature will be accused of trying to circumvent the presumption of innocence. Critics will assert that the introduction of “harsher” measures by other countries does not justify similar action in their own country, because each State must shape its laws according to the constitutional requirements, legal traditions and specific criminal phenomena of its own society. There are a series of solid arguments that can be expressed in this respect.

First. While, for countless crimes, it might be difficult and unnecessary to attempt to precisely define the stage at which this evidential burden shifts onto the defence, this is possible in the case of corrupt officials. Unexplained wealth that is out of proportion with past and present sources of income points to some sort of hidden income. Although this might be totally legal (such as inheritance, gifts from wealthy relatives, or lottery winnings) it is most likely to be illegal if the owner cannot – or is unwilling to - provide a satisfactory explanation for it. However, in order to meet legitimate human rights concerns, the approach chosen – as outlined above – should not change procedural law. The burden of proof should rest with the prosecutor and only when there is a clear case of assets that greatly exceed a known income, it should then be the responsibility of the defendant to explain the possession of unexplained wealth.

Second. Generally, the principle of the presumption of innocence does not prohibit legislatures from creating criminal offences containing a presumption by law as long as the principles of rationality and proportionality are duly respected. Various national legislators have already established norms that, to some extent, oblige the accused to produce evidence to refute a legal presumption. Courts concerned with judging whether or not these norms were constitutional have found them to be in accordance with the principle of the presumption of innocence.

Third. With regard to confiscation provisions, the tendency to shift the burden of proof raises two questions, First, is the principle of the presumption of innocence applicable at all? Second, if it is, does this require the same levels of proof needed for criminal liability? In many national

176 Derek Hodgson, Profits of Crime and their Recovery, p. 82.


178 For example, the Dutch Ministry of Justice is currently elaborating an article that penalises money laundering and according to which it is sufficient to prove that the proceeds “apparently” originate from some crime. Similar regulations have been introduced in Malta and Chile. The French Customs Code also contains, in its Art. 414, a presumption by law that any person in possession of goods while entering France without declaring them is presumed to be legally liable unless he or she can prove a specific event of force majeure to exculpate him.

legal systems, confiscation is not considered a penalty but a “compensating measure” as long as it only aims at depriving the offenders of whatever they have gained illegally and therefore have no right to possess. \(^{180}\) Its purpose is simply to put the offenders into the same (economic) situation in which they found themselves before committing the crime. The aim, unlike a penalty, is not to inflict any punishment.

Fourth. Neither the principle of rationality nor that of proportionality impedes the introduction of easing the burden of proof, as outlined above.

**Proportionality**

In view of the urgent need for more effective laws against corruption, the provisions argued for above must be proportional. This is also because some corrupt conduct, in the judiciary for example, might put at risk the very system that should be guaranteeing the constitutional rights of due process and fair trials. Easing the evidential burden while respecting the basic principle of the presumption of innocence is not therefore simply justifiable but also desirable. However, the aim should be to promote only those laws that respect international human rights norms, including the principle of the presumption of innocence. The challenge is to strike the right balance between society’s need to protect itself against corrupt practices, and safeguarding accused persons from unfair and unjustified intrusions into their privacy or wrongful conviction. \(^{181}\)

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\(^{180}\) The situation is different with respect to confiscation of the *instrumenta sceleris* or *producta sceleris*. In this context, in addition to the preventive scope a penalty like effect might prevail.

Tool 37 - Whistleblower Protection

Purpose

The purpose of whistleblower protection is to encourage people to report crime, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of justice and health and environmental threats by safeguarding them against victimization, dismissal, and other forms of reprisal.\(^{182}\)

Description

The culture of inertia, secrecy and silence breeds corruption. People are often aware of forms of misconduct but are frightened to report them. Recent public inquiries into major disasters and scandals have shown that this culture in the workplace has cost hundreds of lives, damaged thousands of livelihoods, caused tens of thousands of jobs to be lost and undermined public confidence in major institutions. In some of these cases, victims may have been compensated but no one was held accountable for what happened. This culture persists because it is almost certain that the person who “blows the whistle” would be victimized. Therefore, to overcome this and to promote a culture of transparency and accountability, a clear and simple framework must be established that encourages “whistle-blowing” and protects such “whistleblowers” from victimization or retaliation.

A Law to Protect Whistleblowers.

The main purpose of whistleblower laws is to provide protection for those who, in good faith, report cases of mal-administration, corruption and other illicit behavior inside their organization. Some whistleblower laws are only applicable to public officials, while others provide a wider field of protection including private sector organizations and companies. Experience shows that the existence of a law alone is not sufficient to instill trust in potential whistleblowers. The law must provide for a mechanism that allows the institution to deal with the content of the message and not the messenger. In other words, the disclosure must be treated objectively and even if it proves to be false, the law must apply as long as the whistleblower acted in “good faith”. It must also apply irrespective of whether or not the information disclosed was confidential and the whistleblower therefore might have breached the law by blowing the whistle.

Prevention. The first aim of any whistleblower act is to prevent the person making the disclosure from being victimized, dismissed or treated unfairly in any other way, for having revealed the information. The best way to do this is to keep the identity of the whistleblower and the content of the disclosure confidential for as long as possible.

Deterrence. Furthermore, the law should establish an offence for employers to take detrimental action against whistleblowers if they made the disclosures in accordance with the law.

Compensation. The law should oblige the recipient of the disclosure to treat its content and the identity of the whistleblower with confidentiality. It should also contain rules providing for compensation or reinstatement in case whistleblowers suffer victimization or retaliation for disclosing the information. In the case of dismissal, it might not always be acceptable for...

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whistleblowers to be reinstalled in their position. The law should therefore provide for alternative solutions by obliging employers either to provide for a job in another branch or organization of the same institution, or to pay financial compensation.

Co-ordination with the Legal Framework. The part of the whistleblower law that seeks to protect whistleblowers from unfair dismissal must be coordinated with the labour laws of single countries. In particular, where the “employment-at-will” doctrine or similar legal principles allow employers to dismiss employees without reason, the law must create exceptions from this guiding principle. Protections for an employer should guarantee that “blowing the whistle” does not become an easy way to avoid dismissal or to avoid other form of disciplinary action.

Who to Turn To. Generally, the law should provide for at least two levels of institutions to which whistleblowers can report their suspicions or offer evidence. The first level should include entities within the organization for which the whistleblower works, such as supervisors, heads of the organization or internal or external oversight bodies created specifically to deal with mal-administration. If the whistleblower is a public servant he or she should be enabled to report to bodies such as an Ombudsman, an anti-corruption agency or an Auditor General.

Whistleblowers should be allowed to turn to a second level of institutions if their disclosures to one of the first level institutions have not produced appropriate results, and in particular if the person or institution to which the information was disclosed.

- Decided not to investigate:
- Did not complete the investigation within a reasonable time;
- Took no action regardless of the positive results of the investigation; or
- Did not report back to the whistleblower within a certain time.

Whistleblowers should also be given the possibility to directly address the second level institutions if they:

- Have reason to believe that they would be victimised if they raise the matter internally or with a prescribed external body; or
- Reasonably fear a cover-up.

Second level institutions could be designated members of the parliament, the government or the media.

Implementation. Experience shows that whistleblower laws alone will not encourage people to come forward. In a survey carried out among public officials in New South Wales, Australia, regarding the effectiveness of the protection of the Whistleblower Act 1992, 85% of the interviewees were unsure about either the willingness or the desire of their employers to protect them. 50% stated that they would refuse to make a disclosure for fear of reprisal. The ICAC New South Wales concluded that, in order to help the Whistleblower Act work:

- There must be a real commitment within the organisation to act upon disclosures and to protect those making them; and
- An effective internal reporting system must be established and widely publicized in the organization.

A Law to Protect against False Allegations.

Since whistle blowing can be a double-edged sword, it is necessary to protect the rights and reputations of persons against frivolous, vexatious and malicious allegations. The events in post-war U.S.A., and the phenomenon of the “informer” in authoritarian states, underscores this danger. Whistleblower legislation should therefore include clear rules to restore damage caused by false allegations. In particular, the law should contain minimum measures to restore a damaged reputation. Criminal codes normally do contain provisions sanctioning those who
knowingly come forward with false allegations. It should be made clear to whistleblowers that these rules apply also to them if their allegations are not made in good faith.

**Dealing with Whistleblowers and Managing their Expectations.**

In order to ensure effective implementation of whistleblower legislation, those people or institutions that receive the disclosures must be trained in dealing with whistleblowers. Whistleblowers often invest a lot of their time and energy on the allegations they are about to make. They suffer from a high level of stress. If their expectations are not managed properly, it might prove fatal for the investigation and damage trust in the investigating body. In particular, the investigation process and the expected outcome (criminal charges, disciplinary action, etc.) must be explained to the whistleblowers, as well as the likelihood of producing sufficient evidence to take action, and the duration and difficulties of investigation. Whistleblowers should also be informed that the further the investigation proceeds, the more likely it would become for their identity to be revealed and for them to be subjected to various forms of reprisal.

Make the Whistleblower “Last the Distance”. During the investigation, whistleblowers must be kept updated about progress made. Concern about the effectiveness of protection must be acknowledged. The law will never be able to provide full protection and whistleblowers must be made aware of this. It is therefore essential for the investigating body to make every effort to ensure that whistleblowers “last the distance” by informing them about all of the steps taken and to be taken and the implications for the continued anonymity of the whistleblowers, reactions they might encounter as well as other factors which may impact a whistle-blowers willingness to continue providing information to authorities. In addition, they should be given legal advice and counseling.

Avoid Leakage of Information. The most effective way to protect whistleblowers is to maintain confidentiality regarding their identity and the content of their disclosures. However, some country experiences show that the recipients of disclosures do not pay enough attention to this important factor. Quite often, information is leaked, rumours spread, and whistleblowers suffer from reprisals. It is not enough to sanction the leakage of information. Instead, it might be more effective to train the recipients of disclosures on how to conduct investigations while protecting the identity of the whistleblower for as long as possible.

**Preconditions and Risks**

Perception of Lacking Commitment. If whistleblowers are not convinced that the investigating body is committed, they will turn away and probably not take any further steps.

Credible Investigating Body. If there are no external independent bodies to which whistleblowers can directly turn, many potential whistleblowers will not voice their concern.

Clarity of the Law. Since the law must instill trust and the targeted audience often may have modest educational backgrounds, it must be drafted in an easily understandable way.
Monitoring and Evaluation
VII. MONITORING AND EVALUATION

Introduction

Although not as newsworthy as grand corruption, petty corruption and system leakage make a favourable environment for grand corruption. From the perspective of public service users, inefficiencies and inequities of public services are a misuse of public power. They “leak” resources from the system that should serve the public.

Why Bother to Measure?

Corruption represents a “leakage” of resources from institutions that are supposed to be using them for social objectives. It is not only the large-scale larceny of contract rigging, kickbacks, and misuse or simply misappropriation of public funds that represent leakage. This leakage can be in the form of unofficial user fees, kickbacks, grease payments or even free time from services not performed. Under-the-table user charges, absenteeism, the sale of drugs or fertilisers that should be dispensed free of charge, or sale of examination papers — all of these examples represent the misuse of public funds for private profit.

The result of this leakage creates an environment propitious for grand corruption, diverting already scarce public service resources, and it “double taxes” the public. Validation of the fact that corruption reduces service effectiveness is shown by corruption surveys done in Uganda and Tanzania. In Uganda, peasants subjected to corrupt agricultural extension agents had to pay more for fertilisers and pesticides than those in areas outside the project. They also had lower levels of production. In Tanzania, households who had to pay bribes for police assistance and for land transfers often found their problems were not resolved by the payment. And to make matters worse, sometimes these police and land officials also accepted bribes from the other side of the conflict, thus often leaving the issue effectively unresolved (or resolved in favour of whoever paid the most). Surveys can uncover these facts.

Another reason to measure is because resources may not be used to the maximum due to information asymmetries and constraints. The first reasons for this asymmetry is the introspective nature of institutional information systems. Public service providers in virtually all countries have recourse to data generated by routine information systems. However, even in the best of cases, these data tend to be introspective, concerned with the perspective of the institution (the school, the clinic or the police station) rather than the users of the services (the public). Many "users" are not even in contact with the services and thus their opinions cannot be registered in a service-based information system. Further, conventional planning of public services, since it begins with the institutions rather than with the public, often does not contemplate key concerns like coverage or impact of services — much less the question of system leakage.

The second asymmetry concerns the lack of information from which to form expectations. Very often public service users have little idea of what services their money should be buying and are thus subjected to local market dynamics. As they have no way to know whether a particular shortfall in services is due to the service worker, under-investment on public services, or any of a dozens of causes of system leakage, the formation of expectations becomes rather difficult.

Reform might further aggravate the information constraints that they try to correct. It is true that managers often have an accurate “big picture’’ of the reforms which are necessary to improve equity, effectiveness, efficiency and deal with system leakage. Streamlining, downsizing and refocusing service objectives are some examples of these reforms. Yet, the promise of increased responsiveness and improvement in quality often does not materialise because this streamlining
often reduces the institutional ability to measure coverage and impact of services (as well as system leakage).

In public service provision, there are a number of questions that managers of public services need the answers to if they are to overcome information constraints. The first set of questions address the issue of what needs reform. What can be changed? What should be changed first? How much is gained from each of the actions taken? How does one measure progress? What is the confidence level of the answers obtained? A second set of questions deals with the focus of the actions. Some of these questions include the following. Should we focus on particular service providers? Are there any special groups of service users (ethnic, generational and gender divisions are typical stratifications) especially harmed by system leakage? Are there any multiplier effects or combinations of actions that produce more than the sum of their individual effects? A third set of questions deals with the financial and political costs of reducing system leakage. How much will this stakeholder information system cost to implement? How long do we have to wait for the returns? What evidence exists of community or constituency acceptance or a public mandate for change? What is the level of institutional acceptance from the service delivery agencies?

The solution to these information asymmetries and constraints requires a measurement interface between services and users — a process whereby the community voice can be built into planning. Service Delivery Surveys have been designed and implemented in a number of countries with the goal of providing this measurement interface.
Tool 38 - Service Delivery Surveys (SDS)

**Purpose**

The Service Delivery Survey (SDS) is useful in a number of ways as it gives service providers the information necessary to implement reform and service users information to help promote reform. Indeed, the value of SDS in giving consumers a “voice” and allowing them to exert pressure on service providers to deliver higher quality services is important. The role of SDS in providing concrete data about perceptions in a relatively unambiguous way is also important as is its role in promoting greater participation among service users in the service delivery process.

One of the main attributes of SDS is that they are useful management tools. Ultimately, the tool could be used internally by managers at all levels of the government and externally by governmental oversight agencies, politicians, the public, and international donors. The SDS would establish a baseline for service delivery to the public. This baseline could be used to improve the design of a reform program. The indicators could be measured periodically to ascertain the reform’s progress. A service delivery survey would also build capacity within the country to design and implement surveys, as well as to implement results-oriented management.

**Description**

Service delivery surveys originate from a community-based action-research process developed in Latin America in the mid-1980s, known as Sentinel Community Surveillance (SCS). Since then, these stakeholder information systems have been implemented with World Bank support in Nicaragua, Mali, Tanzania, Uganda and Bosnia. With the help of UNICEF and UNDP, they have been established in Pakistan, Nepal, Burkina Faso, Costa Rica and Bolivia.

The scheme was originally conceived to build capacities while producing accurate, detailed and “actionable” data rapidly and at low cost. Ordinarily, SDS’s focus on the generation and communication of evidence for planning purposes. This may be at the level of a municipality, a city, a state, a number of provinces or an entire country. In each of these settings, a representative sample of communities is selected to represent the full spread of conditions in the country (or district). The approach permits community-based fact-finding through a reiterative process, addressing one set of issues at a time.

The SDS process starts with a baseline of service coverage, impact and costs in a representative panel of communities across the country (or district). This involves a household survey, where local interviewers are trained to knock on doors and ask a limited number of well-focused questions about use of services, levels of satisfaction, bribes paid and suggestions for change. These data, and the institutional review from the same communities, are discussed in each community with the service workers and community leaders. The quantitative aspects are used for benchmarking progress with subsequent reiterations of the survey. Logistics of the SCS focus on repeated measurement in the same sites, reducing sampling error and making impact estimation straightforward. The qualitative dimensions reveal what should be done about the problem.

Central to SCS is interaction with the research partners — the communities. The product is therefore the aggregation of data from the epidemiological analysis distilled through interaction with communities. By feeding information back to the communities, dialogue for action is stimulated within households, in communities, and between communities and local authorities.

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183 Webster’s New Collegiate Dictionary defines “epidemiology” as: i) a branch of medical science that deals with the incidence, distribution, and control of disease in a population, ii) the sum of factors controlling the presence or absence of a disease or pathogen.
The resulting mobilisation to resolve specific problems also serves as a basis for empowerment. This involves initiation of cycles that follow a fairly constant rhythm, independent of the subject. Experience over more than a decade of implementation in 40 countries has shown that ownership and commitment on the part of the client is vital to successful development projects. The greater the intensity of participation (in terms of information sharing, consultation, decision-making and initiating action), the greater the sustainability.

The method has been used to measure impact, coverage and cost of land mines, economic sanctions, environmental interventions, urban transport, agricultural extension, health services, judiciary and institutional restructuring. It has proved useful in generating community-designed strategies to combat corruption in the public services in several countries. Actionable results are provided in a short time and at low cost. Typically, the duration of a whole cycle, from the design stage to the report writing, are six to eight weeks.

**Some results of the Service Delivery Survey (SDS)**

Corruption (almost by definition) represents a separation between leaders and their constituencies and separation between public servants and the public. The first contribution of a SDS in overcoming this separation is that all segments of the public are reflected in the collected data. This data gives a voice to the urban and rural, male and female, rich and poor, young and old — even those who do not have access to certain public services for either physical or social reasons. Stratified focus groups are assembled to identify potential solutions so that each group is enabled to voice their opinions and solutions.

But simply to be included in the sample as people who give opinions on the services is a fragile representation of the community voice. The second way SDS’s reduce this separation is that it involves stakeholders actively in the social audit process. Feedback of the data to the communities (such as in Uganda and Tanzania) and systematic use of data to build solutions adds another dimension to the community voice in planning. In these examples, the participants of the focus groups were invited to meetings with the local community leaders to discuss the feasibility and implications of the solutions.

The third way SDS’s close this gap is by providing feedback in a positive way using results to reveal options for the achievement of goals rather than underscoring deficiencies. Communities or districts with the poorest indicators are shown how certain reforms can improve their situation. Further, having a voice in the interpretation and analysis of the resulting data helps to build confidence among the stakeholders and provides a favourable climate for community mobilisation.

The fourth way SDS’s can help to bring the governed and governing together is by using results to manage a change process. This process starts with a necessary commitment to communicate results from the government. The results of each cycle are then communicated to public service providers through a series of "change management" workshops. In Tanzania, the results were discussed in a Cabinet retreat, where a national policy against corruption was formulated. In Uganda, the results were presented at a parliamentarian’s retreat. Media workshops in both countries familiarised journalists with the data and the correct management of positive examples. In this way, these change management workshops help build a sense of accountability, transparency and open government.

SDS’s also provide data necessary for results-oriented development planning. It is a fact that most local governments in developing countries are characterised by poor fiscal outcomes. A results-oriented approach can help improve these outcomes. However, results-oriented management needs detailed “actionable” quantitative data. For a government or municipal authority to act on behalf of a vulnerable subgroup, hard data are required to identify the subgroup concerned and to act as a benchmark to measure progress. Complementary qualitative
Monitoring and Evaluation
data are also needed to indicate the cultural and gender constraints and opportunities as well as to confirm the analysis given to the quantitative data.

Different Types of Monitoring at the international level

At least three types of monitoring mechanisms are currently in use as part of anti-corruption programmes: (i) those based on international instruments, (ii) those based on national instruments and (iii) those of a more general nature184. The advantage of instruments-based mechanisms is that the legal framework is clear: the monitoring focuses on the implementation and impact of the various provisions of these instruments. Examples of this type of monitoring are the mechanisms relating to the OECD-Convention on combating bribery of officials in international business transactions, the GRECO-Programme of the Council of Europe and the various monitoring exercises within the European Union (it is expected that the future UN-instrument against Corruption will also contain a provision on monitoring).

However, even without this sort of formal framework, monitoring effectiveness of national strategies has been accomplished via the use of surveys. An example of this is the recently established monitoring mechanism used in Romania, Lithuania and Poland. Instead of being based on a legal instrument, monitoring takes place on the basis of questionnaires, listing relevant questions on national policies and legislation. Two other examples include the perception indices developed by Transparency International as well as the annual independent survey conducted by ICAC in Hong Kong SAR which measures, among other things, the trust level between ICAC and the public, prosecution rate, as well as levels, types, location and causes of corruption. The UN is currently testing a method in two pilot countries using a so-called country assessment based on both facts and perceptions using hard facts, surveys focus groups and case studies.

Challenges of measuring the impact of anti-corruption strategies

There are certainly many challenges to accurately measuring the impact of anti-corruption strategies, policies and measures.

First, collected data must be analysed by a competent and independent institution capable of extracting the true essence of the data collected which can then be analysed highlighting differences and identifying so-called "best practices". To do this in a credible manner, availability of resources will always be an issue. This holds true even for monitoring mechanisms based on international instruments, since it is not always evident that the Secretariats of the organisations concerned have the necessary resources to ensure effective support and analysis of these mechanisms.

Second, current international monitoring mechanisms are unevenly distributed throughout the world. In some regions, countries tend to participate in more than one monitoring exercise, while in other parts of the world there are no operational monitoring mechanisms at all, as, for example, in most parts of Asia. Of course, the other extreme involves instances where there are multiple mechanisms applicable to the same region, and the challenge arises as to how to avoid duplication of effort.

Third, monitoring can never be an end in itself. Rather, it should be an effective tool to bring about changes in international and national policies and improve the quality of decision-making. If the monitoring exercise is linked to an international instrument, the primary objective should be to first ensure proper implementation of the technical aspects of the instrument and then the practical impact of its implementation. Monitoring can thus serve two immediate purposes. It helps to reveal any differences in interpretation of the instruments concerned and it can stimulate

184 Petter, Langseth; (2001) Helping Member Countries Build Integrity to Prevent Corruption;
swift and effective translation of the provisions of these instruments into national policies and legislation. If it is determined that incomplete or ineffective implementation has occurred, sanctions can be imposed to motivate stronger efforts at success. Therefore, accurate monitoring is critical with respect to launching any successful anti-corruption initiative.

In the case of the OECD-Convention, for example, a built-in sanction requires that reports of the discussions on implementation be made available to the public. Such publicity can be an important mechanism in helping promote more effective measures. Reference can be made in this regard to the publicity surrounding the perception indices of Transparency International. Even though these indices simply register the perceived level of corruption as seen by primarily the international private sector, they gain wide publicity. However, inasmuch as the TI indexes are somewhat useful, a distinct disadvantage is that they: (i) do not always reflect the real situation, (ii) do not involve the victims of corruption in the countries surveyed; (iii) offer little or no guidance of what could be done to address the problem, and (iii) can discourage countries from taking serious measures when their anti-corruption programme efforts are not seen as being successful by an improved score against the TI-Index.

Fourth, monitoring exercises cannot be separated from the issue of technical assistance and it is critical that monitoring not only addresses levels of corruption, but also its location, cost, cause and the potential impact of different remedies. Furthermore, since the trust level between the public and anti-corruption agencies is critical for the success of anti-corruption efforts, public trust levels should also be monitored.

It may be the case that participating countries agree on the need for implementing the measures identified as "best practices", but lack financial, human or technical resources to implement them. Under those circumstances, monitoring exercises would be much more effective if targeted assistance programmes accompanied them. It should be added, however, that not all measures require major resources, especially in the context of preventative measures where much can be done at relatively low cost.

Most of the data collection done by the traditional development institutions is based on an approach that can be described as "data collection by outsiders for outside use". Generally conducted by external experts, international surveys tend to be done for external research purposes. International surveys help spark debate about those countries which fare badly. Such surveys help to place issues on the national agenda and keep it at the forefront of public debate. However, international surveys are comparative and fraught with statistical difficulties.

One value, however, has been that they have highlighted the need for national surveys, and these are now being undertaken with increasing thoroughness. With public awareness of levels, types, causes and remedies of corruption dramatically improved over the last 5 years, the utility of collecting data about corruption is to increase the accountability of the state towards its public by establishing measurable performance indicators that are transparently and independently monitored over time.
Tool 39 - UN Country Assessment

Purpose

UN country assessments aim at producing a clear and coherent picture of a country’s current condition with respect to the:

- Levels, locations, types and cost of corruption;
- Causes of corruption; and
- Remedies for corruption.

However, only about 20% of the resources and efforts are spent on the assessment as such. The main objective is to use and disseminate collected data in order to:

- Raise awareness among key stakeholders and the public;
- Empower the civil society to oversee the state;
- Provide a foundation for evidence-based action plans;
- Establish measurable performance indicators; and
- Monitor the implementation of the anti-corruption action plan.

Description

Country assessments resulting in a corruption monitoring protocol could be issued regularly (once every two to four years) to document levels and locations of corruption as well as progress by a Member State in fighting it. Such country assessments can be conducted by the Centre for International Crime Prevention in collaboration with the United Nations International Criminal Justice Research Institute (UNICRI) and various other research institutes, such as Gallup.

Types, Levels and Locations of Corruption.

The assessments monitor trends regarding the three main types of corruption:

- Corruption in public administration and “street-level” corruption;
- Business corruption (especially in medium-sized businesses); and
- High-level corruption in finance and politics.

In order to assess the types, levels and locations of corruption, various techniques are combined into an integrated and comprehensive approach. Some of the techniques include:

Desk Review. The initial step is to conduct a desk review by compiling all relevant anti-corruption information already available.

Public Opinion Surveys. These surveys help to determine the types, levels and locations of corruption, based on both concrete experiences and perceptions. Significant efforts are undertaken to help guarantee the quality of data by choosing a representative sample and sample size, by ensuring that the survey is implemented according to the terms of reference and by cross checking the survey data. The sample size is chosen to produce quality data at both the national and sub-national levels. As an example, in Uganda, the survey data for each of the country’s 46 districts would be compared with the national average. This type of survey was requested by the Inspector General of Government who felt that the only way he could fight corruption was to have information about corruption levels across sub national units.

Focus Groups. Another diagnosis technique used in country assessments is focus groups, whereby targeted interest groups in government and society hold in-depth discussion sessions. This technique often produces extremely detailed information concerning views on corruption,
precipitating causes, as well as valuable ideas on how governments can fight it. The focus group sessions usually concentrate on the following issues:

- Extent of the corruption problem;
- Types and locations of corruption;
- Negative effects of corruption;
- Root causes;
- Effectiveness of current laws and programs;
- Possible solutions; and
- Prioritising issues

**Case Studies.** Local experts use case studies to describe typical corruption cases in great detail. This exercise can help everyone to understand how corruption actually takes place. Carefully documented practical case studies also help anti-corruption agencies to fine-tune their efforts and can assist in educating the public and potential whistleblowers.

**Legal Assessment.** The entire anti-corruption framework is assessed, including criminal and civil procedure codes, civil service laws (standing orders), public procurement regulations, anti-money laundering statutes, codes of conduct and other relevant codes and rules. Where appropriate, inefficiencies and inconsistencies between various laws are analysed with a view towards integrating a comprehensive solution to strengthen the legal system.

**Assessment of the Institutional Framework.** The capacity and resources of the relevant institutional anti-corruption framework is analysed. This includes an assessment of the effectiveness of control mechanisms and oversight bodies responsible for monitoring and guaranteeing the quality and integrity of the relevant institutional framework. The objective is to evaluate to what extent the judiciary; executive and legislative bodies are already active in preventing and fighting corruption. Particular attention is paid to balance powers, and an assessment is made of the independence of the judiciary, the legislative and the media (often called the fourth power). The aim is to identify the specific problems faced by each body and agency as well as their root causes. The UN country assessments concentrate in particular on “process mapping” to analyse the functions, procedures, reporting relationships, access to information and incentives within the institutional framework. This ‘mapping’ specifies how the organisation carries out its mission, identifies efficiencies and inefficiencies, assesses potentials for conflicts of interest and identifies hazards for extortion (bribe taking) and bribe giving.

**Assessment of the Civil Society.** The sixth and last technique used is the assessment of the civil society and the media. In order for the civil society and the media to hold the government accountable, it is essential that they have access to information. The media must also enjoy freedom from political influence and be independent. With respect to access of information, country assessments do more than merely confirm that some form of freedom of information law exists. They also assess to what extent journalists or citizens in fact have access to certain information in a timely and free fashion.

**Preconditions and Risks**

While international surveys tend to be conducted by outsiders for use outside of the country, national or sub-national surveys are ideally performed by locals (in some cases with the assistance of outsiders) and for local use. International surveys help trigger public debate in countries with most problems. They also help to place the issue on national agendas and to keep them at the forefront of public debate. Public awareness regarding the levels, types, causes of and remedies for corruption have improved dramatically over the last 5 years, and collecting data about corruption will increase the accountability of the state towards its public by establishing measurable performance indicators that can be transparently monitored over time.
Tool 40 - Mirror Statistics as an Investigative and Preventive Tool

Purpose

The purpose of this tool is to uncover the levels of corruption by assessing secondary indicators such as the extent of the grey sector of an economy which includes such commodities as illegally imported cigarettes, liquor and other items. The link between corruption and the grey sector is especially important as corrupt practices usually “enable” the inflow and outflow of resources to and from this sector. Where the economic environment in a country is tightly regulated with effective import regulations and other measures, it would be difficult for the grey sector to operate profitably without resorting to corruption to defeat existing enforcement of regulations.

Description

The use of mirror statistics to track the flow of “resources” of the grey economy and to estimate the size of this sector in the economy is not a new. It has been proven to be an important analytical instrument that can target economic sectors suffering from corrupt practices.

Two Methods for Using Mirror Statistics Information

First Method. The basic information resource to be used is the statistical information about the import and export of commodities between two or more countries. The objective is to compare data for exports and imports from country X to country Y and from country Y back to country X. In principle, the mirror (export/import) figures should match. There should be no discrepancies between the volume of export from country X to country Y and the volume of import in country Y from country X. The basic precondition is access to accurate data. Using this methodology, comparisons could be made of commodity groups, branches of the economy, periods of time, etc.

The interpretation of results should be made with care and should take into consideration several important factors that could contribute to the result. First, an analysis should be made of the accounting methodologies used by different counties. Adjustments should be applied to equalise the data. Second, careful examination of the import/export customs rules and regulations in the mirrored countries and methods of their implementation must be understood. This step helps to equalise the data. Once all of these contextual factors have been identified and accounted for, any imbalances in the statistics could be interpreted as illegal flows of resources (import and export) and further analysis could be performed using a more detailed structure of resources flows.

Second Method. Another method for using mirroring information compares customs import data with market research information. In countries where comprehensive research on the volume and structure of different markets exists, the data provides fairly accurate estimates of the actual volume of imported goods for a certain commodity group. This information could be compared directly to import information from the customs. Eventual differences in these volumes can point to possible illegal import and could be explored further in greater detail.

Use of the Information Obtained

There are at least two ways of using the information obtained through the methods described above.

Investigative (Intelligence) Tool. Results obtained could by used to target the efforts of specialised law enforcement agencies. Although the information obtained is “depersonalised”, it provides clues as to the main areas of illegal export and import, as well as the probable volume of illegal trade. Thus, specific plans for investigation and preventive work could be designed.
Furthermore, mirror statistics could act as an evaluation tool that helps assess the effectiveness of the measures that have already been taken.

Preventive Tool. The results could also be used to analyse and redesign the legal and institutional framework. The existence of substantial discrepancies continuing over time is an immediate indicator that existing rules and regulations fail to work. This could be due to deficiencies in the legal or the institutional framework. Both should therefore become subjected to closer analysis and inspection. In-depth analysis could provide solid evidence that existing systems fail due to the very regulations designed to support legitimate economic activity or for other reasons. Efforts can then be focused on rehabilitating the regulations so that they can function to maximise the economic activity of the country.
Tool 41 - Measurable Performance Indicators for Judiciary

**Purpose**

The purpose of the First Federal Judicial Integrity and Capacity meeting was to initiate and evidence based approach to reform in the judiciary in Nigeria. The meeting attended by all 46 Chief Justice agreed on the following four overall reform objectives:

- Improving Access to Justice;
- Improving the Quality of Justice;
- Raising the Level of Public Confidence in the Judicial Process; and
- Improving our efficiency and effectiveness in responding to public complaints about the judicial process

Having done so the meeting decided to identify key reform measures and measurable performance indicators allowing the establishment of a baseline against which progress can be measured

**Description**

Based on the discussions held in the small groups at a Federal Judicial Integrity and Action Planning Meeting for Chief Justices\(^{185}\) in Nigeria in October 2001, it was possible to establish a list of measures which the Chief Judges considered essential and effective in increasing the access to, the quality of and the public confidence in the justice system. For each of the measures a set of indicators was identified which according to the participating judges would allow establishing if the measure had achieved its goal.

This list became the immediate basis for the refinement of the comprehensive assessment methodology. In particular the survey instruments for judges, lawyers and prosecutors, court users, court staff, both present and retired as well as businesses were reviewed with an particular focus of covering all the mentioned impact indicators.

By linking each single measure directly to a set of indicators it becomes possible to establish individual baselines; a necessary precondition for any truly meaningful monitoring exercise. The impact oriented design of the assessment will allow the fine-tuning and adjustment of each single measure and hereby greatly contribute to the achievement of the overall objectives of the project.

**Access to Justice**

**Measure 1: Implementation of a relevant and up-to-date Code of Conduct for judicial officers**

Impact indicators:

1. Date of most recent review of Code of Conduct
2. Number of complaints received under the Code of Conduct
3. Percentage of complaints received that were investigated
4. Percentage of complaints received and investigated that were disposed of

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\(^{185}\) The first Federal Integrity Meeting for Chief Justices held in Abuja October 27-28 2001 was attended by all 46 Chief Justices in Nigeria. The meeting was chaired by the Chief Justice and facilitated by UN’s Centre for International Crime Prevention (CICP)
5. Code of Conduct complying with best international standards
6. Percentage of officers trained on Code of Conduct

**Measure 2: Enhance the public's understanding of basic rights and obligations dealing with court-related procedural matters**

Impact indicators:
7. The number of judges involved in public information programmes offered to the media and to the public in general
8. Availability of the judicial Code of Conduct to the public

**Measure 3: Ease of access of witnesses in civil/criminal procedural matters**

Impact indicators:
9. Number of instances in which witnesses provide evidence without attending court
10. Average time and expense for a witness to attend a case

**Measure 4: Affordable court fees**

Impact Indicator:
11. Percentage of fees set at too high a level

**Measure 5: Adequate physical facilities for witness attending court**

Impact Indicator:
12. Adequate Witness and Litigant's waiting room

**Measure 6: Itinerant Judges with the capacity to adjudicate cases outside the Court Building reaching distant rural areas**

Impact Indicators:
13. Number of Itinerant Judges
14. Availability of necessary transport

**Measure 7 Level of Informed Citizens (and court-users in particular) on the nature scale, and scope of bail-related procedures**

Impact Indicator:
15. Number of courts offering basic information on bail-related aspects in a systematic manner.

**Measure 8: Use of suspended sentences and updated fine levels**

Impact Indicators:
16. Passage of empowering legislation
17. Existing Number of cases where suspended sentences were applied
18. Number of Cases where fine penalties were applied

Quality of Justice

Measure 9: Timeliness of Court Proceedings

Impact indicators:
19. Level of cooperation between agencies
20. Prioritisation of old outstanding cases
21. Number of adjournment requests granted
22. Percentage of courts where sittings commence on time
23. Percentage of judges whose performance is monitored
24. Levels of consultations between judiciary and the bar
25. Procedural rules that reduce the potential abuse of process
26. Number of judges practicing case management
27. Type of case management being practiced
28. Regular-congestion exercises undertake
29. Regular prison visits undertaken with Human Rights NGO’s and other stakeholders
30. Level of access to books for judicial officers
31. Functioning Criminal Justice and other committees (including participation by NGOs)

Measure 10: Courts exercising powers within their Jurisdiction

Impact Indicators:
32. Number of judges/registrars trained/retrained in last year
33. Extent to which bail jurisdiction clear and implemented
34. Percentage of weekly court returns made and reviewed
35. Number of court inspections
36. Number of files called up under powers of review

Measure 11 Consistency in sentencing

Impact indicator:
37. Availability of criminal records at time of sentencing
38. Development of and compliance with sentencing guidelines

Measure 12; Performance of individual judges

Impact Indicators:
39. Percentage of cases where sits on time
40. Backlog of cases? Going up? Down?
41. Number of errors in procedures
42. Number of appeals allowed against substantive judgments
43. Conduct in court
44. Number of public complaints
45. Level of understanding of Code of Conduct
46. Percentage of sentences imposed within the sentencing guidelines

**Measure 13 Compliance with requirements of civil process**

Impact Indicators:
47. Number of cases where abuse of ex parte injunctions
48. Number of non-urgent cases heard by Vacation judges
49. Number of instances of proceeding improperly in the absence of parties
50. Number of chambers judgments (not given in open court).

**Measure 14 Ensuring propriety in the appointment of judges**

Impact indicator:
51. Level of confidence among other judges

**Measure 15 Raising level of public awareness of the judicial Code of Conduct**

Impact indicators:
52. Availability of Code of Conduct
53. Number of complaints made concerning alleged breaches

**Public confidence in the courts**

**Measure 16; Public Confidence in the courts**

Impact Indicators
54. Level of confidence among lawyers, Judges, litigants, court administrators, Police, general public, prisoners, and court users
55. Number of complaints (see above);
56. Number of inspections by ICPC
57. Effectiveness of policies regarding formal and social contact between the judiciary and the executive
58. Nature, scope and scale of involvement of civil society in court user committees

*Improving our efficiency and effectiveness in responding to public complaints about the judicial process*
Measure 17; Existence of credible complaints mechanisms

Impact Indicators:
59. Complaints mechanisms which comply with best practice
60. Extent to which public are aware of and willing to use the complaints mechanisms
61. Readiness to admit anonymous complaints in appropriate circumstances

Possible Next Steps in Improving Judicial Performance in the four areas

Access to justice

Code of conduct reviewed and, where necessary revised, in ways that will impact on the indicators agreed at the Workshop. This includes comparing it with other more recent Codes, including the Bangalore Code. It would also include an amendment to give guidance to Judges about the propriety of certain forms of conduct in their relations with the executive (e.g. attending airports to farewell or welcome Governors). Ensure that anonymous complaints are received and investigated appropriately. (Measure 1.1; 1.6; 16.4; 17.3) Action: Chief Justice of the Federation

Enforcement of Code of Conduct: Consider how the Judicial Code of Conduct can be made more widely available to the public (e.g. hand outs, posters in the courts etc.) (Measure 2.2) Action: Individual Chief Judges

Increase Public Awareness. Consider how best Chief Judges can become involved in enhancing the public’s understandings of basic rights and freedoms, particularly through the media. (Measure 2.1) Action: Individual Chief Judges

Court fees to be reviewed to ensure that they are both appropriate and affordable. (Measure 4.1) Action: All Chief Judges

Review the adequacy of waiting rooms etc. for witnesses etc. and where these are lacking establish whether there are any unused rooms etc. that might be used for this purpose. Where rooms are not available explore other possibilities to provide shade and shelter for witnesses in the immediate proximity of courts (Measure 5.1) Action: All Chief Judges

Review the number of itinerant Judges with the capacity to adjudge cases away from the court centre. (Measure 5.1) Action: All Chief Judges; Chief Justice of the Federation

Review arrangements in their courts to ensure that they offer basic information to the public on bail-related matters. (Measure 7.1) Action: All Chief Judges

Revise sentencing and fine levels. Press for empowerment of the court to impose suspended sentences and updated fine levels. (Measure 8.1) Action: Chief Justice of the Federation

Quality of Justice

Increased cooperation. Ensure high levels of cooperation between the various agencies responsible for court matters (police; prosecutors; prisons) (Measure 9.2) Action: All Chief Judges

Review of efficiency. Criminal Justice and other court user committees to be reviewed for effectiveness and established where not present, including participation by relevant non-governmental organisations. (Measure 9.13; 16.5) Action: All Chief Judges

Prioritise old cases. Old outstanding cases to be given priority and regular decongestion exercises undertaken. (Measure 9.2; 9.10) Action: All Chief Judges
Adjournment requests to be dealt with as more serious matters and granted less frequently. (Measure 9.3) Action: All Chief Judges; Chief Justice of the Federation

Review of procedural rules to be undertaken to eliminate provisions with potential for abuse. (Measure 9.7) Action: All Chief Judges and Chief Justice of the Federation

Time management. Courts at all levels to commence sittings on time. (Measure 9.4) Action: All Chief Judges.

Reduce delays; Increased consultations between judiciary and the bar to eliminate delay and increase efficiency. (Measure 9.6) Action: All Chief Judges

Increase number of Judges. Review and if necessary increase the number of Judges practising case management. (Measure 9.8) Action: All Chief Judges

Ensure regular prison visits undertaken together with human rights NGOs and other stakeholders. (Measure 9.12; 16.5) Action: All Chief Judges

Clarify jurisdiction of lower courts to grant bail (e.g. in capital cases). (Measure 10.2)

Court inspections. Review and ensure the adequacy of the number of court inspections. (Measure 10.4) Action: All Chief Judges

Review and ensure the adequacy of the number of files called up under powers of review. (Measure 10.5) Action: All Chief Judges

Examine ways in which the availability of accurate criminal records can be made available at the time of sentencing. (Measure 11.1) Action: All Chief Judges and Chief Justice of the Federation


Monitor cases where ex parte injunctions are granted, where judgements are delivered in chambers, and where proceedings are conducted improperly in the absence of the parties to check against abuse. (Measure 13.1; 13.3; 13.4) Action: All Chief Judges and Chief Justice of the Federation

Ensure that vacation Judges only hear urgent cases by reviewing the lists and files. (Measure 13.2) Action: Action: All Chief Judges and Chief Justice of the Federation.

Public Confidence in the Courts

Introduce random inspections of courts by the ICPC. (Measure 16.3) Action: Independent Commission for the Prevention of Corruption.
Judicial Cooperation
VIII. INTERNATIONAL JUDICIAL COOPERATION

Introduction

General part introducing the concept of international judicial cooperation

The international judicial cooperation include the following measures:

- Extradition
- Mutual Legal Assistance (model MAL)
- Transfer of Proceedings
- Transfer of Judgements
- Transfer of Judgements, especially Transfer of Sentenced Persons
- Recovery of Illegal funds (tracing, freezing and confiscation)
Tool 42 - Extradition

Purpose
Pursuing the suspect

Description
Extradition is the surrender by one State, at the request of another, of a person who is accused or has been convicted of a crime committed within the jurisdiction of the requesting State.
Different from expulsion, simple surrender, deportation

Preconditions and risks

Extraditable offence
From the “list” approach to “severity”-approach
Dual Criminality Principle
Prospect (new instruments)

Bars to extradition
“Political offence” and “fiscal offence” exception
Non-extradition of nationals
Other bars
Speciality rule
Prospect (new instruments)

Procedural issues
Two level-System: judicial level and political level
Slow and cumbersome system (e.g. evidentiary rules; lack of training and resources etc.)
Prospect (new instruments)

Related tools
(a) Multilateral Conventions:
Extradition Treaties:
- Commonwealth Scheme (Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth, 1966),
- European Convention on Extradition (1957); First Additional Protocol, Second Additional Protocol,
- Benelux Convention on Extradition and Judicial Assistance in Penal Matters of 27 June 1962,
- Nordic States Scheme of 1962,
- Inter-American Conventions,
• The Arab League Extradition Agreement of 14 September 1952,
• Convention on judicial cooperation of the Union Africaine et Malagache of 1961,
• Convention on extradition of the Economic Community of West African States of 6 August 1994

Provisions on Extradition in other Treaties: e.g. 1988 Drug-related Convention, 2000 TOC Convention.

Bilateral Treaties:

See: UN Model Treaty on Extradition
Tool 43 - Recovery of Illegal Funds

**Purpose**

Broadly speaking, assets stolen from national treasuries derive from outright theft, bribes, kickbacks, extortion and protection money, the systematic looting of the state treasury, illegal selling of national resources, diversion of loans granted by regional and international lending institutions and project funding contributed from bi- and multilateral donor agencies.

In view of these occurrences, repatriation of assets diverted and stolen by top-level public officials and politicians through corrupt practices has become a pressing issue to many Member States. However, success in repatriation has been scarce so far. Most cases take years to conclude and all are extremely expensive. It is rare that more than a small proportion of the illegal funds is repatriated to the country from which they were stolen. In the Marcos case, after 15 years, only $600 million (much of that merely the interest earned on the original sum) of more than $5 billion lies in escrow in the Philippines National Bank and the case shows no signs of being concluded.

**Description**

The large-scale illegal transfer of funds by corrupt political leaders, their relatives and their close associates has long been a serious problem. The former Shah of Iran was alleged to have misappropriated some $35 billion during the 25 years of his reign, largely disguised by foundations and charities. Papa Doc Duvalier and his son, Jean Claude Duvalier, as Presidents of Haiti from 1957 to 1986, were alleged to have extracted between $500 million and $2 billion from the state, an estimated 87% of government expenditure being paid directly or indirectly to Duvalier and his associates between 1960 and 1967. The case against family members of former President of the Philippines, Ferdinand Marcos, is still ongoing almost 15 years after he left office amid allegations that he misappropriated at least $5 billion of state assets. 186

More recently, a Pakistani court convicted the husband of former Pakistani Prime Minister Benazir Bhutto, Asif Ali Zardari, of accepting $9 million in kickbacks, and he is known to have channelled $40 million of unexplainable origin through Citibank private bank accounts. In Nigeria, the late Sani Abacha and his associates are estimated to have removed funds from Nigeria of up to $5.5 billion, mainly deriving from the systematic looting of the Central Bank, as well as bribes received by foreign investors. In Peru, a congressional investigation has estimated that Vladimiro Montesinos, Peru’s former head of intelligence, might have acquired as much as $800 million from activities including kickbacks from military procurement. Former Ukrainian Prime Minister Pavlo Lazarenko is believed to have embezzled around $1 billion from the state. Now under arrest in the United States on charges of laundering some $114 million, Lazarenko has admitted to having laundered $5 million through Switzerland, which has repatriated almost $6 million to Ukraine.

**Pre-conditions and Risks**

The problems hindering repatriation may vary depending on the countries involved. Nevertheless, current and past cases seem to share some similarities. For example, the following factors hinder or render successful recovery of assets impossible: (1) the absence or weakness of the political will within the victim country as well as within those countries where the assets have been diverted, (2) the lack of an adequate legal framework allowing for necessary actions in an efficient and effective manner, (3) insufficient technical expertise within the victim country to...

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186 A 1989 RICO claim brought in California estimated that the assets amounted to $5 billion.
prepare the groundwork at the national level, such as by filing charges against the offenders and at the international level to prepare the mutual legal assistance request, (4) the specialised technical expertise is extremely limited and mainly provided by private lawyers whose services are very expensive and who normally do not have any interest in building the necessary capacities at the national level, (5) the reluctance of victim States to improve their national institutional and legal anti-corruption framework, a deficiency which may not only lead to the further looting of the country, but also seriously damaging to the credibility of the country when requesting mutual legal assistance.

Lack of political will

A strong and committed political will in both the requesting as well as the requested state is essential for the successful outcome of the recovery effort. Direct involvement in the diversion of state funds by high-level government officials, and all too often the countries’ leaders themselves, can impede any action that could be taken. Once a new government comes into power, its credibility depends largely on the question to what extent it will prove willing and capable to deal with the “grand corruption” that took place under its predecessor. Successful recovery of what has been looted from a country can be more important to the public than sanctioning and imprisoning of the offenders. The repatriation of stolen funds can not only confirm to the public a return of the rule of law, but can also provide the government with the necessary resources to implement the reforms promised during the crucial initial phase of coming into power.

However, even where a Government decides to embark on a recovery effort, their internal political conditions may not to allow an unrestricted effort. This condition not only affects the credibility of the recovery initiative, but also of the new government in general. For example, restricting recovery efforts to certain person or circle of people might lead to difficulties in the process of gathering evidence since such evidence might lead to the uncovering of assets that have been diverted by other people than those targeted. In some instances, the lack of unconditional political will to recover all funds that have been diverted may hinder the recovery effort and can lead to criticism both at the national and international level. This could eventually lead to the reluctance of some parties involved to provide their full support and collaboration.

Another common feature of many cases is that the victim states often concentrate exclusively on the extraterritorial investigations while they neglect the basic preparatory work at the national level. In most jurisdictions, there is little hope to recover assets unless a conviction is obtained for the crimes committed in the course of the looting and the connection between those crimes and the assets abroad has been established187.

A lack of political will on the part of the requested country is also a common barrier to successful recovery of stolen assets. Authorities may be reluctant to move against powerful interest groups, such as banks. This seems particularly obvious where the banks are not only holding the assets but were also involved in facilitating their transfer in the first place188.

187 In Nigeria, it was only after more than one years after the first mutual legal assistance requests had been submitted, that charges were filed against M. Abacha at the Abuja High Court. In Mexico, Raúl Salinas has been convicted of murder, but not of drug trafficking or money laundering. Peru has issued warrants for the arrest of Vladimiro Montesinos, but he has disappeared. Former Ukrainian Prime Minister Pavlo Lazarenko has been convicted in a U.S. court of money laundering but not yet in Ukraine itself, where he is suspected of having stolen or generated up to $1 billion in illegal funds

188 A number of further significant developments in controlling the proceeds of corruption offences that implement principles first enunciated in the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Initially, the United Nations Convention Against Transnational Organized Crime (2000) contains a number of strong measures to control the proceeds of bribery and other serious crimes committed by an organized group. Such measures are found in Articles 6 (criminalisation of laundering the proceeds of crime), 7 (regulatory regime against money laundering), 12-14 (asset
Wherever the political will is weak, there is little chance that the complex legal and factual problems typically occurring in cases of asset recovery will be overcome.

**Lacking Legal framework**

Recent examples of recovery efforts show that there is no legal framework providing sufficiently practicable basis for the recovery of assets diverted through corrupt practices. Multi- and bilateral mutual legal assistance treaties are too limited in their substantial and geographical scope and are therefore often not applicable except in the context of the specific case from which they originated. As a consequence, no standard procedure is applied. Recovery strategies vary from civil recovery to criminal recovery to a mix of both. Each method has its advantages and disadvantages and the final choice seems to depend exclusively on what is expected to work best in the jurisdiction where the assets are located. Selection of the appropriate strategy, therefore, requires specialised legal expertise that is typically very costly, if available at all. The United Nations Convention against Transnational Organized Crime provides a response to some of these problems. However, mainly because of its limited scope, it will be only applicable in some specific cases.

**Legal Problems encountered**

During the initial phase of a recovery effort, the main challenge lies in the tracing of the assets, the identification of the various players involved in the process of the looting of the assets and the determination of their potential criminal or civil liabilities. Often, the exchange of information between various jurisdictions as well as the public and the private sphere is extremely cumbersome, if possible at all. In such an environment, most efforts fail in this initial phase or are not even undertaken because of the difficulties envisaged. The central legal problems are related to jurisdiction and territoriality. Where legal systems are incompatible, particularly when cases involve cooperation between Continental and Common Law systems, cooperation is difficult. Mutual legal assistance treaties (MLATs) have proven cumbersome and ineffective when the object is to trace and freeze assets as quickly as possible. Overcoming jurisdictional problems slows down investigations, often fatally. By the time investigators get access to documents in another jurisdiction, the funds have moved elsewhere.

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Legal problems encountered differ significantly depending on the jurisdiction in which the recovery effort is pursued (common / continental law) and the approach chosen (civil/ criminal recovery). Each approach and jurisdiction has its advantages and disadvantages. Civil law, allowing for confiscation and recovery based on the balance of probabilities, has the clear advantage since the evidentiary threshold is typically lower than with criminal actions. Conversely, access to information as well as investigative powers in the civil process is limited and, apart from some common law countries, the freezing of the assets can be difficult. Civil recovery, however, also opens alternative approaches as far as the civil action against third parties is concerned. For example, in some common law countries where compensation goes beyond simple economic damage and where moral and punitive damage compensation is possible, actions against the facilitators of the looting may be considered. Another advantage of civil recovery consists in the free choice of the jurisdiction in which the recovery of the proceeds of corruption is pursued. In the case of criminal recovery, prosecution must follow pre-set jurisdictional conditions while civil recovery can be pursued almost anywhere in the world, and, perhaps even more importantly, be pursued in several jurisdictions in parallel. This can be particularly important where there is the risk that the offender might transfer his or her loot to a “non-freezing-friendly” jurisdiction.

The criminal law approach generally provides the investigators with privileged access to information, both at the national and international level. The investigative powers of a prosecutor’s office make it easier to overcome bank secrecy and to obtain freezing orders. At the same time, however, the actual confiscation and refunding to the victim may prove more complex since most legal systems still require that the illicit origin of the proceeds be established beyond any reasonable doubt. In the civil proceeding, the link between the assets and the criminal acts at their origin must only be established on the grounds of balanced probabilities, also known as a preponderance of the evidence.

Another clear advantage of criminal recovery is the cost factor. Criminal recovery requires less financial resources on the part of the requesting State since most of the investigative work which has to be conducted is undertaken by law enforcement agencies of the requested country. However, a clear disadvantage of criminal recovery arises from the dependency on the sometimes-strict requirements that need to meet under the requested countries national law in order to obtain the collaboration of its authorities. Courts in requested countries often set preconditions to file charges or to bring forfeiture proceedings against individuals prior to agreeing to freeze assets or to keep them frozen. Repatriation in most cases can be only granted after a final decision is made on criminal prosecution or forfeiture to permit repatriation. Those proceedings must comply with the requested state’s own procedural requirements of due process. The courts might also want to establish that the proceedings in the requesting countries satisfy human rights principles. Many requesting countries have found some or all of these requirements difficult to fulfil.

Other aspects are linked to the legal tradition of the jurisdictions involved. For example, a clear advantage within many continental law jurisdictions is the possibility for the victim to participate in the criminal proceeding as a partie civile. Such status enables the victim to have access to all the data available to the prosecution and reliance on the criminal court to decide on the (civil) compensation to the victim.

In common law systems, the wide discretionary powers of the prosecution to engage in plea-bargaining has proven to be an effective tool in asset recovery cases. In particular, where the main objective consist not in obtaining conviction for all the single criminal acts involved but to recover the largest amounts of assets possible, offenders may be offered immunity from prosecution in exchange for their fullest collaboration in the location of the diverted assets. However, the impediments mentioned above only touch upon a few of the most evident problems involved. A complete inventory of all the possible scenarios is beyond the scope of this Tool Kit.
Solutions and Limitations of the TOC Convention

In the context of asset recovery. Because the TOC-Convention is currently under consideration for ratification, the issue of asset recovery as a legal problem will receive some important attention. The Convention, even though targeted at combating offences transnational in nature and involving organised criminal groups, will provide for some solutions in this context. Once ratified, the Convention will also be applicable to other crimes, such as the embezzlement of state resources, fraud, thievery, extortion and other forms of the abuse of public power for private gain, as most of them will be considered as serious crimes under the national law of the State Parties.

The transnational nature of illegal transfers of stolen property will always be present in repatriation cases. However, proving involvement of an organised criminal group in the activity might be problematic. In view of the wide definition of the organised criminal group as a “structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain directly or indirectly a financial or material benefit”, the Convention may nevertheless be applicable. In many cases of the more recent past, the main offenders relied on a network of close associates participating in and benefiting from the various criminal acts involved in the looting. E.g. Mohammed Abacha, son of the late dictator Sani Abacha, and his associates have already been charged for participating in an organised criminal group under Swiss law.

The Convention obliges the State Party that has been requested to provide mutual legal assistance in investigation, prosecution, and judicial proceeding in relation to the offences covered under this Convention. However, the requesting Party must have reasonable grounds to suspect that such offences are transnational in nature and involves an organised crime group. In particular, the mutual legal assistance to be afforded may include measures such as the identification, tracing, freezing or seizing and confiscating of the proceeds of crime. However, the request shall be executed in accordance of the domestic law of the requested State. This provision gives the requested Statewide grounds to refuse responding to the request.

The Convention also obliges State Parties to submit the request for mutual legal assistance in relation to the confiscation of proceeds from offences covered under this Convention to its competent authorities for the purpose of obtaining an order of confiscation, and if granted, to give effect to it. In addition, the requesting State party is also entitled to submit an order of confiscation issued by a court of its own territory to the requested State for execution.

This new legal framework would mean that Member States handling cases of large-scale corruption would have a functioning and practical legal framework. In particular they would be able to obtain the cooperation of other State Parties to identify, trace, freeze or seize assets deriving from a large variety of corrupt practices. Recovery of the assets, however, can remain problematic. According to Article 14, State parties shall give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party. This provision is not mandatory and it is only applicable if the requesting State Party intends to compensate the victims or to return the proceeds to their legitimate owners. While it relatively easy to obtain repatriation where assets have been directly diverted from State resources, the situation is less clear with regard to the proceeds of corruption. In these cases, the interests at stake for the victim state are less clear unless it suffers damage directly linked to the payment of the bribe. Where the requesting state cannot show that the funds are actually owned by the state, the requested state may still confiscate the funds as criminal proceeds and keep it for themselves.

Technical Capacities
One of the most important obstacles to seeking out illegal funds and securing their repatriation is lack of capacity in the requesting and in the requested country. The recovery of assets that have been diverted through corrupt practices is extremely complex and consequently requires top-level technical capacities. Tasks necessary to successfully mount a repatriation effort include the conduct of financial investigations, forensic accounting, requests for mutual legal assistance and a solid understanding of the legal requirements of the States where the assets have been located. There are few practitioners in either public or private practice with experience in this type of work, and in many jurisdictions, there are none at all.

In states where corruption is rampant, these capacities are often not available and it is probable that a lack of state capacity helped create the conditions that facilitated the corruption in the first place. Shortcomings in judicial, administrative and/or investigative capacity, however, seriously impede the degree to which a country can undertake such a case successfully. Necessary technical expertise is available at very high costs. Countries that have been looted by their former leaders are typically finding themselves in substantial budgetary crisis. Spending money on private lawyers based on the uncertain hope of actually being able to recover these costs may often not be an option. Also, the private sector generally has no interest in educating the national authorities so that they will be able to conduct future recovery efforts without the help from outsiders. Consequently the lack of expertise remains unchanged.

Resources

The recovery of assets can be costly. Much of what can be done in relation to the repatriation of assets depends on the resources available to fund the case. Cases will almost certainly last for several years, and parties to the action are likely to be determined by their ability to fund litigation. In the case of criminal recovery, this might less be an obstacle. Also, offenders that have been looting their respective countries over a long period of time do not face the same resource problems as the victims trying to recover the assets. They can employ armies of lawyers ready to jeopardise and delay the successful recovery with all legal means available. The issue of justice being done becomes a question of how long offenders and victims are able to sustain the battle.

Prevention of Future Victimization

States that have been victimised often do too little to prevent future diversion of assets. This leads not only to repeated victimisation, but it also affects negatively the repatriation of such funds that have already been diverted. It is understandable when some countries may be hesitant to collaborate in the repatriation of assets when they must fear that the assets returned most likely will become prey to corrupt practices again. Therefore, countries embarking on a recovery effort should consider committing a certain percentage of the assets recovered in form of a “Governance Premium” to the strengthening of the national institutional and legal anti-corruption framework.
Tool 44 - Mutual Legal Assistance (MLA)

**Purpose**

Mutual legal assistance is an international cooperation process by which States seek and provide assistance in gathering evidence for use in the investigation and prosecution of criminal cases, and, in tracing, freezing, seizing and ultimately confiscating criminally derived wealth. It covers a wide and ever expanding range of assistance including, search and seizure, production of documents, taking of witness statements, including by video conference or evidence and temporary transfer of prisoners or other witnesses to give evidence.

It differs from traditional cooperation between law enforcement agencies. Law enforcement cooperation enables a wide range of intelligence and information sharing, including from witnesses providing they agree to give information, documents or other evidentiary materials voluntary. If the witness is unwilling, coercive measures will be needed, usually in the form of a court order from a judicial officer.

It also differs from extradition, although many of the legal principles underlying mutual legal assistance are derived from extradition law and practice. Extradition involves the surrender of a person from one sovereign jurisdiction to another and fundamentally affects that person’s liberty and possibly life. Accordingly, extradition law, practice and procedure typically enable less flexibility and room for discretion in granting a request, than mutual legal assistance.

**Description**

An UN expert working group brought together in Vienna in December 2001 recommended that States take the following actions in order to facilitate the providing of effective mutual legal assistance:

**Action 1; Enhancing the Effectiveness o MLA Treaties and Legislation**

An effective legal basis to provide mutual legal assistance is critical to ensuring effective action. States should develop broad mutual legal assistance laws and treaties in order to create such a legal basis.

Since mutual legal assistance treaties (MLATs) create a binding obligation to cooperate with respect to a range of mechanisms, States should wherever possible expand the number of States with which they have such treaty relationships. States or regions that would have difficulty negotiating an extensive network of bilateral MLATs should consider developing regional MLATs to create a modern legal framework for cooperation, or if this is not possible, ensuring that they have up to date domestic legal basis for providing legal assistance. In this context States may wish to consider relevant UN or regional model treaties or model legislation and their associated guidelines or commentaries.

In developing or reviewing treaties and legislation States should ensure that there is the greatest possible flexibility in the domestic law and practice to enable broad and speedy assistance. It is

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190 Eg, UNDCP’s model laws: (a) for States of common law legal tradition Model Mutual Assistance in Criminal Matters Bill 2002, Model Foreign Evidence Bill 2002, Model Extradition (Amendment) Bill 2002, Model Witness Protection Bill 2002; (b) for States of the civil or continental legal tradition Model Law on Mutual Legal Assistance 2002.
particularly important to have the capacity to render the assistance in the manner sought by the Requesting State.

States should regularly review such treaties and laws, and, as needed, supplement them to ensure that they keep pace with useful developments in international mutual legal assistance practice.

**Action 2; strengthening effectiveness of central authorities**

**Establishment of effective Central Authorities**

The drug and crime control conventions contain extensive and broadly similar provisions relating to mutual legal assistance. Included in their provisions are requirements for each Party to notify the Secretary-General of the United Nations of the central authority designated by it to receive, transmit or execute requests for mutual legal assistance. This is critical information for Requesting States in planning and drawing up requests. It must be accurate, up to date and widely available to those who frame or transmit mutual legal assistance requests.

States that have not already done so should establish a central authority that facilitates the making under article 7 of the 1988 Convention of requests for mutual legal assistance to, and speedy execution of requests received from, other Parties. Central authorities should be staffed with practitioners who are legally trained, have developed institutional expertise and continuity in the area of mutual legal assistance.

Designation of authorities which have important national drug control capability in other fields (e.g., health ministries), but little if any in international mutual legal assistance should be avoided.

**Ensuring the Dissemination of Up-to-Date Contact Information**

Parties to the 1988 Convention should ensure that contact information contained in the UN Directory of competent authorities under article 7 of the Convention is kept up-to-date, and, to the extent possible, provides information for contacting its central authority via phone, fax and Internet.

**Ensuring around the Clock Availability**

Both with respect to the 1988 Convention and generally, a State’s central authority should, to greatest extent possible, provide for a means of contacting an official of the central authority if necessary for the purposes of executing an emergency request for mutual legal assistance after working hours. If no other reliable means is available, States may consider ensuring that their Interpol National Central Bureau or other existing channel is able to reach such an official after working hours, remembering that at any given time sunrise in one part of the world is sunset in another.

**Consistency of Central Authorities for the purposes**

The EWG noted the wide and growing range of international conventions, each requiring parties to afford one another the widest measure mutual legal assistance in relation to the offences covered by the particular convention, and each requiring for that purpose the designation of a central authority.

The Group noted the potential for fragmentation of effort and inconsistency of approach if different central authorities are designated for different groups of offences. States are therefore urged to ensure that their central authorities under the 1988 Convention and the UN Convention on Transnational Organized Crime of 2000 are a single entity of the kind described in this
section, in order both to make it easier for other States to contact the appropriate component for all kinds of mutual legal assistance in criminal matters, and to facilitate greater consistency of mutual legal assistance practice for different kinds of criminal offences.

Reducing delay

The EWG noted that significant delay in the execution of request is in part caused by delays in consideration of the request by the receiving central authority and transmission of the request to the appropriate executing authority. States should take appropriate action to ensure that requests are examined and prioritised by central authorities promptly upon receipt and transmitted to executing authorities without delay. States should consider placing time limits upon processing of requests by central authorities. States are encouraged to afford foreign requests the same priority as similar domestic investigations or proceedings. States should also ensure that executing agencies do not unreasonably delay processing of requests. Appropriate coordination arrangements should be in place in federal jurisdictions where constituent States have execution responsibilities to minimize the risk of delayed responses.

Action 3: Ensuring awareness of national legal requirements and best practices

Increasing availability and use of practical guides regarding national mutual legal assistance legal framework and practices (domestic manuals; guides for foreign authorities)

It is important that domestic authorities be aware of the availability of mutual legal assistance and know the procedures to follow to obtain that assistance in relation to an investigation or prosecution. It is also very useful, particularly in larger jurisdictions, where there may be several authorities involved in the making or execution of such requests, to provide for the sharing of information between those authorities.

States should adopt mechanisms to allow for the dissemination of information, regarding the law, practice and procedures for mutual legal assistance and on making requests to other States, to domestic authorities. One possible approach is to develop a procedural manual or guide for distribution to relevant law enforcement, prosecutorial and judicial authorities. Other useful mechanisms can include the distribution of a regular newsletter and the convening of domestic practitioners meetings to provide updates on cases, legislation and general developments.

The provision of information to foreign authorities was also highlighted as an important measure to facilitate effective cooperation. States should develop guidelines on domestic law and procedures relating to mutual legal assistance to inform foreign authorities on the requirements that must be met to obtain assistance. Any such guidelines should be made available to foreign authorities through a variety of methods, such as, for example, publication on a website, direct transmission to law enforcement partners in other States or distribution through the ODCCP or other international organizations.

Increasing training of personnel involved in the mutual legal assistance process

Effective implementation of mutual legal assistance instruments and legislation is not possible without personnel who are well trained with respect to the applicable laws, principles and practices. States should use a broad range of methods to provide such training, in a manner that will allow for the expertise to be sustained, e.g.:

- Lectures and presentations by central authorities as part of regular training courses or workshops for law enforcement, prosecutors, magistrates or other judicial authorities;
- Special workshops or seminars on a domestic, regional or multi-jurisdictional basis;
• Introducing programs on mutual legal assistance as part of the curriculum for law schools or continuing legal education programs;
• Exchanges of personnel between central authorities of various jurisdictions;

*Action 4; Expediting cooperation through use of alternatives, when appropriate*

**Value of Police Channels where formal coercive measures are not required**

The EWG wanted to emphasize that, except for coercive measures normally requiring judicial authority, formal mutual legal assistance will not always be necessary to obtain assistance from other States.

Whenever possible, information or intelligence should initially be sought through police to police contact, which is faster, cheaper and more flexible than the more formal route of mutual legal assistance. Such contact can be carried out through ICPO/Interpol, Europol, through local crime liaison officers, under any applicable memoranda of understanding, or through any regional arrangements, formal and informal, that are available.

**Particularly where evidence is voluntarily given, or publicly available**

While generally police to police contact can never be used to obtain coercive measures for the sole use of the Requesting State, it may be used to obtain voluntarily given evidence, evidence from public records or other publicly available sources. Again, this method has the advantage of being faster and more reactive than formal requests. Also certain categories of evidence or information may be obtained directly from abroad without the need for police channels for example publicly available information stored on the internet or in other repositories of public records.

**Or to help accelerate an effective response to very urgent formal requests**

Many States will also permit very urgent requests to be made orally or by fax between law enforcement officers so that advance preparations can be made or urgent non-coercive assistance given, at the same time as a formal request is routed between central authorities.

**But always inform the Central Authority of the prior informal channel contacts**

The formal request should state that a copy has been sent by the informal route to prevent duplication of work. Similarly, where there has been prior police to police contact, the Letter of Request should state this and give brief details.

**Use of Joint Investigation Teams**

States should use joint investigation teams between officers of two or more States where there is a transnational aspect to the offence, for example in facilitating controlled deliveries of drugs or in cross border surveillance operations.

States should make full use of the benefits of the exchange of financial intelligence (in accordance with appropriate safeguards) between agencies responsible for the collating financial transaction data and where necessary develop or enact the appropriate enabling legislation.

*Action 5; Maximizing effectiveness through direct personal contact between central authorities of Requesting and Requested States*
**Maintaining Direct Contact throughout all Stages of the Request**

The 1993 Report\(^1\) had stressed the importance of personal contacts to open communication channels and to develop the familiarity and trust necessary to achieve best results in mutual legal assistance casework.

The EWG reaffirmed that personal contact between members of central authorities, prosecutors and investigators from the requesting and Requested States remains critically important at every stage in the mutual assistance process. In order to facilitate this, contact details, including phone, fax and where available, email addresses, of the responsible officials, should be clearly stated within the request. Sometimes it may be desirable to establish contact with the official in the Requested State before sending the request in order to clarify legal requirements or simplify procedures. Such contact can be initiated through the police to police means listed above, including through existing police attaché networks, or between prosecutors or staff of central authorities through the UNDCP’s list of competent authorities, through networks such as the EU’s European Justice Network, or through less formal structures such as the International Association of Prosecutors or simply personal contacts.

**Benefits of Liaison Magistrates, Prosecutors and Police Officers**

The EWG also encouraged States to take initiatives such as the exchange of liaison police officers, magistrates or prosecutors with States with whom there is significant mutual legal assistance traffic, either by posting a permanent member of staff to the central authority of that country, or by arranging short term exchanges of staff. Experience shows that these “on-site” initiatives produce faster and more useful mutual legal assistance than usually possible through “distance” dealings.

**Action 6; preparing effective requests for mutual legal assistance**

Preparation of a request for assistance involves consideration of a number of requirements, e.g. treaty provisions (where applicable), domestic law, the requirements of the Requested State. However, too meticulous attention to detail could result in a request that was unduly lengthy or was so prescriptive that it inhibited the Requested State from resorting to alternative methods of securing the desired end-result. Those preparing requests should apply these basic principles:

- To be very specific in presentation;
- To link the existing investigation or proceedings to the assistance required;
- To specify the precise assistance sought, and
- Where possible, to focus on the end-result and not on the method of securing that end-result (for example, it may be possible for the Requested State to obtain the evidence by means of a production or other court order, rather than by means of a search warrant)

To assist in the application of the above principles, the EWG developed checklists (tools for use in preparing requests. The checklists set out both the requirements generally expected of requests and additional specific requirements for certain areas of assistance.

**Action 7; Eliminating or Reducing impediments to execution of requests in the Requested State**

\(^1\) UNDCP Expert Working Group on Mutual Legal Assistance and Related Cooperation (E/CN.7/1993/CRP.13). The EWG found that the recommendations in the 1993 Report had stood the test of time and still represented best practice. Some of them were now formally reflected in later instruments, such as Article 18 of the United Nations Against Transnational Organized Crime, 2000.
1. Interpreting legal requirements flexibly.

In general, States should strive to provide extensive cooperation to each other, in order to ensure that national law enforcement authorities are not impeded in pursuing criminals who may seek to shield their actions by scattering evidence and proceeds of crimes in different States. As described below, States should examine whether their current framework for providing assistance creates unnecessary impediments to cooperation and, where possible, reduce or eliminate them.

In addition, those prerequisites to cooperation that are retained should be interpreted liberally in favor of cooperation; the terms of applicable laws and treaties should not be applied in an unduly rigid way that impedes, rather than facilitates the granting of assistance.

2. Minimizing grounds for refusal and exercising them sparingly

If assistance is to be rendered as extensively as possible between States, the grounds upon which a request may be refused should be minimal, limited to protections that are fundamental to the Requested State.

Many of the existing grounds of refusal in mutual legal assistance are a “carry over” from extradition law and practice, where life or liberty of the target may be more directly and immediately at stake. States should carefully consider such existing grounds of refusal to determine if it is necessary to retain them for mutual legal assistance. An area of particular concern was dual criminality. It was noted that positions were divided with some States requiring it for all requests, some for compulsory measures only, some having discretion to refuse on this basis and some with neither a requirement nor a discretion to refuse. Because of the problems that can arise from the application of this concept to mutual assistance, the EWG recommended that States consider restricting or eliminating the application of the principle, in particular where it is a mandatory pre-condition.

Problems can also arise from the application of the ne bis in idem principle as a ground for refusal of assistance. To the greatest extent possible, those States that apply this ground of refusal should use a flexible and creative approach to try and minimize the circumstances where assistance must be refused on this basis, for example, when necessary, by obtaining an undertaking that the Requesting State will not prosecute a person who already has been prosecuted in respect of the same conduct in the Requested State, to enable the provision of information to assist in investigations in the Requesting State. Some States do not apply this ground of refusal at all and States may wish to consider if it is possible to adopt such an approach.

Any ground of refusal should be invoked rarely, only when absolutely necessary.

3. Reducing use limitations

Traditionally, evidence transmitted in response to a request for mutual legal assistance could not be used for purposes not described in the request unless the Requesting State contacted the Requested State and provided express consent to other uses. However, in order to avoid cumbersome requirements that are often not necessary many States have provided for a more streamlined approach in their mutual legal assistance practice. For example, many modern mutual legal assistance treaties instead require the Requested State to advise that it wishes to impose a specific use limitation; if the advisory is not deemed necessary, there will be no limitation of use.

Such methods provide adequate control to the Requested State in important cases while facilitating the efficiency of mutual legal assistance in the many cases that are not sensitive. States should consider adopting such modern approaches to use limitations.
4. Ensuring confidentiality in appropriate cases

Some States are not in a position to maintain confidentiality of requests, and that the contents of requests were disclosed to the subjects of the foreign investigation/proceedings, thereby potentially prejudicing the investigation/proceedings. It was noted that confidentiality of requests was often a critical factor in the execution of requests. It was recommended that where it is specifically requested, Requested States take appropriate measures to ensure the confidentiality of requests is maintained, and that in circumstances where it is not possible to maintain confidentiality under the law of the Requested State, the Requested State notify the Requesting State at the earliest possible opportunity and in any case prior to the execution of the request in order that it may decide whether it wishes to continue with the request in the absence of confidentiality.

5. Execution of requests in accordance with procedures specified by the Requesting State

It is important to comply with formal evidentiary/admissibility requirements stipulated by the Requesting State to ensure the request achieve its purpose. It was noted that failure to comply with such requirements would often render it impossible to use the evidence in the proceedings in the Requesting State, or at the least, causes delay, (eg. where the requested material has to be returned to the Requested State for certification/authentication in accordance with the request). The Requested State should make every effort to achieve compliance with specified procedures and formalities to the extent that such procedures/formalities are not contrary to the domestic law of the Requested State. States are also encouraged to consider if domestic laws relating to the reception of evidence can be made more flexible to overcome problems with the use of evidence gathered in a Foreign State.

6. Coordination in multi-jurisdictional cases

Increasingly, there are cases in which more than one State has jurisdiction over some or all of the participants in a crime. In some cases, it will be most effective for the States concerned to choose a single venue for prosecution; in others, it may be best for one State to prosecute some participants while one or more other States pursue the remainder. In general, coordination in such multi-jurisdictional cases will, inter alia, avoid a multiplicity of requests for mutual legal assistance from each State that has jurisdiction that would otherwise take place. Where there are multiple requests for assistance in the same case, States are encouraged to closely consult in order to avoid needless confusion and duplication of effort.

7. Reducing complexity of mutual legal assistance through reform of extradition processes

Traditionally, some States did not extradite their nationals to the State in which a crime took place. At times, such States would instead seek to prosecute their national themselves in lieu of extradition, resulting in lengthy and complex requests for mutual legal assistance in order to obtain the necessary evidence from the country in which the crime took place.

Recent increases in the number of States that either will extradite their nationals or will temporarily extradite them provided that any sentence can be served in the State of nationality, reduce the need for mutual legal assistance that would otherwise be required.

States that do not extradite nationals should consider whether this approach can be reduced or eliminated. If this is not possible, the States concerned should seek to coordinate efficiently with a view to an effective domestic prosecution in lieu of extradition.
8. Cooperation with respect to confiscation (enforcement of civil forfeiture, asset sharing)

There are particular impediments to assistance with respect to the freezing/ seizure and confiscation of proceeds of crime. As noted in the report of the EWG on asset forfeiture in relation to freezing/ seizure, it can be difficult to obtain this assistance on the urgent basis required because of some of the inherent delays in the mutual assistance process.

Problems also arise because of the different approaches to the execution of mutual assistance requests and the varying systems for confiscation.

The 1988 Convention permits a State to comply with a request for freezing/ seizure or confiscation by directly enforcing the foreign order or by initiating proceedings in order to obtain a domestic order. As a result the approach taken differs between States.

Further, the States that obtain domestic orders do so on the basis of varying domestic asset confiscation regimes. In some States there is a requirement to provide evidence of a connection between the property sought to be confiscated and an offence. Other States employ a value or benefit system where there need only be evidence that the property is linked to a person who has been accused or convicted of a crime.

Experience in this area clearly demonstrates that the direct enforcement approach is much less resource intensive, avoids duplication and is significantly more effective in affording the assistance sought on a timely basis. Consistent with the conclusions of the EWG on asset forfeiture, the EWG strongly recommended that States which have not done so adopt legislation to permit the direct enforcement of foreign orders for freezing/seizure and confiscation.

In the interim, where a State is seeking assistance by way of freezing/seizing or confiscation of assets, prior consultation will be required to determine which system is employed in the Requested State in order that the request can be properly formulated.

The EWG also noted that several jurisdictions have adopted or are in the process of adopting regimes for civil forfeiture (i.e. without the need to obtain a criminal conviction as a prerequisite to final confiscation). The EWG supported the use of civil forfeiture as an effective tool for restraint and confiscation. However, it was recognized that this created new challenges, because most current mutual legal assistance regimes are not yet applicable to civil forfeiture. The EWG recommended that States ensure that their mutual assistance regimes will apply to requests for evidentiary assistance or confiscation order enforcement in civil forfeiture cases.

Problems also arise in requests relating to freezing/seizure and confiscation because of insufficient communication about applications for discharge of an order or other legal challenges brought in the Requested State. It is critically important that the Requesting State be informed of any such application in advance in order that it may provide additional evidence or information, which may be of relevance to those proceedings. Once again the importance of communication was emphasized.

The EWG noted the importance of equitable sharing of confiscated assets between the Requesting and Requested State as a means of encouraging cooperation, particularly with States that have very limited resources to execute requests effectively.

9. Reducing impediments to mutual legal assistance brought about by third parties

Accused or other persons may seek to thwart criminal investigations or proceedings by legal action aimed at delaying or disrupting the mutual legal assistance process. While it may well be fundamental to provide the opportunity for third party participation in certain proceedings

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arising from the execution of a request for mutual legal assistance, States should ensure that wherever possible, their legal frameworks do not provide fortuitous opportunities for third parties to unduly delay the providing of assistance or to completely block execution on technical grounds.

In addition, a modern trend in taking witness evidence in the Requested State is to defer objections based on the law of the Requesting State until after the testimony is transmitted to the Requesting State, so that it may decide on the validity of the objection. This avoids the possibility of an erroneous ruling in the Requested State and allows the Requesting State to decide matters pertaining to its own law.

10. Consulting before refusing/postponing/conditioning cooperation to determine if necessary

Where the Requested State considers that it is unable to execute the request, formal refusal should not be made before consulting with the Requesting State to see if the problems can be overcome, or the request modified to enable assistance to be given. For example, where assistance cannot be given because of an ongoing investigation or prosecution in the Requested State, it may be possible to agree to the postponement of the execution of the request until after the domestic proceedings are concluded. In another example, consultation may lead to a request for search and seizure, which could not be fulfilled under the law of a Requested State being modified to a request for a production order, which could. Where, however, it is not possible to resolve the issue, reasons should be given for refusal.

Action 8; Making use of modern technology to expedite transmission of requests

States should make use of modern means of communications to transmit and respond to urgent requests for mutual legal assistance to the greatest extent possible. Where there is a particular need for speed, traditional, much slower, methods of transmission of requests (such as the transmission of written, sealed documents through diplomatic pouches or mail delivery systems) can result in cooperation not being provided in time. Where there is a concern that evidence may be lost, or that significant harm to persons or property may result if cooperation is not expedited, expedited means such as phone, fax, or Internet should be utilized. The Requesting and Requested States should determine among themselves how to ensure the authenticity and security of such communications, and whether such communications should be followed up by a written request transmitted through the traditional channel.

Action 9; Making use of most modern mechanisms for providing MLA

The EWG noted the opportunities presented by modern technology to expedite the provision of assistance in criminal matters and to maximize the effectiveness of mutual assistance processes. The EWG also noted developments in international fora such as the European Union (Convention on Mutual Assistance in criminal matters between the member States of the European Union of 22 May 2000) and the Council of Europe (Convention on Cybercrime) in relation to the taking of evidence via video-link and the interception of electronic communications.

• It was recommended that States give consideration to acceding to such Conventions where possible and appropriate, and to developing the ability through their domestic legislation or otherwise to facilitate transnational cooperation in the following areas:
  The taking of evidence via video-link;
• The exchange of financial intelligence between agencies responsible for collating financial transactions data;
The exchange of DNA material to assist in criminal investigation
- Interception of communications;

The provision of assistance in computer crime investigations, including:
- Expeditious preservation of electronic data;
- Expeditious disclosure of preserved traffic data;
- Allowing interception where telecommunications’ gateways are located on the territory of the Requested State, but are accessible from the territory of the Requesting State;
- Monitoring electronic communications on a “real-time” basis

**Action 10: Maximizing availability and use of resources**

**Providing Central Authorities with Adequate Resources**

An effective mutual assistance program needs to be properly resourced in terms of both central and competent authorities and necessary infrastructure. As an optimum position, States should ensure that appropriate resources are allocated to mutual legal assistance. For developing States with many urgent competing resource priorities, ideal resource levels may not always be attainable.

**Obtaining Assistance from a Requesting State**

However, there may be other creative approaches that can be adopted to deal with resource issues. Importantly, a Requested State may wish to “seek assistance from the Requesting State in order to provide assistance”. Some examples of the types of assistance that can be sought from the Requesting State include providing personnel or equipment to be used in execution of the request, paying for the use of private counsel or covering general costs in whole or in part. A number of States have found it useful to lend a staff member to a Requesting State to facilitate the preparation and drafting of an effective request.

**Asset Sharing**

The sharing of confiscated assets between the Requesting and Requested States is an important way that cooperation can be encouraged and additional resources provided. The EWG noted that asset sharing arrangements between States now find support in multilateral instruments such as the UNTOC Convention (Article 14 par. 3, subparagraph b). The Group encourages States able to do so, to make greater use of asset sharing possibilities for these purposes.

**Optimizing Language Capability**

One special resource issue identified was the need for capacity for languages within the central authority. The optimum is to have this capacity by virtue of bilingual or multilingual personnel working in the authority. This enhances capacity for informal communication as well as with respect to review and presentation of requests. Access to reliable translation services is also of critical importance to ensure that translations of outgoing requests are accurate and properly reflect the original document and to review incoming requests where the accompanying translation is of a poor quality.

At the same time, some States may be unable to employ bilingual or multilingual personnel or have easy access to translation services for geographic or cultural reasons or because of a lack of resources. In those cases, creative solutions need to be found to deal with language problems. Some examples would be seeking assistance from other government departments and missions abroad or perhaps from the Requesting or Requested State as the case may be.
**Action 11; Role of the United Nations in facilitating effective MLA**

UNDCP and CICP have recognised and established roles in assisting Requesting States to implement particular international conventions - UNDCP, relating to drug control – and CICP, relating to transnational organized crime, once the Convention enters into force. This work includes legislative drafting assistance, model legislation on, for example, mutual legal assistance, asset forfeiture, witness protection, and the domestic use of foreign evidence, training of prosecutors and judicial officers, and regional and interregional casework-problem solving legal workshops for practitioners.

**Coordination of Technical Assistance**

The EWG recognized the essential role UNDCP/CICP in also working with its partners, firstly to help establish effective central authorities, and secondly, to coordinate cooperation and training efforts on a national, sub-regional and regional basis. In doing so, the EWG stressed the importance of drawing on the expertise of practitioners dealing with mutual legal assistance issues and casework on a daily basis, and linking them to States in need of training and by networking these efforts out under the scheme of wider partnerships.

**Updating of UN Directory of Competent Authorities for Mutual Legal Assistance**

In calling on States to notify accurate, appropriate and timely information particulars of their central authorities to transmit or execute mutual legal assistance requests for the purposes of Article 7 of the 1988 Convention, the EWG urged UNDCP to work with the States concerned to help ensure that UNDCP’s Directory of Central Authorities is as useful as possible for day-to-day international casework cooperation.

**Consistency between the 1988 Convention and the United Nations Convention against Transnational Organized Crime**

In noting similar basic mutual assistance requirements of the 1998 Convention and the 2000 UNTOC Convention, and the legal assistance work done by UNDCP and CICP, the EWG urged CICP and UNDCP to work closely together in assisting States to implement their mutual legal assistance obligations under the conventions.

**Development of Training Materials**

The EWG noted UNDCP’s compilation, indexing and publication of all drug control legislation, including anti-money laundering legislation. This legislation is also available on the ODCCP website. The EWG recommended that UNDCP collect and compile from States any existing guidelines for foreign requesting authorities and training materials produced in this field of expertise (e.g. the Commonwealth University Curriculum on International Cooperation to Combat Crime, coordinated training activities for magistrates from Spain, Portugal and France, etc.). These materials could then be posted on the ODCCP and partner websites with appropriate cross-links, subject to the agreement of the material providers.

The EWG encouraged the organization by UNDCP/CICP, Commonwealth Secretariat, EU, regional organizations and other interested partners, of regular meetings of mutual assistance practitioners to discuss developments in mutual assistance law, policy and practice.

**Preconditions and risks**
Preconditions and risks were also discussed during the EWG and are reflected in the Report of the Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice, Vienna 3-7 December 2001 as well as the Report of the preceding EWG of 15-19 February, 1993.

**Main Preconditions**

*Both countries should be party to the 1988 Convention if article 7 is to be used as the legal basis for the request;*

*Similarly with respect to the United Nations Convention against Transnational Organized Crime;*

*Adequate domestic enabling mutual legal assistance legislation and procedures or, if treaties are self-executing in the countries concerned (i.e. the treaty itself becomes the country’s domestic law), the relevant treaty, bilateral or multilateral enables the request or execution action concerned.*

**Main Risks**

*Absence of adequate enabling domestic legislation;*

*Lack of political will to implement the treaty or enabling legislation with adequate infrastructure and human/financial resources;*

*Absence of an effective central authority to request, execute or transmit to others for execution international mutual legal assistance requests;*

*Delay in executing the request and transmitting the results for use by the Requesting State, usually due to lack of central authorities between which regular communication can identify and resolve any outstanding request execution problems;*

*Introspective national focus in the Requested State on sovereignty, the paramountcy of domestic mutual legal assistance law, practice and procedure, particularly procedural law and practice;*

*Costs of the execution of requests can lead to serious delay and even refusal of requests, unless central offices can communicate to limit excessive requests and to solve cost problems for example through cost-sharing arrangements.*

**Related tools**

*For related tools please be hereby referred to the Report of the Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice, Vienna 3-7 December 2001.*

*The EWG developed General and supplemental Checklists intended to provide general guidance in the preparation of requests for international mutual legal assistance in criminal matters.*

*The General Checklist deals with the basic content of all mutual legal assistance requests. The Supplemental Checklists deal with additional content needed for the effective execution of requests for search and seizure, production of documents, taking witness statements/evidence, temporary transfer of prisoners to give evidence, pre-judgment seizure/freezing, or post-judgment confiscation.*

*The EWG also reproduced two Forms with permission, including a Cover Note (Request/Acknowledgment) for mutual legal assistance requests and an Authentication Certificate for Foreign Public Documents.*
Further, UNDCP’s Legal Advisory Programme developed comprehensive drug-related model legislation available for all the world’s major legal systems. In the field of mutual legal assistance, the UNDCP Model Mutual Assistance in Criminal Matters Bill 2000, the Model Foreign Evidence Bill 2000 and the UNDCP Money Laundering and Proceeds of Crime Bill 2000 are available for states with a common law tradition and for states with a civil law system the UNDCP Model Law on International Cooperation (Extradition and Mutual Legal Assistance) and the UNDCP model Law on Drug Trafficking and Related Offences.
Members of the Expert Group Meeting, April 13-14, 2000

Ms. Anna Alvazzi Del Frate, Dr. Neil Andersson, Mr. Per Oyvind Bastoe, Mr. Daniel Blais, Mr. Daryl M. Balia, Mr. Jack A. Blum, Mr. Alberto Bradanini, Mr. David Browser, Mr. Richard Buteera, Mr. Gherardo Colombo, Mr. Peter Csonka, Mr. Roberto de Michele, Mr. Bertie de Speville, Dr. Giuseppe di Gennaro, Professor Alan Doig, Mr. Kevin J. Ford, Mr. Michel Gauthier, Ms. Irma Hatabarat, Dr. Nihal Jayawickrama, Professor Hisao Katoh, The Hon. Mr Justice Pius Langa, Mr. Robert Manchin, Ms. Mette Masst, Mr. Bulelani Ngcuka, Mr. Luis Moreno Ocampo, The Hon. B. J. Odoki, Dr. Denis Osborne, Ms. Elena A. Panfilova, Mr. David Pezzullo, Professor Mark Pieth, Mr. Jeremy Pope, The Hon. Y. Bhaskar Rao, Mr. Augustine Ruzindana, Hon. Justice Govind Bahadur Shrestha, Mr. Alexander Stoyanov and Mr. Arthur Sydnes
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