ARTÍCULO 7º -Cada Estado Parte, cuando sea apropiado y de conformidad con los principios fundamentales de su ordenamiento jurídico, procurará adoptar sistemas de convocatoria, contratación, retención, promoción y jubilación de empleados públicos y, cuando proceda, de otros funcionarios públicos no elegidos, o mantener y fortalecer dichos sistemas. Estos:

a) Estarán basados en principios de eficiencia y transparencia y en criterios objetivos como el mérito, la equidad y la aptitud;

b) Incluirán procedimientos adecuados de selección y formación de los titulares de cargos públicos que se consideren especialmente vulnerables a la corrupción, así como, cuando proceda, la rotación de esas personas a otros cargos;

c) Fomentarán una remuneración adecuada y escalas de sueldo equitativas, teniendo en cuenta el nivel de desarrollo económico del Estado Parte;

d) Promoverán programas de formación y capacitación que les permitan cumplir los requisitos de desempeño correcto, honorable y debido de sus funciones y les proporcionen capacitación especializada y apropiada para que sean más conscientes de los riesgos de corrupción inherentes al desempeño de sus funciones. Tales programas podrán hacer referencia a códigos o normas de conducta en las esferas pertinentes.

2. Cada Estado Parte considerará también la posibilidad de adoptar medidas legislativas y administrativas apropiadas, en consonancia con los objetivos de la presente Convención y de conformidad con los principios fundamentales de su derecho interno, a fin de establecer criterios para la candidatura y elección a cargos públicos.

3. Cada Estado Parte considerará asimismo la posibilidad de adoptar medidas legislativas y administrativas apropiadas, en consonancia con los objetivos de la presente Convención y de conformidad con los principios fundamentales de su derecho interno, para aumentar la transparencia respecto de la financiación de candidaturas a cargos públicos electivos y, cuando proceda, respecto de la financiación de los partidos políticos.

4. Cada Estado Parte, de conformidad con los principios fundamentales de su derecho interno, procurará adoptar sistemas destinados a promover la transparencia y a prevenir conflictos de intereses, o a mantener y fortalecer dichos sistemas.”
Con relación a ello se efectúa una síntesis de las normas y acciones llevadas a cabo en dichas materias y en lo concerniente a la competencia de esta jurisdicción:

-La República Argentina reconoce la participación de los trabajadores pertenecientes a la Administración Pública a través de sus representaciones sindicales, en la determinación de la organización de sus relaciones laborales y en la regulación de sus derechos y obligaciones tal como está establecido en la propia Constitución Nacional (cfr. Artículo 14 bis entre otros). Así está inscripta en el régimen de negociación colectiva para la Administración Pública Nacional, habiendo ratificado los Convenios Internacionales de la ORGANIZACIÓN INTERNACIONAL DEL TRABAJO en la materia, Nos 151/79 y 154/81, a través de las Leyes Nos 23.328 y 23.544, respectivamente.

En ese marco se dictó la Ley de Negociaciones Colectivas N° 24.185 de 1992, como asimismo la Ley Marco de Regulación de Empleo Público Nacional N° 25.164 de 1999, y sus respectivos Decretos reglamentarios Nros. 447/93 y 1.421/2002, que constituye la primera ley de función pública desde la restauración de la democracia. Bajo este encuadre se negociaron paritariamente dos CONVENIOS COLECTIVOS DE TRABAJO GENERAL, homologados por los Decretos N° 66/99 y 214/06. El último, actualmente vigente, estableció los derechos, garantías y obligaciones de los trabajadores, las obligaciones del Estado empleador, la integración y funciones de los órganos paritarios, y el mecanismo de negociación sectorial por escalafones incluyéndolos en un Anexo del mismo. Asimismo agregó importantes mejoras en los principios y características que deben considerarse en la negociación y en la elaboración de los Convenios Sectoriales, tendentes a la modernización de los regímenes de carrera y específicamente respecto a la estructura escalonaria y a la regulación de los subsistemas que la integran selección, evaluación del desempeño, capacitación y retribuciones.

Cabe resaltar sobre este particular y con respecto a las bases para negociar determinados derechos, como por ejemplo la estabilidad que tiene rango constitucional, la sanción de la Ley Marco estableció determinados principios
generales a los que queda sujeta la relación de empleo público y que, por lo tanto, deben ser respetados en las negociaciones colectivas que se celebren en el marco de la Ley N° 24.185. En tal sentido, los derechos y garantías acordados en esta ley al Servicio Civil de la Nación constituyen mínimos que no podrán ser desplazados en perjuicio de éstos en las negociaciones colectivas que se celebren.

La experiencia recogida en el decurso de la vigencia de las normas en materia de negociación colectiva para la Administración Pública Nacional indica que la homologación del Segundo Convenio Colectivo de Trabajo General por el Poder Ejecutivo Nacional, con el encuadre de los derechos y garantías que establece la ley Marco de Regulación de Empleo Público Nacional y la participación de la representación gremial completa de las entidades con actuación en el sector público nacional, ha dado un impetu inédito a la aplicación del mecanismo negocial en el ámbito nacional.

En tal sentido permitió su despliegue con la apertura de negociaciones a nivel sectorial por escalafones a más de 100.000 trabajadores. Ello implica el compromiso de las partes intervinientes, con el desarrollo de la carrera de los trabajadores y la regulación de sus condiciones particulares de trabajo, en el marco del diálogo fecundo de las partes involucradas.

Así, se han acordado los siguientes Principios que deben tenerse en cuenta para el desarrollo de la carrera,

-los conceptos de promoción y sus alcances, considerando la promoción horizontal y vertical y el acceso a funciones de jefatura y jerarquizadas, basados todos en la acreditación de competencias laborales específicas, la capacitación sistemática y la calificación del desempeño laboral productivo, determinándose que la sola permanencia o antigüedad del trabajador no da lugar a promoción;

-las previsiones sobre selección y los principios que deberán cumplirse en su reglamentación: de igualdad de oportunidades, publicidad y transparencia y específicamente la igualdad de trato por razones de género o de discapacidad, como así también la debida competencia entre los candidatos;

-la determinación expresa de cómo deberán aprobarse los procesos de selección por parte del Estado empleador, fijando la previa consulta a las entidades sindicales signatarias de los convenios colectivos en el marco de funcionamiento de los órganos paritarios de interpretación y aplicación que en ellos se establezcan.

- Los requisitos y exigencias que deberán contemplar los sistemas de selección: sistemas de evaluación objetiva de antecedentes, experiencias relacionadas con el
cargos, conocimiento, habilidades y aptitudes. También se alude a que podrán convenirse, modalidades de cursos de formación habilitantes para el ingreso.

-Inclusión de los principios sobre los cuales deberán regularse los sistemas de evaluación de desempeño de los agentes y de capacitación y la instrumentación de los órganos paritarios de administración del Fondo Permanente de Capacitación y Recalificación Laboral, más allá de la inversión estatal mediante sus propios órganos de formación de funcionarios (INAP).

-El reconocimiento del derecho a la estabilidad en la función por tiempos determinados (5 años) a funcionarios ejecutivos y de jefaturas intermedias que accedan a esos cargos por concurso.

-El reconocimiento y promoción del cumplimiento del 4% de los puestos y contratos para personas con discapacidad certificada conforme a lo establecido en el artículo 8° de la Ley N° 22.431.

Seguidamente se incluye la cita de los artículos pertinentes del citado Convenio para contribuir a la precisión de sus contenidos y resaltar la importancia de los mismos así como de su efectivo cumplimiento en las distintas instancias de negociación de los convenios sectoriales, en cuyos textos se incluyen las referencias a estos artículos.

-PAUTAS BASICAS PARA EL DESARROLLO DE LA CARRERA-

ARTÍCULO 50.- La carrera del personal estará orientada a facilitar la incorporación y el desarrollo de los recursos humanos que permitan a los órganos del PODER EJECUTIVO NACIONAL cumplir con efectividad sus objetivos y responsabilidades.

ARTÍCULO 51.- La carrera del personal se orientará según los siguientes principios: 1. Igualdad de oportunidades.
2. Transparencia en los procedimientos.
3. Recrutamiento del personal por sistemas de selección.
4. Evaluación de las capacidades, méritos y desempeños para el avance en la carrera en función de los términos que se establezcan en cada convenio sectorial.
5. La responsabilidad de cada empleado en el desarrollo de su carrera individual.
6. La asignación de funciones acorde con el nivel de avance del agente en la carrera.

PROMOCIÓN –

ARTÍCULO 52.- La carrera del personal consistirá en el acceso del agente a distintos niveles, grados, categorías, agrupamientos o funciones, con sujeción a las pautas generales establecidas en el presente Convenio y en las normas vigentes en la materia.

ARTÍCULO 53.- Los agentes podrán promover horizontalmente dentro de cada nivel o categoría escalafonaria en la que se encuentren, conforme a las pautas que establezcan los respectivos regímenes. La promoción exigirá como mínimo una cantidad de calificaciones adecuadas del desempeño del agente y la acreditación de...
las competencias laborales o actividades de capacitación que se acuerden en los respectivos convenios sectoriales.

ARTÍCULO 54.- La promoción vertical de nivel o categoría escalafonaria se efectuará conforme a los mecanismos de selección y/o mérituo y requisitos aplicables al cargo o función al que se aspire.

ARTÍCULO 55.- En ningún caso podrá convenirse que sólo la permanencia del agente en el servicio dé lugar a su promoción.

SELECCIÓN

ARTÍCULO 56.- La selección del personal se realizará mediante sistemas que aseguren la comprobación de que se conozca la idoneidad, méritos, competencias y actitudes laborales adecuadas para el ejercicio de las funciones.

ARTÍCULO 57.- Se deberán respetar los principios de igualdad de oportunidades, publicidad y transparencia y específicamente la igualdad de trato por razones de género o de discapacidad, como así también la debida competencia entre los candidatos. Se asegurará el cumplimiento de las Leyes Nros. 22.431 y 23.109 o las que en el futuro se dicten estableciendo condiciones de ingreso a la Administración Pública Nacional.

ARTÍCULO 58.- El Estado empleador establecerá perfiles comunes que contengan los requisitos mínimos y que tengan por objeto comprobar un conjunto básico de conocimientos, habilidades y aptitudes, para cubrir cargos vacantes de naturaleza funcional similar o equivalente. En el perfil de la vacante a cubrir se deberá especificar cuáles son las habilidades y aptitudes psicofísicas necesarias para el desarrollo del trabajo, a los fines de facilitar la postulación de trabajadores con discapacidad.

ARTÍCULO 59.- Difusión de las convocatorias. Con el objeto de garantizar el principio de publicidad, el Estado empleador pondrá en conocimiento de los interesados todas las ofertas disponibles. Las entidades gremiales se comprometen a actuar como agentes de difusión de las convocatorias en todos sus ámbitos de actuación.

ARTÍCULO 60.- Procedimientos. Los procesos de selección del personal que apruebe el Estado empleador, con previa consulta a las entidades sindicales signatarias de los convenios colectivos en el marco de funcionamiento de los órganos paritarios de interpretación y aplicación que en ellos se establezcan y a los efectos de asegurar el cumplimiento de las garantías consagradas en el presente Capítulo, contemplarán básicamente sistemas de evaluación objetiva de antecedentes, experiencias relacionadas con el cargo, conocimiento, habilidades y aptitudes. Podrán convenirse asimismo, modalidades de cursos de formación habilitantes para el ingreso.

ARTÍCULO 61.- Designación. La designación de personal se ajustará al orden de mérito aprobado.

Cuando se trate de la selección de aspirantes a cargos directivos, de conducción o de coordinación superior, se podrá acordar en los respectivos convenios sectoriales, cláusulas que posibiliten a la autoridad competente escoger entre los candidatos de una terna.
ARTÍCULO 62.- Tipo de convocatoria. No podrán restringirse por convenio sectorial, las disposiciones vigentes que establecen convocatorias abiertas al público para ciertas categorías o niveles escalonarios. El ámbito de las convocatorias que no sean abiertas, abarcará como mínimo al personal comprendido en el respectivo convenio sectorial.

ARTÍCULO 63.- Veeduría. La parte gremial fiscalizará los procesos de selección, debiéndose dejar constancia en acta de todas sus observaciones. Estas observaciones serán elevadas al titular de la jurisdicción o entidad y consideradas antes de la decisión final.

ARTÍCULO 64.- Órganos de selección. Se asegurará la integración de los órganos de selección para la cobertura de cargos gerenciales o que requieran títulos técnicos y/o profesionales, con representantes de academias nacionales, consejos, colegios o asociaciones profesionales, o especialistas de reconocido prestigio pertenecientes o no, a universidades o centros de investigación, nacionales o extranjeros, afines a la especialidad requerida.

En ningún caso los órganos de selección estarán integrados exclusivamente por personal de la jurisdicción de la que dependa el cargo a cubrir, entendiéndose por jurisdicción a la JEFATURA DE GABINETE DE MINISTROS, al Ministerio, Secretaría de la PRESIDENCIA DE LA NACION u organismo descentralizado, ni por más de un SESENTA POR CIENTO (60%) de personas de un mismo sexo.

EVALUACION DEL DESEMPEÑO LABORAL

ARTÍCULO 65.- La evaluación de desempeño laboral facilitará la evaluación de competencias, aptitudes, actitudes laborales del trabajador así como el logro de objetivos y resultados en el desarrollo de sus funciones orientados al servicio de las finalidades de la unidad organizativa en la que preste servicios.

ARTÍCULO 66.- Objetivo. La evaluación del desempeño deberá contribuir a estimular el compromiso del agente con el rendimiento laboral y la mejora organizacional; su desarrollo y capacitación, la profesionalidad de su gestión y la ponderación de la idoneidad relativa para su promoción en la carrera.

ARTÍCULO 67.- Principios. Los sistemas de evaluación que se aprueben por el Estado empleador, con previa consulta a las entidades, sindicales signatarias de los convenios colectivos en el marco de funcionamiento de los órganos paritarios de interpretación y aplicación que en ellos se establezcan a los efectos de asegurar el cumplimiento de las garantías consagradas en el presente Capítulo, se sujetarán a los siguientes principios:

a) Objetividad y confiabilidad.

b) Validez de los instrumentos a utilizar.

c) Analogía de los criterios de evaluación para funciones equivalentes, sin perjuicio de resguardar las especificidades correspondientes.

d) Distribución razonable de las calificaciones en diferentes posiciones que permitan distinguir adecuadamente desempeños inferiores, medios y superiores.

e) Instrumentación de acciones tendentes a mejorar los desempeños inadecuados.
ARTÍCULO 68.- Plazos. La evaluación será al menos anual y comprenderá al personal que hubiera prestado como mínimo SEIS (6) meses de servicio efectivo. El proceso de calificación deberá estar concluido durante el trimestre inmediato posterior al período evaluado. Cuando sea necesario por la naturaleza de los servicios podrán convenirse otros períodos.

ARTICULO 69.- Evaluadores. Los titulares de unidades organizativas y jefaturas serán responsables de evaluar al personal a su cargo con ecuanimidad y objetividad. En caso de desvincularse del servicio deberán dejar un informe sobre el desempeño de los agentes que le dependan.
El cumplimiento de lo dispuesto en el presente precedentemente integra el deber establecido de conformidad con el inciso c) del artículo 36 del presente convenio.
Los convenios sectoriales podrán acordar modalidades especiales de acuerdo a las particularidades de las funciones a evaluar.

ARTÍCULO 70.- Órgano de Evaluación. Podrá ser unipersonal o colegiado. El proceso de evaluación deberá garantizar la participación del superior inmediato. La evaluación del desempeño del agente podrá complementarse con las ponderaciones de otros actores vinculados con su gestión.

ARTÍCULO 71.- Veeduría. Para garantizar el fiel cumplimiento de los objetivos del proceso de evaluación, los representantes gremiales participarán en carácter de veedores.

CAPACITACION

ARTÍCULO 72.- Objetivo.- La capacitación tendrá como objetivo asegurar la formación, el desarrollo y perfeccionamiento de las competencias laborales del personal a fin de elevar su profesionalización y facilitar su acceso a las nuevas tecnologías de gestión, de acuerdo con las prioridades que el Estado empleador defina en el marco de sus atribuciones de formulación, acreditación, certificación y evaluación de las actividades de capacitación.

ARTÍCULO 73.- Requisitos.- El personal deberá cumplir con los requisitos de capacitación que se acuerden en los respectivos convenios sectoriales en el marco de sus respectivos regímenes de promoción en la carrera.

ARTÍCULO 74.- Cada Jurisdicción o Entidad Descentralizada elaborará un plan estratégico de capacitación, tanto general como específico, y sus correspondientes planes anuales, sobre la base de las propuestas elevadas por los titulares de las jefaturas intermedias y sectoriales y las necesidades detectadas y las propuestas a elevar por las organizaciones sindicales signatarias del Convenio Colectivo General y de los Convenios Sectoriales. Dichos planes se articularán con las estimaciones cuantitativas y de las características de las competencias laborales a satisfacer para atender los servicios actuales y futuros de las jurisdicciones y entidades descentralizadas, contemplando, además, las particularidades circunstancias regionales y provinciales de las prestaciones a cargo del personal.
El Estado empleador, a través del Instituto Nacional de la Administración Pública conforme a lo prescrito en la Ley Nº 20.173 y modificatorias, elaborará las pautas metodológicas y los lineamientos generales bajo cuya orientación dichos planes serán elaborados y certificará las actividades de capacitación.

ARTICULO 75.- Crease la COMISION DE ADMINISTRACION del FONDO PERMANENTE DE CAPACITACION Y RECALIFICACION LABORAL, establecido de conformidad con lo dispuesto en el Capítulo X del Anexo de la Ley Nº 25.164 y su Decreto reglamentario Nº 1421/02, integrada por CINCO (5) representantes titulares y CINCO (5) suplentes por los órganos respectivos del Estado empleados y CINCO (5) representantes titulares y CINCO (5) suplentes por las entidades sindicales signatarias del presente convenio colectivo, y que funcionará en el INSTITUTO NACIONAL DE LA ADMINISTRACION PUBLICA. La designación de dichos representantes será efectuada por cada parte y comunicada ante la Co.P.A.R. (Comisión Permanente de Aplicación y Relaciones Laborales –Organo paritario permanente)

DE LOS CONVENIOS COLECTIVOS SECTORIALES
Retomando la aplicación de los principios determinados en el Convenio Colectivo de Trabajo General cabe reseñar que están articulados según se desprende de su artículo 8º que en su parte pertinente determina que serán por escalafon o por organismo según el detalle obrante en el Anexo II del mismo. En consonancia con lo previsto por la Ley Nº 24.185, su artículo 9º fija las materias que podrán ser objeto de negociación sectorial, citando: la estructura de la carrera, el escalafon, las materias remitidas y las no tratadas por el presente convenio y todas las modalidades sectoriales de institutos emergentes del convenio general.”

En este marco y a partir del año 2005, fueron convocadas conforme el procedimiento, diversas comisiones negociadoras paritarias sectoriales para establecer acuerdos salariales y avanzar en el diseño de las carreras y demás aspectos necesarios. Se consignan los Convenios Colectivos Sectoriales que han sido homologados al presente:

- Decreto Nº 127/06 Convenio Colectivo Sectorial para el personal del INSTITUTO NACIONAL DE TECNOLOGIA AGROPECUARIA (INTA)
- Decreto Nº 40/07 Convenio Colectivo Sectorial para el personal del SERVICIO NACIONAL DE CALIDAD AGROALIMENTARIA (SENASA) SENASA
- Decreto Nº 109/07 Convenio Colectivo Sectorial para el personal del INSTITUTO NACIONAL DE TECNOLOGIA INDUSTRIAL (INTI)
- Decreto Nº 973/08 Convenio Colectivo Sectorial para el personal artístico de las ORQUESTAS, COROS Y BALLET NACIONALES DE LA SECRETARIA DE CULTURA DE LA NACION
- Decreto Nº 2098/08 Convenio Colectivo Sectorial para el personal del SISTEMA NACIONAL DE EMPLEO PUBLICO (SINEP)
- Decreto Nº 1133/09 Convenio Colectivo Sectorial para el personal profesional del EQUIPO DE SALUD de los INSTITUTOS DE INVESTIGACIÓN Y
ESTABLECIMIENTOS HOSPITALARIOS DEL MINISTERIO DE SALUD DE LA NACIÓN

-Decreto N° 1032/09 Convenio Colectivo Sectorial para el personal del INSTITUTO NACIONAL DEL CINE Y ARTES AUDIOVISUALES (INCAA)
- Decreto N° 1714/10 Convenio Colectivo Sectorial para el personal de la SINDICATURA GENERAL DE LA NACIÓN (SIGEN)

En lo concerniente a otros aspectos de profesionalización del empleo público, su despliegue e incorporación en los Convenios sectoriales queda plasmado no solo en los textos de los mismos, sino en la práctica continua del tratamiento de las propuestas de reglamentaciones sobre estos aspectos, en los órganos paritarios de aplicación cuya intervención da impulso a la implementación por parte del Estado empleador de tales principios, para su aplicación concreta en el desarrollo de la carrera de los trabajadores involucrados. En este sentido, es de señalar que han sido aprobadas mediante el mecanismo fijado en cada sectorial, diversas reglamentaciones sobre múltiples temas que hacen al efectivo desarrollo de la carrera.

-Así, se mencionan a título ejemplificativo las nuevas reglamentaciones sobre los siguientes aspectos de los subsistemas de carrera; de selección (SIGEN, SENASA, INTI, SINEP, personal del equipo de salud); de capacitación (SENASA, SIGEN, SINEP) de evaluación del desempeño (organismos musicales y un régimen de transición en el INTI); de capacitación (SENASA) como asimismo respecto de la aplicación u otorgamiento de determinados adicionales o suplementos (organismos musicales, INTI, SIGEN, SINEP).

-Corresponde mencionar también la incorporación de previsiones particulares sobre medidas activas de acción afirmativa sobre minorías necesitadas de especial protección, por ejemplo en el sectoral de organismos musicales, como así también las disposiciones sobre cumplimiento de condiciones para el ingreso preferencial tanto de personas con discapacidad como ex combatientes de Malvinas, en todos los sectoriales, conforme las normas citadas precedentemente.

-Corresponde también mencionar que mediante acuerdo paritario respectivo, desde el año 2005 y con frecuencia anual se han venido pactando los aumentos salariales que han permitido una sensible recuperación del salario real, congelado desde 1994. Ello ha supuesto un promedio en ese periodo de aumentos superiores al 120%.

En cuanto a la aplicación práctica se vienen realizando concursos de ingreso y promoción o ascenso de personal mediante los sistemas de las escalafones precitados, en varios Ministerios y organismos descentralizados, incluyéndose la modalidad de curso-concurso, cuyas convocatorias en los plazos y con los requerimientos exigidos han sido publicadas en el Boletín Oficial y registradas y publicitadas en la página web y carteleras de los organismos de origen y de esta Subsecretaría. Más de 1.200 cargos se han autorizado a cubrir por estos mecanismos y otros 5.000 se encuentran en trámite de hacerse.
In order to install and cultivate a culture of responsibility, transparency and accountability in the public service sector, Armenia has established and legislated for certain forms of State and municipal services. Both the selection of professional staff in the State and municipal services and their career progression within the service are conducted on a competitive basis. The pay structure for State and municipal employees is fixed and remuneration is established according to the post held and the employee’s level of qualification and length of service. Training institutions have been established for State and municipal employees, which provide retraining and refresher training based on updated curricula.

Specific codes of conduct have been adopted for State public servants, judges, prosecutors and diplomats, taking account of the special nature of their functions, and a code of ethics for other public servants has also been adopted. During the period from 2004 to 2007, government policy was oriented towards creating and increasing the scope available to agencies that revised and circulated information within public bodies and in public relations departments. Various mechanisms have been developed and implemented to involve civil society in public administration. Representatives of civil society sit on the Governing Board for the implementation of major State programmes. The necessary amendments have been made to the Judicial Code in order to improve the retraining offered to judges and to provide foundation training for candidates to the judiciary.

Ensuring that employees of the penal correction system do not fraternize with individuals held in penal correction institutions (in prisons) is crucial in reducing the corruption risk within the system. The risk of fraternization arises when an employee works for a prolonged period in one penal correction facility. The Penal Correction Service Act provides that an employee may be transferred without his or her consent from the current post to another equivalent post if the service so requires. Such a transfer is possible if the penal correction system employee has held the post for at least one year. Another provision establishes that a penal correction system employee is to be transferred to another equivalent post over the period during which a close relative or an individual closely linked to him or her by family ties (his or her parent, wife or husband, child, sibling, grandfather or grandmother, or the parent, child, sibling, grandfather or grandmother of his or her husband or wife) are either serving a custodial sentence or held in custody.
In accordance with the amendments introduced into the Penal Correction Service Act, adopted on 17 November 2009, provision was made for the institution of special civil servants, the classification of posts and the appointment and service procedure under the new Chapter 14.1. No other provisions under penal correction legislation relate to conflicts of interest.
AZERBAIJAN (SECOND MEETING)

Azerbaijan introduced new procedures and rules for recruitment, hiring, attestation, replacement, promotion in civil service. The reforms in this area were championed by innovative Commission on Civil Service Commission under the President of the Republic of Azerbaijan. Civil Service Commission brought necessary developments and credit in this area, promoting transparency, equality and merit-based advancement in civil service recruitment. Current recruitment to civil service consists of several stages. First stage is general admission tests, where applicants are required to get certain score above defined minimum. At the second stage, the candidates sit an interview by professional group of interviewers, which may be filmed, subject to the permission of the applicant. Pool of experts and questions has been developed and special Appellate Body established thought the involvement of independent experts. This measure is set up to enable candidates to lodge their complaints, in order to address their concerns. Entire process is open to public and all related information is available online on Commission’s webpage.

Presidential Decree was issued on the 25 February 2011 “On the improvement of the social protection of the traffic patrol service officers of the Ministry of Internal Affairs and some measures on the regulation of traffic rules”. Under the Decree 25 percent of the fines collected due to the violation of the traffic rules will be used as additions to the monthly salaries of the officers of the traffic patrol service and other officers participating in the regulation of traffic. President of the Republic of Azerbaijan singed on February 14, 2011 a Decree “On the improvement of social protection of the officers of State Customs Committee, simplification and increasing of transparency in the customs procedures”. Under the Decree 25 percent of the extra budgetary funds of the Customs Committee (which is formed from allocation part of confiscated goods and fines collected) will be allocated as additions to the monthly salaries of the customs officers.
Belgium (Eighth Meeting)

Chaque État Partie s’efforce, s’il y a lieu et conformément aux principes fondateurs de son système juridique, d’adopter, de maintenir et de renforcer des systèmes de recrutement, d’embauchage, de fédération, de promotion et de retraite des fonctionnaires et, s’il y a lieu, des autres agents publics non élus, qui :
1. Reposent sur les principes d’efficacité et de transparence et sur des critères objectifs tels que le mérite, l’équité et l’aptitude ;
   a) Comportent des procédures appropriées pour sélectionner et former les personnes appelées à occuper des postes publics considérés comme particulièrement exposés à la corruption et, s’il y a lieu, pour assurer une rotation sur ces postes ;
   b) Favorisent une rémunération adéquate et des barèmes de traitement équitables, compte tenu du niveau de développement économique de l’État Partie ;
   c) Favorisent l’offre de programmes d’éducation et de formation qui leur permettent de s’acquitter de leurs fonctions de manière correcte, conforme et équitable et les fassent bénéficier d’une formation spécialisée appropriée qui les sensibilise davantage aux risques de corruption inhérents à l’exercice de leurs fonctions. Ces programmes peuvent faire référence aux codes ou normes de conduite applicables.

2. Chaque État Partie envisage également d’adopter des mesures législatives et administratives appropriées, conformes avec les objectifs de la présente Convention et conformes aux principes fondateurs de son droit interne, afin d’arrêter des critères pour la candidature et l’élection à un mandat public.
3. Chaque État Partie envisage également d’adopter des mesures législatives et administratives appropriées, compatibles avec les objectifs de la présente Convention et conformes aux principes fondateurs de son droit interne, afin d’accroître la transparence du financement des candidatures à un mandat public électif et, le cas échéant, du financement des partis politiques.
4. Chaque État Partie s’efforce, conformément aux principes fondateurs de son droit interne, d’adopter, de maintenir et de renforcer des systèmes qui favorisent la transparence et préviennent les conflits d’intérêts.

Pour rappel, le Conseil supérieur de la Justice (ci-après CSJ) ne nomme pas et ne gère pas la carrière des magistrats mais il intervient dans le cadre de la nomination et de la promotion des membres du siège et des membres du ministère public en organisant les examens permettant d’accéder à la magistrature, en procédant à la sélection des candidats et en présentant les lauréats de cette sélection à la nomination aux emplois déclarés vacants au sein de la magistrature et en sélectionnant et présentant les candidats en vue de leur désignation aux fonctions de chef de corps de l’organisation judiciaire dont il détermine les profils généraux.

La nécessité d’organiser la nomination et la promotion des magistrats sur des bases objectives - excluant toute désignation purement politique - constitue un fondement essentiel de la création du CSJ. L’institution du CSJ au sein même de la Constitution comme une instance autonome indépendante des pouvoirs législatif, exécutif et judiciaire vise en effet à garantir l’indépendance et l’impartialité des juges qui doivent pouvoir exercer leur mission à l’abri de toute pression et de toute influence émanant d’un pouvoir notamment politique auquel ils seraient redevables de leur nomination.

Le CSJ dispose ainsi d’un rôle déterminant dans le processus décisionnel conduisant à la nomination ou à la promotion du magistrat. Qu’il s’agisse des membres du siège ou des membres du ministère public, aucune décision ne peut être prise sans qu’il intervienne dès lors que lui revient de manière exclusive le pouvoir de présentation au ministre des candidats proposés pour la nomination ou la promotion. Le ministre ne peut passer outre sa proposition. Tout au plus peut-il y opposer un refus motivé. Même dans ce cas, le CSJ conserve le dernier mot en contraignant une réétalonnage de l’appel aux candidats en cas de divergence persistante.

Indépendamment de cette indépendance structurelle et institutionnelle qui met le candidat magistrat et le magistrat postulant une autre affectation à l’abri de la pression de l’autorité de nomination, la procédure de sélection mise en œuvre par les commissions de nomination du CSJ, lors de la sélection des candidats, a été actualisée de manière à accorder davantage d’attention à la conscience de l’existence de principes déontologiques et à sonder de manière plus approfondie la connaissance de l’existence et du contenu du guide pour les magistrats (voir infra).

Le CSJ a aussi pris des initiatives concrètes afin d’intégrer la dimension « déontologie » dans les programmes des différents examens d’accès à la magistrature. Ces programmes (qui seront d’application dès septembre 2017) prévoient désormais que, dans le cadre des épreuves orales, les candidats seront également interrogés sur le « statut et la déontologie du magistrat ». Par ailleurs, le CSJ réfléchit à la possibilité de rédiger, à l’intention des chefs...
de corps, un manuel sur l’utilisation des formulaires d’avis qu’ils sont appelés à émettre au sujet des candidats dans le cadre des présentations aux places vacantes de magistrats. Dans ce manuel, il pourrait notamment être expressément renvoyé à la déontologie positive.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY BULGARIA

ARTICLE 7 UNCAC

PUBLIC SECTOR

BULGARIA (THIRD MEETING)

Paragraph 1 (a) of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

Has your country adopted and implemented the measures described above? (Check one answer)
(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or measure(s):
Please cite the text(s)

Bulgaria complies with this provision through the Law on the public officials. It prescribes the system of recruitment, hiring, retention, promotion and retirement of civil servants. They are based on efficiency, objectivity and transparency.

Have you ever assessed the effectiveness of the measures adopted to ensure that recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials are based on efficiency, transparency and objective criteria?
(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:
The efficiency of the respective laws is assessed when they are amended and/or supplemented. The respective ministries or working groups, established for the amendment of a given act are responsible for analyzing the efficiency of the law and to undertake measures for its improvement.

10. Paragraph 1 (b) of article 7
1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or measure(s):
See the answer under point 9 with regard to article 7, letter "a".

In addition, the Institute for public administration (IPA) is providing for specialised trainings to public officials in the anticorruption field, which is also included in the training under the Career and Professional Growth Programmes of the 2011 Catalogue. The module presents the international treaties to which Bulgaria is a party in this particular field.

The purpose of the training is:
· to familiarise participants with the progress in international co-operation in combating bribery of foreign public officials: actions taken by the UN, the World Bank, the OECD, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the Council of Europe and the European Union;
· to present the legal terms “public official”, “foreign public official”, “bribery”, “foreign country”, “act or refrain from acting in relation to the performance of official duties” within the meaning given by the OECD Antibribery Convention;
· to present the basic provisions of the Anticorruption Conventions regulating the responsibility of legal persons, sanctions, statute of limitations, money laundering, accounting, mutual legal assistance, monitoring and follow-up.

In 2011, 1 258 civil servants in the administration of the executive branch of the government, charged with control functions and with the application of the Conflict of Interest Prevention and Disclosure Act, internal auditors in the public sector and control authorities under special laws (Ministry of Interior Act, Customs Act, Spatial Development Act etc.) went through training in the module and enhanced their knowledge and skills in applying the OECD Convention.

Have you ever assessed the effectiveness of the measures adopted to establish procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation of such individuals to other positions?

(Y) Yes
**Paragraph 1 (c) of article 7**

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

   ...  

   (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

**Has your country adopted and implemented the measures described above? (Check one answer)**

(Y) Yes

*Please cite, summarize and attach the applicable policy(ies) or measure(s):*

The sublaws dealing with the issues of remuneration and the pay scales for civil servants in Bulgaria are currently under revision. Once the new rules are adopted we will provide them the WG on prevention.

**Have you ever assessed the effectiveness of the measures adopted to promote adequate remuneration and equitable pay scales for civil servants and, where appropriate, other non-elected public officials?**

(Y) Yes

**Paragraph 1 (d) of article 7**

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

   ...  

   (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas;

**Has your country adopted and implemented the measures described above? (Check one answer)**

(Y) Yes

*Please cite, summarize and attach the applicable programme(s)*

Such trainings are provided by the Institut on public administration. See the answer above under point 10 (art.7 c)
Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?
(Y) Yes

Paragraph 2 of article 7
2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

Has your country adopted and implemented the measures described above? (Check one answer)
(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):
The Law on civil servants is applicable to the candidates for public office. See the text of the law, attached under point 9 (art.7a).
This Act determinates the rules for the prevention and ascertainment of conflict of interest of public office holders, the category “public office holder”, the legal definition of "conflict of interest", "private interest" and "benefit" and stipulates the sanctions for violations of the prohibitions of the act.
The act provides the incompatibilities for taking public office (art. 7, point 3 of the Convention), system for prevention of conflict of interest (art.7, point 4 of the Convention), system of declarations for conflict of interest (art. 8, point 5 of the Convention).
In 2010 CIPAA was amended and supplemented with a new Chapter 5 “a”. By that amendment of the act the Commission for Prevention and Ascertainment of Conflict of Interest (CPACI) was established. The new chapter of the act determines the activities of the Commission for Prevention and Ascertainment of Conflict of Interest /the Commission/as an independent standing body. The Commission consists of five members, of whom three members elected by the National Assembly shall elect, one appointed by the President and one elected by a decision of the Council of Ministers and appointed by an order of the Prime Minister. The term of office of the Chairperson and the members of the Commission is five years, and they are limited to two full successive terms of office. The organization and operation of the Commission is determined by rules, adopted by the Commission and promulgated in the State Gazette. Annually, the Commission shall file a report on the activity performed before the National Assembly not later than the 31st day of March of the next succeeding year.
The act defines in a clear manner the range of public office holders. Within the meaning given by article 3, paragraph 1 - 25 LPACI "public office holders" are:

1. the President and the Vice President;
2. the Constitutional Court judges;
3. the National Representatives;
4. the Prime Minister, the Deputy Prime Ministers, the Ministers and the Deputy Ministers;
5. the Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court and the Prosecutor General;
6. the National Ombudsman and the Deputy Ombudsman;
7. the Regional Governors and the Regional Vice Governors;
8. the mayors, the deputy mayors of municipalities and of boroughs;
9. the municipal councillors;
10. the members of the Supreme Judicial Council;
11. the Chief Inspector and the inspectors of the Inspectorate to the Supreme Judicial Council;
12. the President and the members of the National Audit Office;
13. the Governor, the Deputy Governors and the members of the Managing Board of the Bulgarian National Bank;
14. the Governor and the Vice Governor of the National Social Security Institute;
15. the heads of the overseas missions of the Republic of Bulgaria;
16. the administrative heads of the judicial authorities;
17. the single-person authorities, the deputies thereof and the members of the collegial authorities covered under Article 19 (4) of the Administration Act, as well as the members of other collegial authorities established by a law;
18. the heads of public-financed organisations established by a law, by a resolution of the National Assembly or by an act of the Council of Ministers;
19. the members of the Supervisory Board, the Manager of the National Health Insurance Fund and the directors of the regional health insurance funds;
20. the judges, the prosecutors and the investigating magistrates;
21. the recording magistrates and the public enforcement agents;
22. the representatives of the State or the municipalities on the management or supervisory bodies of commercial corporations wherein the State or a municipality holds an interest in the capital or of not-for-profit legal entities;
23. the managers and the members of the management or supervisory bodies of municipal-owned or state-owned enterprises, as well as of other legal persons established by a law, by an act of a state body or of a body of local self-government;
24. the members of the political cabinets and the advisors and experts to the political cabinets;
25. the staff in the Administration of the President, of the legislative, executive and judicial authorities, the staff in the local administration, the staff in the bodies established by a law, with the exception of the staff occupying technical positions.

According to art. 5 of the law, Public office holder may not hold any other office or perform any activity which, according to the Constitution or a special law, is incompatible with the status thereof. This regulation of the law is according to the Constitution or a special law, is incompatible with the status thereof. This regulation of
the law is a general provision which refers to different legal acts - Labour Code, Civil Cervants Act, Act for Local Government and Local Administration, Ordinances and others. In that way the legislator managed to compile all requirements for incompatibilities into the provisions of art. 5 of LPACI.

Following the legal definition of incompatibilities, The CPACI treats them as a formal violation of the law which is not a conflict of interest in the meaning of art. 6-11 of Chapter II. However, incompatibilities are an indicator for possible situations of conflict of interest.

Please attach the text(s)
Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.
If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):
Please provide criteria or rules about eligibility or non-eligibility for public office like no prior convictions, no significant debt, nationality, etc.

... Conditions of Appointment

Article 7. (1) To be eligible for appointment as a civil servant, a person must:

1. (Supplemented, SG No. 43/2008) be a Bulgarian citizen, a citizen of another Member State of the European Union, of another State which is a Contracting Party to the Agreement on the European Economic Area, or of the Swiss Confederation;
2. have attained majority;
3. be interdicted;
4. have not been sentenced to deprivation of liberty for a premeditated indictable offence;
5. be not disqualified from occupying a specified position according to the established procedure;
6. possess the specific qualifications for occupation of the respective position as provided for in the statutory instruments.

(2) The following persons shall be ineligible for appointment as civil servants:
1. (Amended, SG No. 95/2003, supplemented, SG No. 94/2008, effective 1.01.2009) any person who would come in a hierarchical relationship of direction and control with a spouse, with a de facto cohabitee therewith, a lineal relative up to any degree of consanguinity, a collateral relative up to the fourth degree of consanguinity inclusive, or an affine up to the fourth degree of affinity inclusive;
2. (Supplemented, SG No. 95/2003, amended, SG No. 94/2008, effective 1.01.2009) any person who is a sole trader, an unlimited partner in a commercial corporation, a managing director, a business attorney, a commercial agent, a managerial agent, a broker, a liquidator or a trustee in bankruptcy, a member of a management or supervisory body of a commercial corporation or cooperative;
3. any person who is a National Representative;
4. (Amended, SG No. 95/2003) any person who is councillor in a Municipal Council - applicable solely to the relevant municipal administration;
5. any person who occupies a senior or supervisory position in a political party;
6. any person who is employed under an employment contract, excluding faculty at higher educational establishments;

(3) (New, SG No. 94/2008, effective 1.01.2009) A civil servant may represent the State or a municipality on the management or supervisory bodies of any commercial corporations wherein the State or a municipality holds an interest in the capital or of any legal persons established by a law, for which the said civil servant shall not receive any compensation.

(4) (New, SG No.43/2008, renumbered from Paragraph (3), SG No. 94/2008, effective 1.01.2009) Only Bulgarian citizens shall be eligible for appointment as senior civil servants, as well as to any positions related to performance of functions in the field of defence, public order, foreign policy, national security and safeguarding state secrets.

(5) (Renumbered from Paragraph (3), SG No. 43/2008, renumbered from Paragraph (4), SG No. 94/2008, effective 1.01.2009) Appointment to managerial positions shall be limited to persons holding a degree of higher education.

(6) (Renumbered from Paragraph (4), SG No. 43/2008, renumbered from Paragraph (5), SG No. 94/2008, effective 1.01.2009, supplemented, SG No. 108/2008) Any discrimination, privileges or restrictions based on race, nationality, ethnicity, sex, origin, religion, persuasions, membership of political, trade union or other public organizations or movements, personal, social and property status, or the existence of a disability, shall be inadmissible upon entry of civil service.

... Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

*Have you ever assessed the effectiveness of the measures prescribing criteria concerning candidature for and election to public office?*

(Y) Yes
CHILE (THIRD MEETING)

“Artículo 7. Sector público.
4. Cada Estado Parte, de conformidad con los principios fundamentales de su derecho interno, procurará adoptar sistemas destinados a promover la transparencia y a prevenir conflictos de intereses, o a mantener y fortalecer dichos sistemas.”

Chile cumple con esta disposición. El sistema institucional chileno tiene como uno de sus pilares la transparencia y publicidad de los actos de la Administración, consagrado en el inciso segundo del artículo 8° de la Constitución Política (http://www.leychile.cl/Navegar?idNorma=242302&buscar=Decreto+100+constituci%C3%B3n+pol%C3%ADtica). Además, la Ley N° 20.285 establece normas sobre Acceso a la Información Pública y crea el Consejo para la Transparencia, el cual tiene por objeto promover la transparencia de la función pública, fiscalizar el cumplimiento de las normas sobre transparencia y publicidad de la información de los órganos de la Administración del Estado, y garantizar el derecho de acceso a la información.

La Ley 20.285 (http://www.leychile.cl/Navegar?idNorma=276363&buscar=ley+20285) tiene como finalidad hacer operativo en la práctica el principio de transparencia a través de toda la Administración del Estado, lo cual aborda en forma muy completa. Establece normas sobre transparencia “activa”, es decir, información que los órganos públicos deben tener permanentemente a disposición de los ciudadanos (principalmente a través del sitio web del respectivo órgano público en internet, en el ícono denominado “Gobierno Transparente” que contiene información relativa a dotación de personal, remuneraciones, actos y resoluciones, estructura orgánica de la respectiva institución, compras y adquisiciones, información presupuestaria, entre otros rubros) y también regula el procedimiento para que los ciudadanos puedan acceder a determinada información específica que no esté incluida en la “transparencia activa”. En este caso, el ciudadano interesado debe presentar una solicitud de información, que puede ser formulada directamente a través de la página web de la institución, o personalmente en sus oficinas. La respectiva institución pública tiene un plazo de 20 días hábiles (prorrogables a 30) para responder la solicitud. En caso de que la información solicitada sea denegada o sea incompleta, ello puede dar lugar a la presentación de un reclamo, por parte del solicitante, ante el Consejo para la Transparencia (http://www.consejotransparencia.cl/), órgano autónomo cuyo Consejo Directivo es designado con participación del Senado, encargado de velar por el cumplimiento de la Ley de Transparencia y de Acceso a la información. De la resolución de este Consejo puede reclamarse ante la respectiva Corte de Apelaciones. El derecho de acceso a la información constituye un elemento fundamental para alcanzar un alto grado de
transparencia en el ejercicio de las funciones públicas, a la vez que facilita la formación de una mayor y más efectiva participación ciudadana en los asuntos públicos. Desde que la Ley entró en vigencia (20 de abril de 2009) y hasta marzo de 2012 el Consejo ha recibido 3.703 casos y dictando 3.289 decisiones, experimentándose un incremento progresivo en el número de casos que se someten al conocimiento del Consejo\(^1\). Adicionalmente, el Consejo ha dictado diversas instrucciones para favorecer la adecuada aplicación de la Ley\(^2\) y realiza otras actividades para fiscalizar su cumplimiento\(^3\).

 Entre los ejemplos de normas del ordenamiento jurídico chileno que se insertan en lo ordenado por la disposición de la UNCAC en análisis, debe incluirse la Ley 19.880, que establece las Bases de los Procedimientos Administrativos que rigen los actos de los Órganos de la Administración del Estado (http://www.leychile.cl/Navegar?idNorma=210676&buscar=ley+19880). Esta ley define el concepto “acto administrativo” y consagra (y define) **los principios a los cuales está sometido el procedimiento administrativo**, la mayoría de ellos imprescindibles para la adecuada defensa del Ordenamiento Jurídico frente a los intentos o actos de corrupción. Entre ellos están los de “abstención” (definido en el artículo 12 de la referida ley\(^4\)) y “transparencia” (definido en el artículo 165).

 Otro ejemplo de la importancia que Chile asigna al valor de la transparencia y su capacidad como herramienta para la prevención de la corrupción, en sus diversas manifestaciones, es la plataforma www.mercadopublico.cl, que forma parte del Sistema de Compras Públicas establecido por la Ley N° 19.886 (http://www.leychile.cl/Navegar?idNorma=213004&buscar=ley+19886) y en que todos los organismos públicos deben publicar la información de las compras y contrataciones de la administración. La plataforma es de acceso público, no requiere de claves para ingresar, por lo que cualquier ciudadano puede consultar en ella las transacciones efectuadas por las 845 organismos públicos que transan en el Sistema. Así, se puede acceder, a través de las fichas de licitación, visibles para cada una de las licitaciones, al detalle de los antecedentes de cada uno de los procesos licitatorios; se conocen, entre otros antecedentes, las bases de la licitación con clara identificación de los criterios de evaluación, las preguntas y respuestas durante los procesos, los proveedores que ofertan los montos que ofrecen, las resoluciones de adjudicación, las actas de evaluación, e incluso las ofertas técnicas enviadas por los proveedores, que mayoritariamente hoy son de acceso público.

 La Contraloría General, por su parte, publica todos los informes de auditoría en su página web (www.contraloria.cl) salvo que se trate de materias que, por la Constitución o la ley tengan el carácter de reservadas, lo que apunta precisamente a dar transparencia a sus actuaciones y a la de sus fiscalizados, permitiendo que la ciudadanía tenga pleno conocimiento de las observaciones que realiza respecto de los entes que controla. En cuanto a la prevención de conflictos de intereses y la debida transparencia patrimonial de las autoridades públicas, la Ley N° 18.575, de Bases Generales de la Administración del Estado (http://www.leychile.cl/Navegar?idNorma=191865&idVersion=2001-11-17), en su Título III (incorporado por la Ley N° 19.653, publicada en el D.O. [“Diario Oficial”] de 17.11.2001) regula las cuestiones de probidad administrativa, estableciendo en el art. 57 la obligación de un conjunto de altas autoridades de presentar una declaración de intereses en el plazo de 30 días contado desde la asunción del cargo, así como también la
obligación estatuida en el artículo 60 A de la misma Ley de presentar una declaración de patrimonio, la que se extiende a los directores que representen al Estado en ciertas empresas donde éste tuviere participación accionaria (art. 37 Ley N° 18.046 sobre Sociedades Anónimas, http://www.leychile.cl/Navegar?idNorma=29473&buscar=ley+18046).

Ambas declaraciones deben ser presentadas ante el Contralor General de la República o ante el Contralor Regional respectivo, según su caso, quien las mantendrá para su consulta (arts. 59 y 60 D Ley N°18.575).

En lo concerniente a la prevención de conflictos de intereses y la debida transparencia patrimonial de las autoridades públicas, la Ley N° 18.575 de Bases Generales de la Administración del Estado, en su Título III (incorporado por la Ley N° 19.653 publicada en el D.O. de 17.11.2001) regula las cuestiones de probidad administrativa, estableciendo en el art. 57 la obligación de un conjunto de altas autoridades de presentar una declaración de intereses en el plazo de 30 días contado desde la asunción del cargo, así como también la obligación estatuida en el artículo 60 A de la misma Ley de presentar una declaración de patrimonio, la que se extiende a los directores que representen al Estado en ciertas empresas donde éste tuviere participación accionaria (art. 37 Ley N° 18.046 sobre Sociedades Anónimas.

Cabe agregar que la Contraloría General de la República (CGR) tiene, dentro de su competencia, la revisión de la presentación oportuna de las referidas declaraciones, como también la verificación de que las Unidades de Control Interno fiscalicen tal materia, lo cual se efectúa durante las auditorías constantes que desarrolla esta Entidad a nivel nacional.

Ambas declaraciones antes citadas deben mantenerse en la Contraloría General de la República o en la Contraloría Regional respectiva, según su caso, para su consulta (arts. 59 y 60 D Ley N°18.575). Esta obligación también la fiscaliza el órgano contralor a través de la función de Auditorías.

Por otro lado, corresponde a la CGR pronunciarse acerca de la existencia de inhabilidades de los funcionarios públicos, lo que hace a través del control de legalidad de los nombramientos de los empleados públicos y del análisis, entre otras, de denuncias. Así también, con motivo del control de legalidad preventivo y también durante la realización de las auditorías a planes, programas, proyectos, etc., se revisa la existencia de conflictos de interés que pudieren presentar tanto funcionarios como ex funcionarios. Así, a modo ejemplar, se puede señalar que, durante la realización de las auditorías en materia de personal, se fiscaliza específicamente que los funcionarios públicos obligados a presentar tales declaraciones, las hayan presentado de manera oportuna y, con ocasión de las auditorías en que se detecta alguna situación patrimonial o de intereses conflictiva, se verifica si dicha situación ha sido informada o no en la respectiva declaración.

La Dirección Nacional del Servicio Civil (DNSC)6 cuenta con un Programa de Inducción de Probidad y Transparencia, http://www.serviciocivil.gob.cl/programa-chile-probidad/cursos, que tiene por objeto dar a conocer los elementos básicos de la organización del Estado, su administración, los derechos y obligaciones, y la administración presupuestaria a todos/as quienes se desempeñan dentro de la Administración Central del Estado, así como también comprender la importancia de sus funciones desde una óptica global del Estado y de los poderes que éste ostenta, particularmente del poder ejecutivo, mediante el cual el Presidente de la República
cumple sus funciones y atribuciones a través del gobierno central. Además de ello, entre los instrumentos a través de los cuales la DNSC da cumplimiento al N°4 del Artículo 7 de la UNCAC, cabe mencionar:

Programa de inducción y fortalecimiento de directivos/as cuyos cargos están adscritos al Sistema de Alta Dirección Pública. El Sistema de Alta Dirección Pública es un sistema creado para profesionalizar los altos cargos del Estado. Se trata que las más altas responsabilidades sean ejercidas por personas competentes e idóneas, elegidas mediante concursos públicos y transparentes.

Portal de Empleos Públicos. El portal www.empleospublicos.cl es administrado por la Dirección Nacional del Servicio Civil y contiene las convocatorias de servicios públicos a las que pueden postular funcionarios/as públicos/as y la ciudadanía, según corresponda. Cada institución que utiliza el portal es responsable de sus procesos y de las consultas técnicas que tengan los/las postulantes sobre cada convocatoria. El objetivo de este portal es facilitar y dar mayor transparencia a la difusión de la oferta de empleos que realizan los servicios públicos y optimizar el proceso de postulación.

Manual de Selección de Personas en Servicios Públicos. Uno de los aspectos relevantes que incorporó la Ley N° 19.882 (http://www.leychile.cl/Navegar?idNorma=211480&buscar=ley+19882) en la gestión de personas en el Estado, se refiere a la implementación de un nuevo Sistema de Concursos, entre cuyos objetivos destaca la valoración del mérito e idoneidad como principales factores de desarrollo de la carrera, constituyendo una herramienta técnica y homogénea para evaluar el ingreso, la promoción y el acceso a los cargos de tercer nivel directivo. Los concursos, de este modo, deben garantizar la igualdad de oportunidades, la no discriminación y la transparencia. Para apoyar a los servicios en la instauración y consolidación del Sistema de Concursabilidad, la Dirección Nacional del Servicio Civil ha diseñado un Manual para Selección de Personas en servicios públicos, regidos por el Estatuto Administrativo, que busca hacer un aporte que propicie una transparente y eficiente gestión de los concursos, donde el mérito y la idoneidad sean los elementos centrales en los procesos de selección del personal de la Administración Civil del Estado.

Por otra parte, con el fin de anticipar aspectos de la política de Recursos Humanos propuestos por medio de un Proyecto de ley al Poder Legislativo y previo a su tramitación, se emitió el Instructivo Presidencial, N°007, de 02 de noviembre de 2010, que no permite considerar como mérito, haber ejercido un cargo de Alto Directivo Público en forma provisional, sin participar del concurso público correspondiente. Además, fija plazo de seis meses para que los Altos Directivos Públicos nombrados Transitoriamente, no excedan los 6 meses en esa condición.

El Consejo de Auditoría Interna General de Gobierno elaboró, en cumplimiento de la Política de Auditoría Interna General de Gobierno, el Documento Técnico N° 29, “Programa Marco de Auditoría sobre Probidad Administrativa”, actualizado el año 2010, el cual tiene por finalidad armonizar el enfoque de auditoría utilizado en la revisión y control del cumplimiento de la probidad administrativa en los distintos Servicios de la Administración del Estado. Especificamente se puede señalar que este Documento Técnico entrega a los Auditores Internos de los servicios públicos un Programa Marco de
Auditoría que permitirá auditar procesos dirigidos a prevenir conflictos de intereses, así por ejemplo en este Documento Técnico se establece un esquema de análisis sugerido para determinar objetivos específicos de auditoría y procedimientos generales de auditoría, sobre la base de riesgos que afecten los objetivos de cumplimiento, que en el caso en cuestión, corresponde al proceso de Recursos Humanos, subproceso ingreso de personal, etapa genérica declaración de intereses y patrimonio, cuyo objetivo principal es que los funcionarios públicos que toman decisiones demuestren su objetividad y transparencia en la toma de decisiones, y que se ejecute la función pública con apego a las normas de probidad y transparencia.


Entre otros ejemplos del cumplimiento, por parte de Chile, de lo señalado en el N° 4 del artículo 7 de la UNCAC, es del caso mencionar que la Superintendencia de Valores y Seguros (SVS) mediante la Resolución N° 50, establece un Reglamento sobre el deber de reserva, manejo de información privilegiada y operaciones sobre valores de oferta pública por parte de los funcionarios de la Superintendencia de Valores y Seguros, que reglamenta las operaciones efectuadas con información obtenida por un funcionario en razón de su cargo con el fin de evitar conflictos de interés.

También como parte de las iniciativas y medidas del Estado de Chile en el contexto del cumplimiento de la disposición del N°4 del Artículo 7 de la UNCAC, es pertinente hacer mención de lo siguiente:

**Proyecto de ley de Probidad en la Función Pública.** El 3 de mayo de 2011 ingresó al Congreso el Proyecto de ley de Probidad en la Función Pública (N° de Boletín: 7616-06), el cual tiene por objeto regular el ejercicio de la función pública desde la perspectiva del cumplimiento del principio de probidad. El proyecto reconoce como mecanismo principal en la prevención de los conflictos de interés de los funcionarios públicos, la estructuración de una declaración de intereses y patrimonio (que ya existen en nuestro ordenamiento, pero que el proyecto perfecciona) que dé cuenta, pública, clara y transparentemente, de dónde están radicados los intereses de las autoridades y funcionarios obligados y a cuánto asciende el patrimonio de éstos. La intención es potenciar la regulación de las declaraciones ya existentes en la legislación. Adicionalmente, recoge en una sola ley la regulación vigente sobre declaración de intereses y patrimonio, la actualiza y establece nuevas obligaciones para las autoridades y funcionarios a los que ésta se les aplica. También unifica la normativa actual relativa a la materia, estableciendo en ella la regulación respecto de otras autoridades que no forman parte de la Administración del Estado, y que hoy en día se encuentra dispersa en diversos textos legales.
Hace extensiva la obligación de efectuar y actualizar esta declaración, a autoridades y funcionarios que actualmente no se encuentran afectos, incluyendo a los miembros del Consejo para la Transparencia, a los Defensores Locales, a los Consejeros del Consejo de Alta Dirección Pública y los miembros del Tribunal para la Contratación Pública.

Finalmente, regula nuevos mecanismos de prevención de conflictos de interés, estableciendo la obligación de ciertas autoridades de constituir un Mandato de administración discrecional de valores, y, por último, la enajenación de los activos que en aquellas situaciones excepcionales en las que el mandato no pueda resolver un determinado conflicto de interés.

Este Proyecto establece sanciones para los casos de incumplimiento de estas obligaciones. Actualmente el proyecto se encuentra en el segundo trámite constitucional en el Senado.

**Proyecto de ley que modifica la ley N° 20.285, de Acceso a la Información Pública y Formulación de indicaciones.** El 2 de junio del 2011 se presentó en el Congreso Nacional un proyecto de ley (N° de Boletín 7686-07) para modificar la ley N° 20.285 sobre acceso a la información pública. Se busca perfeccionar la normativa sobre transparencia activa, incorporando la publicación de remuneraciones de los trabajadores regidos por el Código del Trabajo, y de las autoridades elegidas por elección popular o cualquier otro mecanismo de designación; se extiende el plazo para la notificación de terceros eventuales perjudicados con la solicitud de acceso y el plazo de respuesta de éstos; la elaboración anual del Presidente del Consejo para la Transparencia de una cuenta pública sobre la gestión de dicho organismo el año anterior.

Posteriormente, con fecha 28 de noviembre del año 2011, el gobierno del Presidente Sebastián Piñera presentó una indicación al proyecto de ley que modifica la ley N° 20.285 sobre acceso a la información pública. Mediante esta indicación, y luego de 3 años de vigencia de la Ley de Transparencia, se busca mejorar el ejercicio del derecho de acceso a la información pública y del Consejo para la Transparencia, a través, entre otros, de la ampliación de los servicios públicos que son sujetos de la ley de transparencia, como las corporaciones y asociaciones municipales; la especificación de qué se entiende por información pública cuando está en poder de los órganos de la administración del Estado; la inclusión de algunas materias obligatorias a publicar por los servicios en sus sitios electrónicos, como las declaraciones de intereses y patrimonio de las autoridades y funcionarios obligados a presentarlasc; el perfeccionamiento del procedimiento ante el Consejo para la Transparencia, a través de la inclusión de un recurso especial contra sus resoluciones; una mayor protección a los datos personales.

Actualmente el proyecto se encuentra en el primer trámite constitucional en la cámara de diputados.

**Próxima presentación de proyecto de ley sobre regulación del lobby.** El Gobierno presentará en el Congreso Nacional, durante el primer semestre del año 2012, un proyecto de ley sobre regulación del lobby, cuya idea central es transparentar la agenda de las autoridades públicas que son sujeto pasivo de lobby.

**Próxima presentación de proyecto de ley sobre Partidos Políticos.** Durante el primer semestre del año 2012 el Gobierno presentará en el Congreso Nacional un proyecto que reforma la ley de partidos políticos que, entre otras cosas, otorgará mayores derechos a
Ingreso de Chile a Open Government Partnership (Alianza para el Gobierno Abierto).

Chile adhirió al Open Government Partnership (Alianza para el Gobierno Abierto) en septiembre del año 2011. Esta Alianza es un acuerdo asociativo destinado a promover la adopción de políticas de participación ciudadana, lucha contra la corrupción, empoderamiento ciudadano y gobierno electrónico en cada uno de los Estados miembros. Con motivo de este ingreso, el Gobierno de Chile ha impulsado una serie de actividades con distintos actores de la sociedad, tanto a nivel nacional como internacional, que suponen la integración de ésta en la iniciativa, con el objetivo de presentar un Plan de Acción en la ciudad de Brasilia, Brasil, en la reunión que se llevara a cabo los días 16, 17 y 18 de abril del 2012.

Una de las actividades más importante fue la realización de una consulta pública en línea a fin de incorporar las perspectivas y expectativas de los diferentes sectores de la sociedad en esta tarea. Esta se realizó en entre el 23 de diciembre de 2011 y el 9 de enero de 2012 y permitió recibir opiniones al primer documento de propuesta para el Plan de Acción del Gobierno de Chile.

A este proceso se agregó un proceso paralelo de consulta con expertos representantes de organismos públicos y organizaciones de la sociedad civil.

Las sugerencias y opiniones recogidas en el marco de la consulta y la respuesta a ellas fueron publicadas en el sitio electrónico de la consulta y sirvieron de base para la reformulación del Plan de Acción. Más información se encuentra en el link http://www.ogp.cl/.

3 Se han realizado, por ejemplo, evaluaciones para conocer la forma en que los organismos públicos ingresan y dan respuesta a las solicitudes de información ciudadanas que reciben mediante la metodología de cliente simulado http://www.consejotransparencia.cl/bajo-desempeno-de-organismos-publicos-ante-solicitudes-ciudadanas-de-acceso-a-informacion/consejo/2012-02-15/152848.html, y rankings que evalúan el cumplimiento de los deberes de transparencia activa http://www.consejotransparencia.cl/consejo-para-la-transparencia-entrega-segundo-ranking-nacional-de-transparencia/consejo/2012-01-10/165842.html.
4 Artículo 12. Principio de abstención. Las autoridades y los funcionarios de la Administración en quienes se den algunas de las circunstancias señaladas a continuación, se abstendrán de intervenir en el procedimiento y lo comunicarán a su superior inmediato, quien resolverá lo procedente.

Son motivos de abstención los siguientes:
1. Tener interés personal en el asunto de que se trate o en otro en cuya resolución pudiera influir la de aquél; ser administrador de sociedad o entidad interesada, o tener cuestión litigiosa pendiente con algún interesado.
2. Tener parentesco de consanguinidad dentro del cuarto grado o de afinidad dentro del segundo, con cualquiera de los interesados, con los administradores de entidades o sociedades interesadas y también con los asesores, representantes legales o mandatarios que intervengan en el procedimiento, así como compartir despacho profesional o estar asociado con éstos para el asesoramiento, la representación o el mandato.
3. Tener amistad íntima o enemistad manifiesta con alguna de las personas mencionadas anteriormente.
4. Haber tenido intervención como perito o como testigo en el procedimiento de que se trate.
5. Tener relación de servicio con persona natural o jurídica interesada directamente en el asunto, o haberle prestado en los dos últimos años servicios profesionales de cualquier tipo y en cualquier circunstancia o lugar.
La actuación de autoridades y los funcionarios de la Administración en los que concurran motivos de abstención no implicará, necesariamente, la invalidez de los actos en que hayan intervenido. La no abstención en los casos en que proceda dará lugar a responsabilidad. En los casos previstos en los incisos precedentes podrá promoverse inhabilitación por los interesados en cualquier momento de la tramitación del procedimiento. La inhabilitación se planteará ante la misma autoridad o funcionario afectado, por escrito, en el que se expresará la causa o causas en que se funda.

5 Artículo 16. Principio de Transparencia y de Publicidad. El procedimiento administrativo se realizará con transparencia, de manera que permita y promueva el conocimiento, contenidos y fundamentos de las decisiones que se adopten en él. En consecuencia, salvo las excepciones establecidas en la Ley de Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado y en otras disposiciones legales aprobadas con quárum calificado, son públicos los actos y resoluciones de los órganos de la Administración del Estado, así como sus fundamentos y documentos en que éstos se contengan, y los procedimientos que utilicen en su elaboración o dictación.

6 Servicio público descentralizado, creado por la Ley Nº 19.882, que tiene como misión promover y contribuir a la modernización del Estado, posicionando -como un elemento central- la gestión estratégica de las personas que trabajan en la administración pública.

7 Órgano asesor del Presidente de la República, que efectúa proposiciones en torno a la formulación de políticas, planes, programas y medidas de control interno de la gestión gubernamental, en sus diversas instancias, conforme a las directrices definidas al efecto por el Gobierno y que tiendan a fortalecer la gestión de los organismos que conforman la Administración del Estado y el uso debido de los recursos públicos asignados para el cumplimiento de sus programas y responsabilidades institucionales.

CHILE (SECOND MEETING)

Artículo 7. Sector público
1. Cada Estado Parte, cuando sea apropiado y de conformidad con los principios fundamentales de su ordenamiento jurídico, procurará adoptar sistemas de convocatoria, contratación, retención, promoción y jubilación de empleados públicos y, cuando proceda, de otros funcionarios públicos no elegidos, o mantener y fortalecer dichos sistemas. Éstos:
   a) Estarán basados en principios de eficiencia y transparencia y en criterios objetivos como el mérito, la equidad y la aptitud;
   b) Incluirán procedimientos adecuados de selección y formación de los titulares de cargos públicos que se consideren especialmente vulnerables a la corrupción, así como, cuando proceda, la rotación de esas personas a otros cargos;
   c) Fomentarán una remuneración adecuada y escalas de sueldo equitativas, teniendo en cuenta el nivel de desarrollo económico del Estado Parte;

Comentario de la SVS:
Como buena práctica la Superintendencia se rige por el Código de buenas prácticas laborales sobre no discriminación para la administración central del Estado, haciendo hincapié en lo que se refiere al proceso de reclutamiento y selección, utilizando, por ejemplo, el currículum ciego en las postulaciones, evaluaciones psicológicas encargadas a consultoras externas y evaluaciones de inglés encargadas al Instituto Chileno Norteamericano, en caso que corresponda.

b) Incluirán procedimientos adecuados de selección y formación de los titulares de cargos públicos que se consideren especialmente vulnerables a la corrupción, así como, cuando proceda, la rotación de esas personas a otros cargos;
   c) Fomentarán una remuneración adecuada y escalas de sueldo equitativas, teniendo en cuenta el nivel de desarrollo económico del Estado Parte;

Comentario de la SVS:
Con el fin de reducir la rotación de personal calificado en la SVS, durante el 2010 se tomaron medidas tales como: solicitar a la Dirección de Presupuesto recursos adicionales destinados a generar incentivos para aquellos funcionarios que en consideración a la criticidad de las funciones que desempeñan y a su experiencia y desarrollo profesional en
la SVS resulta de suma relevancia retener en el Servicio. Adicionalmente, se identificaron funcionarios a quienes fuera posible otorgar una promoción de grado. Dicho análisis consideró criterios de desempeño de los funcionarios, brecha existente entre sus rentas individuales respecto de mercado, promociones previas, acceso a capacitación y a otros incentivos. Como resultado de los procesos descritos en esta ocasión fue posible otorgar una promoción de grado a 62 funcionarios de distintos estamentos de la SVS, lo que representa un 20% del total de 310 funcionarios que se desempeñan actualmente en la Superintendencia. Asimismo, se envió al Ministerio de Hacienda la propuesta de porcentajes de asignación mensual establecida en el artículo 17 de la Ley 18.091, solicitando que se adopten medidas tendientes a igualar las remuneraciones de los funcionarios de la SVS a aquellas correspondientes a los funcionarios de la Superintendencia de Bancos e Instituciones Financieras, entidad que cumple un rol homologable al que desarrolla la SVS. Para esto último, se aportaron antecedentes que evidencian la brecha de remuneraciones que existe entre los funcionarios de ambos servicios. Con todas estas medidas se busca avanzar progresivamente en el objetivo comúnmente compartido de tener una Superintendencia de alto nivel técnico, de carácter profesional e independiente, comprometida con el servicio público, tratándose de esa manera evitar posibles actos de corrupción y captura del regulador.

d) Promoverán programas de formación y capacitación que les permitan cumplir los requisitos de desempeño correcto, honorable y debido de sus funciones y les proporcionen capacitación especializada y apropiada para que sean más conscientes de los riesgos de corrupción inherentes al desempeño de sus funciones. Tales programas podrán hacer referencia a códigos o normas de conducta en las esferas pertinentes.

COMENTARIO GENERAL: El marco general del establecimiento de un sistema de función pública en Chile tiene como pilar el artículo 38 de la Constitución Política de la República, el cual dispone que “Una ley orgánica constitucional determinará la organización básica de la Administración Pública, garantizará la carrera funcionaria y los principios de carácter técnico y profesional en que debe fundarse, y asegurará tanto la igualdad de oportunidades de ingreso a ella como la capacitación y el perfeccionamiento de sus integrantes”. Complementa dicha disposición el N° 17° del artículo 19 constitucional (inserto en el capítulo de las garantías constitucionales), el que reza: “art. 19: La Constitución asegura a todas las personas: 17° La admisión a todas las funciones y empleos públicos, sin otros requisitos que los que impongan la Constitución y las leyes”. La Ley orgánica constitucional a que alude la Constitución es la Ley N° 18.575 de Bases Generales de la Administración del Estado (cuyo texto refundido, coordinado y sistematizado fue fijado por el Decreto con Fuerza de Ley –DFL– N° 1-19.653, publicado en el Diario Oficial el 17.11.2001). Este cuerpo legal, en lo referido a lo dispuesto en el artículo 7° N.1.- de la UNCAC, contiene diversas disposiciones generales que informan la función pública, así como aquellas referidas a los criterios generales relativos al sistema de convocatoria, selección, reclutamiento, contratación, remuneración, retención, promoción y jubilación de los funcionarios públicos.

Así, en cuanto a los criterios generales, el artículo 13 instituye la observancia de los principios de probidad administrativa y dispone la obligación de ejercer la función pública con transparencia. Por su parte el artículo 15 identifica los criterios que regirán la
ley estatutaria del personal de la Administración; el artículo 16 los requisitos de ingreso, en particular la observancia del principio de la igualdad de condiciones para postular los empleos públicos a través de concursos; el artículo 17 previene que el estatuto de los funcionarios públicos deberá proteger la dignidad de la función y guardar conformidad con su carácter técnico, profesional y jerarquizado.

Finalmente el artículo 18 dispone la sujeción de los funcionarios a responsabilidad administrativa, sin perjuicio de las responsabilidades civil y penal derivadas de sus actuaciones, mientras que el artículo 19 de la Ley de Bases establece la prohibición de realizar cualquier actividad política dentro de la Administración.

Por otro lado, más específicamente, los artículos 43 a 51 –Párrafo 2° del Título II de la Ley de Bases sobre la carrera funcionaria- establecen el marco para la dictación del Estatuto Administrativo del personal de las entidades públicas, en particular lo relativo al ingreso, deberes y derechos, responsabilidad administrativa y la cesación de funciones. En este ámbito importa relevar el establecimiento de concursos públicos para seleccionar a los postulantes a cargos públicos, a través de procedimientos técnicos, imparciales que aseguren una apreciación objetiva de de sus aptitudes y méritos (art. 44); el carácter de estable que tiene el empleo público y las causales específicas por las cuales se podrá cesar en un empleo (art. 46); los principios generales relativos a la calificación del desempeño (art. 47). Asimismo se disponen los criterios para el establecimiento de un sistema de capacitación y perfeccionamiento (art. 48), así como para un régimen de remuneraciones que estimule el ejercicio de determinadas funciones preservando el principio de que a responsabilidades y condiciones similares se asignarán iguales remuneraciones.

Finalmente, la Ley N° 19.653 de diciembre de 1999 incorporó a la Ley de Bases un extenso Título III referido al principio de probidad administrativa, el cual, según la ley, “consiste en observar una conducta funcionaria intachable y un desempeño honesto y leal de la función o cargo, con preeminencia del interés general sobre el particular” (art. 52). Dicho principio fue elevado a rango constitucional, en el artículo 8° inc. 1° de la Constitución, mediante la Ley de Reforma Constitucional N°20.050 de 26.08.2005. Las normas específicas que regulan la carrera funcionaria están establecidas en la Ley N° 18.834 que contiene el Estatuto Administrativo cuyo texto refundido, coordinado y sistematizado fue fijado a través del DFL N° 29, de 16.06.04, del Ministerio de Hacienda, publicado en el DO el 16.03.05; la Ley N° 19.882 (junio 2003) llamada de Nuevo Trato Laboral, que crea el Servicio Civil e instituye el Sistema de Alta Dirección Pública, y la Ley N° 19.553 sobre Asignación de Modernización que regula el pago de una porción de remuneraciones variables asociada al cumplimiento de metas.

Algunos aspectos importantes del Estatuto Administrativo se encuentran en su artículo 3°, letra f), que señala que la carrera funcionaria “…es un sistema integral de regulación del empleo público, aplicable al personal titular de planta, fundado en principios jerárquicos, profesionales y técnicos, que garantiza la igualdad de oportunidades para el ingreso, la dignidad de la función pública, la capacitación y el ascenso, la estabilidad en el empleo, y la objetividad en las calificaciones en función del mérito y de la antigüedad.” Asimismo,
en lo referido a igualdad en el acceso al empleo público el Estatuto Administrativo dispone, que se prohíbe “...todo acto de discriminación que se traduzca en exclusiones o preferencias basadas en motivos de raza, color, sexo, edad, estado civil, sindicación, religión, opinión política, ascendencia nacional u origen social que tengan por objeto anular o alterar la igualdad de oportunidades o trato en el empleo (art. 17 inc. 3°)”

Por su parte, son importante para la provisión de los empleos públicos las normas de la Ley N° 19.882 cuyo Sistema de Alta Dirección Pública distingue entre Primer y Segundo Nivel Jerárquico, garantizando un sistema de acceso igualitario a los cargos directivos de los servicios públicos del país; hace concursables los cargos de jefes de departamento y los de niveles de jefaturas jerárquicos equivalentes de los ministerios y servicios públicos, denominados de Tercer Nivel Jerárquico; y acentuó el carácter meritorio de la carrera administrativa regulada por el Estatuto Administrativo.

Respecto de esta materia, en lo concerniente a buenas prácticas, la Contraloría General de la República (CGR) informa lo siguiente:

En primer término, cabe tener presente que la Contraloría General de la República, como Organismo Superior de Control debe contar con personal de excelencia. Para ello, la selección del personal se realiza sobre la base de los principios de eficiencia y transparencia y en criterios objetivos como el mérito, la equidad y la aptitud.

En efecto, toda la selección de sus funcionarios se hace a través de su portal3, el que tiene un Banner especial de selección de personal (Trabaje con nosotros), al mismo tiempo se publican en diarios de circulación nacional los llamados a participar; los aspirantes participan libremente en un proceso que es igual para todos quienes quieran trabajar en la CGR, que supone entrevistas, pruebas y antecedentes curriculares evaluados por un Comité de Selección distinto al Contralor General. Al mismo tiempo, se solicita a una empresa externa a las Entidades Fiscalizadoras Superiores un examen psicolaboral. Todo ello con parámetros de la más alta eficiencia.

Al mismo tiempo posee una escala de rentas que condice con el nivel de exigencia requerido y contempla un proceso de capacitación a través de pasantías y charlas al personal que ingresa y un sistema de mejoramiento continuo del conocimiento de aquellos funcionarios con más tiempo en la institución.

Contempla un proceso de rotación de funcionarios y jefaturas tanto del nivel central como respecto de sus sedes regionales, evitando con ello que se creen lazos de amistad

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1 Dicho estatuto, establece en el artículo 60, que “…un reglamento contendrá las normas complementarias orientadas a asegurar la objetividad, transparencia, no discriminación, calidad técnica y operación de los concursos para el ingreso, para la promoción y para cualquier otra finalidad con que se realicen.” En cumplimiento de esta norma, se dictó el Decreto Supremo (DS) N° 69 de 30 de enero de 2004 (anexo 5), del Ministerio de Hacienda, que contiene el Reglamento sobre Concursos del Estatuto Administrativo.

2 En cuanto a los niveles directivos se distinguen tres jerarquías, siendo las dos primeras denominadas cargos de alta dirección pública, cuya provisión es responsabilidad del Consejo de Alta Dirección Pública, quien actúa apoyado por la Dirección Nacional del Servicio Civil, en el marco de normas objetivas, que garantizan la realización de concursos públicos, abiertos y de amplia difusión, para la provisión de estos cargos, sobre la base del mérito y la idoneidad. Luego existen los cargos denominados de Tercer Nivel Jerárquico, que corresponden a Jefaturas de Departamento y otros equivalentes, los cuales también son provistos sobre la base de concursos públicos, abiertos, de amplia difusión, que permiten un acceso igualitario sobre la base del mérito y la idoneidad. Finalmente, existen los concursos de ingreso a la planta, de promoción y de encasillamientos del personal, al tenor de lo dispuesto en el Reglamento N° 69 de 2004 (anexo 5), ya citado.
con los funcionarios de los servicios fiscalizados y permiten también dar una visión integradora y transversal del quehacer institucional a sus empleados.

Los funcionarios de la CGR se rigen por el Estatuto Administrativo y por normas estatutarias contenidas en su ley orgánica constitucional; existe un ordenamiento esquemático de funciones contenidos en su Planta 4; escalafones funcionarios que se confeccionan luego de un proceso objetivo de calificaciones; para acceder a cargos superiores existen los ascensos y procesos reglados conocidos por todos; existen procesos de capacitación por competencias que permiten a los funcionarios adquirir las capacidades necesarias para acceder a cargos superiores.

El CAIGG, por su parte, señala:

El Consejo de Auditoría Interna General de Gobierno elaboró, en cumplimiento de la Política de Auditoría Interna General de Gobierno, el Documento Técnico N° 29, “Programa Marco de Auditoría sobre Probidad Administrativa”, actualizado el año 2010, el cual tiene por finalidad armonizar el enfoque de auditoría utilizado en la revisión y control del cumplimiento de la probidad administrativa en los distintos Servicios de la Administración del Estado. Específicamente se puede señalar que este Documento Técnico entrega a las Unidades de Auditoría Interna de los servicios públicos un Programa Marco de Auditoría que permitirá auditar diversos procesos, tales como: 1° “La Ejecución de la Función Pública”, cuyo objetivo principal es verificar, por parte del auditor interno, que la ejecución de la función pública se ejecute con apego a las obligaciones funcionarias y sin infracción de las incompatibilidades legales; 2° “Cumplimiento de la Jornada Laboral”, cuyo objetivo principal es verificar que ésta se cumpla en forma continua y de acuerdo al horario establecido y en ejecución de las labores propias del cargo; 3° “Proceso de Adquisición”, cuyo objetivo principal es verificar la realización de una adecuada planificación en relación a los requerimientos del servicio. Finalmente, el Auditor Interno deberá verificar si en el servicio auditado existe o no un ambiente de control interno, que impida la ejecución de acciones de riesgos asociados a la probidad, en relación a cada uno de los procesos auditados.

Comentario de la SVS acerca de lo señalado en la letra d) del Nº 1 del artículo 7:

Respecto de este punto, funcionarios de la Superintendencia de Valores y Seguros han participado y organizado Seminarios relacionados con prácticas de prevención de la corrupción y cohecho. Ej. Seminario "La Convención para Combatir el Cohecho a Funcionarios Públicos Extranjeros en Transacciones Comerciales Internacionales de la OCDE y su aplicación en el sector privado". Asimismo ha existido una permanente capacitación de los funcionarios de la Superintendencia de Valores y Seguros en “Probidad y transparencia en el sector público”

2. Cada Estado Parte considerará también la posibilidad de adoptar medidas legislativas y administrativas apropiadas, en consonancia con los objetivos de la presente Convención y de conformidad con los principios fundamentales de su derecho interno, a fin de establecer criterios para la candidatura y elección a cargos públicos.

COMENTARIO GENERAL: Chile, de acuerdo con el artículo 4° de la Constitución, es una república democrática y, por tanto, define a las autoridades de las distintas de
acuerdo con los procedimientos electorales usuales. Así, el artículo 5° constitucional señala que la soberanía reside en la nación y que su “ejercicio se realiza por el pueblo a través del plebiscito y de elecciones periódicas…” .

En el mismo cuerpo constitucional están contenidas las normas que definen la condición de ciudadano, su ejercicio y su pérdida eventual (art. 13), el carácter personal, igualitario, secreto y voluntario del sufragio5 (art. 15) y las condiciones bajo las cuales se suspende este derecho (art. 16) o la calidad de ciudadano (art. 17).

Por su parte, el artículo 18 establece el marco general que regula el sistema electoral, disponiendo que leyes orgánicas constitucionales determinarán los aspectos concretos adopten dicho sistema, los mecanismos de financiamiento, su transparencia, límite y control del gasto, así como los registros electorales.

En cuanto a las normas que regulan la elección de los diversos órganos a nivel nacional, subnacional o local, la propia Constitución fija los criterios de elegibilidad de las candidaturas y norma las bases de los procesos eleccionarios respecto de la Presidencia de la República (arts. 25 a 31), Diputados (47 y 48), Senadores (49-50) y alcaldes y concejales (arts. 118-119). Adicionalmente, la regulación de los detalles de los procesos electorales está contenida en la Ley N°18.700 de Votaciones Populares y Escrutinios, y en la Ley N° 18.695 respecto de algunas materias específicas relativas a los gobiernos locales.

Por otro lado, la Ley N°18.460 crea el Tribunal Calificador de Elecciones, y la Ley N°18.556 el sistema electoral y el Servicio Electoral, esta última la entidad de supervigilar y fiscalizar a los organismos encargados de efectuar las elecciones y formar y mantener el Padrón Electoral.

Finalmente, la Ley N° 19.175 Orgánica Constitucional sobre Gobierno y Administración Regional precisa el mecanismo mediante el cual se eligen los miembros de los Consejos Regionales (arts. 29 a 35).
刑事司法机关廉政

一、检察院系统：

加强检察机关廉政建设和内部风险防范采取的举措

1.关于贯彻《联合国反腐败公约》第七条的举措。

（1）检察机关工作人员招聘、录用和退休制度中体现公正透明和问责精神的制度。一是制定完善招聘、录用制度及方案措施。坚持公平、公正、公开原则，提前向人事主管部门报送遴选录用（招聘）计划，并及时公开职位及资格条件；统一组织笔试，命题严格保密；委托国家级命题机构命制面试题本；邀请纪检监察部门全程监督。防止舞弊行为。二是严格执行国家干部退休制度。明确干部达到退休年龄（60岁）后，启动办理退休手续，免去相应职务（法律职务、行政职务），并及时将工资关系转移至离退休干部局。

（2）高腐败风险岗位的特殊选任和培训制度，如轮岗制度。针对检察机关领导干部面临的高腐败风险，在《检察官培训条例》中突出政治理论培训的重要地位，作为领导素能培训的一项重要内容。制定《“十三五”时期检察教育培训工作规划》，
牢牢抓住“关键少数”，将思想政治与法治理念培训作为重要培训内容，突出检察机关领导素能培训，要求最高人民检察院5年内对各省级院班子成员和地市级检察长轮训一遍，每3年对县级院检察长轮训一遍；省级院对地市级和县级院班子成员轮训一遍；分层分类完成对省、市、县三级院业务部门负责人的轮训。制定并实施《基层检察人员轮训办法（试行）》，将思想政治理论教育、理想信念教育和检察职业道德纪律教育纳入轮训内容，每三年为一个周期，每三年把基层检察人员轮训一遍，依次接替、循环进行，形成全覆盖、周期性、常态化的轮训机制。

建立和完善任职和新进人员培训制度。根据有关规定，高检院授权并指导各省级院组织初任检察官资格培训，大力开展晋升高级检察官资格培训，举办各级新进干部培训班，把“坚持德育为先”放在第一位，突出强调“立德树人”，加强反腐倡廉教育、警示教育和岗位廉政教育，引导干警保持廉洁操守，提高检察人员廉洁从检能力。

（3）检察官的选用标准。严格检察官选任条件、标准和程序，从入口上保证检察官廉洁从检、公正司法。在坚持公务员法、检察官法相关标准的前提下，积极推行检察官员额制改革，严格检察官遴选考核，规定曾因犯罪受过刑事处罚等情形，不得入额。
I Focus on standardized rules and regulations to promote law-based duty fulfillment and scientific administration

China’s civil servant administration system has experienced the development course from theoretical discussion to pragmatic implementation. The implementation of the Civil Servant Law of the People’s Republic of China (hereafter referred to as Civil Servant Law) on January 1, 2006 marked a new legalization phase of China’s civil servant administration system. The Civil Servant Law defines the scope and basis of civil servant administration. It is formulated in accordance with the Constitution of the People’s Republic of China and actual practices of cadre and personnel system reforms. Civil servants as defined by the Civil Servant Law refer to those who perform public duties according to the law and have been included into the state administrative staffing with wages and welfare borne by the state public finance. The people working in the departments of the Communist Party of China, organs of people’s congresses, administrative offices, departments of the Chinese People’s Political Consultative Conference, judicial organizations, procuratorate departments and departments of democratic parties all belong to the category of civil servants.

The Civil Servant Law defines the principles and contents of civil servant administration. The Civil Servant Law stipulates that civil servants administration should follow the principle of openness, equality, competition and selecting the superior ones, should be carried out pursuant to the legal power limits, qualifications, standards and procedures and should adhere to the principle of paying equal attention to supervisory restrictions and incentive guarantees. The Civil Servant Law covers all the links of civil servant recruitment, management and dismissal and every aspect of a civil servant’s public career is provided for in a comprehensive manner including employment, assessment, appointment and dismissal, promotion and demotion, reward, government discipline punishment, training, intercommunication, avoidance, resignation and dismissal, salary, welfare and insurance, retirement, appeal and accusation and appointment. The Civil Servant Law defines China’s classified system of posts of civil servants as well as the categorization of posts and ranks. The Civil Servant Law establishes the principle of classified administration of civil servants and further improves the categorization of posts and ranks. The posts of civil servants, in light of the nature, features and necessities of administration on civil servant posts, are classified into such categories as comprehensive
administrators, technological professionals and administrative law enforcers. The posts of civil servants are divided into leading posts and non-leading posts.

The Civil Servant Law defines the fundamental requirements and intrinsic nature of civil servants administration. Civil servants’ activities of fulfilling duties according to law are under legal protection. The Civil Servant Law not only stipulates the basic principles, basic systems and basic measures of civil servant administration, but also clarifies the rights and obligations of civil servants, the organizations of administration, and related legal liabilities. Through clearly defining the essential aspects of civil servant administration, the Civil Servant Law provides the solid foundation for the administration of civil servants in a scientific and law-biding manner.

**II Focus on institutional innovation to prevent illegitimate manipulations of civil servant selection and appointment.**

The Civil Servant Law has scored much reformative and innovative progress in terms of improving the civil servants administration system and related mechanisms.

The Civil Servant Law establishes the mechanism of succession by providing for the recruitment and dismissal of civil servants. For instance, it stipulates that citizens can become civil servants through public examinations, a constitutional right equally bestowed upon every one. It is also stipulated that all the civil servants should be recruited through examinations, which contributes to the effective prevention of certain malpractices in public servants selection. During the past five years since the implementation of the Civil Servant Law, a total of 11.77 million people have participated in public examinations and 620,000 of them have been selected as civil servants.

The Civil Servant Law establishes the mechanism of competition. It is stipulated that recruitment of beginning public servants must follow the principle of open examination, strict assessment, competition on an equal footing and selection by merits and that candidates to be promoted to a leading position within the same public organ shall be selected through competitive post bidding. For certain post vacancies, candidates may be selected through an open selection from the society. The introduction of the mechanism of competition effectively increases the transparency of public servants selection and prevents varied forms of illegitimate manipulation.

The Civil Servant Law establishes the mechanism of protecting the rights and interests of civil servants. The Civil Servant Law stipulates that civil servants enjoy eight rights including participating in trainings, provides for the system of launching an appeal or accusation, the arbitration system for personnel disputes of contracted civil servants, and the system of salary, welfare and insurance for civil servants, and establishes the four circumstances where civil servants cannot be dismissed. All these reflect the importance that the state attaches to the protection of civil servants’ rights and interests.
The Civil Servant System establishes the mechanism of supervision and restraint by providing for the nine obligations of civil servants including exemplarily abiding by the Constitution and laws, 16 disciplines that civil servants should not violate, and systems of assessment, punishment, dismissal, voluntary resignation and forced resignation, all combined to strengthen institutional supervision over civil servants. The establishment of such systems such as responsibility investigation, resignation and dismissal greatly strengthens the administration and supervision of civil servants.

**III Focus on supervisory and restraining measures to promote open and transparent operation of public power and clean governance.**

In recent years, China has made constant reformative and innovative progress in the supervisory mechanism of civil servants and the promotion of clean governance.

China has established the power restraint and supervisory system. On the principles of reasonable structure, scientific distribution, rigorous procedures and effective restraint, China is gradually establishing a sound power structure and operation mechanism featuring both restraint and coordination among decision-making power, executive power and supervisory power. Now, a supervisory system with Chinese characteristics has been established, composed of intra-Party supervision in the CPC, supervision by the National People’s Congress and the local people’s congresses (NPCs), supervision within the governments, and democratic supervision by the Chinese People’s Political Consultative Conference National Committee and local people’s political consultative conferences (CPPCCs), judicial supervision, supervision by the general public and supervision by public opinion. These relatively independent supervision mechanisms collaborate closely with one another to form an integrated force.

Consolidated efforts are devoted to ensuring the proper exercise of public power. The Law of the People’s Republic of China on the Supervision of Standing Committees of People’s Congresses at All Levels enacted in 2007 strengthened the supervisory role of those committees in the form of law over the administrative, judicial and procuratorial powers of the people’s governments, people’s courts and people’s procuratorates at corresponding levels. Also enacted are the Law of the People’s Republic of China on Administrative Supervision, Audit Law of the People’s Republic of China, Administrative Reconsideration Law of the People’s Republic of China, Administrative Procedure Law of the People's Republic of China to establish the systems of administrative supervision, audit supervision, administrative re-consideration and administrative procedure to strengthen supervision over the administrative organs and their staff. China has established the system of making public such information as related to the exercise of power. Since the 1980s, the Chinese government has proactively implemented the systems of making public government affairs. The Regulations of the People’s Republic of China on Making Public Government Information and some other important statutory documents have been promulgated. The Regulations stipulate that government information, other than that related to state secrets, business secrets and personal privacy, should be made public in a timely and accurate manner, with the
requirement of making public as the principle and holding back as the exception, to
guarantee the people’s right to know, participate, express and supervise.
Transparencia

Tanto la política pública como el marco legal colombiano tienen una aproximación al concepto de transparencia. Así las cosas y de conformidad con el CONPES 3654 y la Ley de Transparencia y del Derecho de Acceso a la Información Pública (Ley 1712 de 2014), la transparencia implica la gestión y publicación de información según criterios de relevancia, accesibilidad, exactitud y cumplimiento de plazos. Adicionalmente, la Cumbre de Poderes Judiciales la define como la carga que se le impone a los poderes judiciales de mantener accesible al público la información relevante de su gestión y de sus integrantes.

Con base en lo anterior a continuación se expone cómo Colombia busca:

1.1 Establecer y fortalecer sistemas para asegurar la transparencia y la rendición de cuentas en la convocatoria, contratación, retención y jubilación de empleados públicos de las instituciones de justicia penal y para poner en marcha procedimientos adecuados para la selección y formación de titulares de cargos públicos que se consideren especialmente vulnerables a la corrupción en las instituciones de justicia penal.

Como se expuso con anterioridad, le corresponde al Consejo Superior de la Judicatura la administración de la Rama Judicial. La Sala Administrativa de dicho Consejo elabora el presupuesto de la Rama, determina la estructura y la planta del personal de las Corporaciones y Juzgados y elabora los planes de formación, capacitación y adiestramiento.

Para realizar las formaciones y capacitaciones cuenta con la Escuela Judicial “Rodrigo Lara Bonilla”. En el año 2016 se realizaron cursos de formación en gestión documental, como también se consolidó la red de formadores en los módulos de optimización de talento humano, ética judicial, acción de tutela y cultura del servicio. También se realizó un programa de formación de implementación de las TIC en la Rama Judicial para reforzar los mecanismos de seguridad y acceso a la información.

A diferencia de la Corte Suprema de Justicia, la Corte Constitucional y el Consejo de Estado, la Fiscalía General de la Nación tiene autonomía para asignar la planta de personal de su Corporación, también tiene un Manual de Contratación y cuenta con la Escuela de Investigación Criminal y Ciencias Forenses para la capacitación de personal.

Para explicar el funcionamiento de la convocatoria, contratación y retención de empleados públicos, en primer lugar, cabe destacar que la Ley 270 de 1996 en su artículo 125, clasifica a los servidores de la Rama Judicial según la naturaleza de sus funciones y competencias. En este sentido son funcionarios los magistrados de las corporaciones nacionales, jueces de la república y fiscales, por otra parte, son empleados los demás servidores judiciales.
Para la contratación y permanencia de los mismos se tiene que, de conformidad con el artículo 130 de la Ley 270 de 1996, son de libre nombramiento y remoción los cargos de Magistrado Auxiliar, Abogado Asistente y sus equivalentes que pueden ser, los adscritos a la Presidencia y Vicepresidencia, y los secretarios. Los demás cargos son de carrera. Las calidades para ocupar los cargos de carrera se encuentran estipuladas en los artículos 160 y 161 de la ley 270. Adicionalmente, las Corporaciones de la Rama Judicial tienen un Manual de Funciones para los Cargos Adscritos. En el caso de la Fiscalía General de la Nación el artículo 59 de la ley 938 de 2004, señala los cargos que son de libre nombramiento y remoción y dispone que los demás cargos son de carrera judicial.

Para el incremento, profesionalización, formación e idoneidad de los funcionarios y empleados de la Rama Judicial se reglamentó la convocatoria a concurso de méritos para la conformación de Registros de Elegibles mediante Acuerdo PSAA14-10228, y se implementó el Acuerdo PSAA14-10281 que incluyó una nueva metodología de calificación teniendo en cuenta los cambios legislativos y los nuevos modelos de gestión. Así en el Plan Sectorial de Desarrollo se buscó mediante dichos mecanismos la consolidación de la selección del talento humano por el sistema de carrera judicial para la profesionalización de funcionarios y empleados, la eficacia en su gestión, la garantía de igualdad en la posibilidad de acceso, y el mérito como el fundamento principal para el ingreso.

La Dirección Ejecutiva de Administración Judicial y las seccionales de las mismas son las encargadas de los asuntos relacionados con la contratación. Los procedimientos para contratar están en el Manual de Contratación dispuesto en la resolución No. 4132 de 2014. Adicionalmente, de conformidad con el Acuerdo No. 113 de 1993 puede la Sala Administrativa del Consejo Superior de la Judicatura declara la urgencia manifiesta para contratar de acuerdo con el Estatuto de la Administración Pública.

Frente a la transparencia y rendición de cuentas en estos procesos el Consejo Superior de la Judicatura expidió la circular PCSJC17-8 en la cual se adopta una política de transparencia en la contratación. Esto implica, cuando a ello hubiere lugar, utilizar las herramientas que en materia de contratación estatal ofrece Colombia Compra Eficiente, que es la Agencia Nacional de Contratación Pública. Adicionalmente, estableció la obligación de presentar un informe el último día hábil de los meses de junio y diciembre de cada vigencia.

1.2. (art. 7) Establecer criterios para la candidatura y elección a cargos públicos de los miembros de las instituciones de justicia penal.

Para la provisión de cargos de Magistrados o Fiscal General de la Nación se tiene lo siguiente:

- **Consejo Superior de la Judicatura.**

El Consejo superior de la Judicatura se divide en dos salas: la Sala Administrativa y la Sala Jurisdiccional Disciplinaria. La Sala Administrativa está integrada por seis (6) Magistrados, uno elegido por la Corte Constitucional, dos por la Corte Suprema de Justicia, y tres por el Consejo de Estado. Los Magistrados son elegidos para un periodo de ocho años.

- **La Corte Suprema de Justicia.**
La Corte Suprema de Justicia como máximo Tribunal de la Jurisdicción Ordinaria está integrada por veintitrés (23) Magistrados para periodos individuales de ocho años y no podrán ser reelegidos. Para la selección de magistrados de la Corte Suprema de Justicia el Consejo Superior de la Judicatura envía una lista de elegibles. Los requisitos de estos candidatos están dispuestos en el artículo 233 de la Constitución Política de Colombia.

En cuanto al procedimiento, el Consejo Superior de la Judicatura invita a todos los abogados que reúnan los requisitos y aspiren a ser magistrados, para que presenten su hoja de vida y acrediten las calidades referidas. Al definir la lista, el Consejo Superior de la Judicatura deberá indicar y explicar las razones por las cuales se incluyen los nombres de los aspirantes que aparecen en ella.

- La Corte Constitucional.

La Corte Constitucional está integrada por (9) Magistrados, elegidos por el Senado en ternas presentadas por: tres (3) el Presidente de la República, tres (3) la Corte Suprema de Justicia y tres (3) el Consejo de Estado. Son elegidos para periodos individuales de ocho años. El numeral 5 del artículo 317 y 319 de la ley 5 de 1996 (Reglamento del Congreso), establecen la integración, elección y periodos constitucionales de la Corte Constitucional.

Adicionalmente, en el año 2015 se expidió el Decreto 0537 el cual establece un trámite para la integración de las ternas de candidatos a magistrados de la Corte Constitucional por parte del Presidente de la República que incluye invitación pública, publicación de la lista definitiva para que los ciudadanos se pronuncien frente a los candidatos, entrevistas a los candidatos y elaboración de la terna que se dará a conocer a la opinión pública y al Senado. Para la conformación de las ternas el Presidente debe tener en cuenta la probidad, independencia, idoneidad, carácter y solvencia académica y profesional.

- El Consejo de Estado.

El Tribunal Supremo de la Contencioso Administrativo y Cuerpo Supremo Consultivo del Gobierno cuenta con treinta y un (31) magistrado. De acuerdo con el artículo 11 del Acto Legislativo 02 de 2015 los Magistrados del Consejo de Estado son elegidos por la misma Corporación de lista enviada por el Consejo Superior de la Judicatura, la cual debe ser realizada tras una convocatoria pública reglada y buscando el equilibrio entre quienes provienen del ejercicio profesional, de la Rama Judicial y de la Academia.

- Para todas las altas cortes.

En caso de causas constitucionales contra los Magistrados, denuncias o quejas le corresponde a la Cámara de Representantes acusar ante el Senado (CP, art. 178, numerales 3 y 4). Para mantenerse en el cargo deben observar buena conducta y no haber llegado a la edad de retiro forzoso. Adicionalmente, no son reelegibles para el mismo cargo.

- Fiscalía General de la Nación.

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY COLOMBIA

ARTICLE 7 UNCAC

PUBLIC SECTOR

COLOMBIA (EIGHTH MEETING)

Lo anterior, no solo en lo que respecta a la financiación, sino también en asuntos relacionados con conflictos de intereses, antecedentes fiscales, disciplinarios y penales, así como el seguimiento al proceso de elección valiéndose de las TIC´s.

En lo que respecta a la información para la detección y prevención de posibles conflictos de intereses, si bien se deja abierto a presentar diversas declaraciones, consideraríamos que podrían dejarse explícitas algunas que no están allí como la declaración patrimonial, las ausencias en sala y las actividades de docencia. Lo anterior, enfocado no solo a la realización de la declaración, sino también a la publicidad y accesibilidad de las mismas.

Consideramos que sería importante incluir la solicitud de información sobre el establecimiento y fortalecimiento de sistemas para asegurar la transparencia y la rendición de cuentas en lo que respecta a los procesos de elección de magistrados y magistrados auxiliares de la justicia.

1.3.3 Carrera Judicial
1.3.3.1. Mejoramiento en los procesos de calificación de servicios
En desarrollo del Plan Sectorial 2015-2018, el eje estratégico de Carrera Judicial se fundamentó en los principios de la igualdad y del mérito para determinar el ingreso, la permanencia y la promoción en el servicio de funcionarios y empleados que tiene como finalidad garantizar la eficacia y la calidad del servicio de Administración de Justicia y que se encuentra estructurado a partir de los principios constitucionales y de las disposiciones estatutarias que ha consagrado el legislador (…)

En ese orden de ideas, la citada estrategia busca alcanzar:
“(…)
a) El carácter profesional de funcionarios y empleados,
b) La eficacia de la gestión de los servidores judiciales,
c) La garantía de igualdad en las posibilidades de acceso a la función para todos los ciudadanos aptos al efecto, y

d) El mérito como fundamento principal para el ingreso, la permanencia y la promoción en el servicio.”

Durante la vigencia 2015, en desarrollo del Plan Sectorial 2015-2018, se contribuyó en cumplimiento de los objetivos de igualdad en el acceso, profesionalismo, probidad y eficiencia. En desarrollo de los procesos de selección, los concursos de méritos para cargos de funcionarios, han presentado un incremento significativo respecto de la participación de los aspirantes en las diferentes convocatorias abiertas por la Sala Administrativa del Consejo Superior de la Judicatura, aumentando en un 829% la participación de aspirantes para acceder a los cargos de Magistrados de Tribunales y Consejos Seccionales de la Judicatura, en un 219% para los aspirantes a cargos de
Los cargos de Auxiliares de la Justicia son oficios públicos que prestan su colaboración al ejercicio de la función judicial, deben ser desempeñados por personas idóneas, de conducta intachable, excelente reputación, incuestionable imparcialidad, versación y experiencia en la respectiva materia, y cuando fuere el caso con título profesional, tecnológico o técnico legalmente expedido. De conformidad con el Acuerdo 1518 de 2002, por el cual se establece el Régimen de los Auxiliares de la Justicia, se dispuso en su art. 20, que la Unidad realice la integración de las listas de Auxiliares de la Justicia a nivel Nacional, para ser remitidas a las Altas Cortes. Ahora con el Acuerdo PSAA15-10448 expedido el 28 de diciembre de 2015, se actualizó el régimen de los Auxiliares de Justicia. En cumplimiento del Acuerdo 1518 de 2002, de la actualización de las listas de los auxiliares de la justicia y de los Acuerdos modificatorio PSAA10-7339 de 2010 y aclaratorio PSAA10-7490 de 2010, los cuales dieron alcance a lo que disponía en esta materia el artículo 117 de la Ley 1395 de 2010 y en particular lo atinente a la constitución de pólizas de garantías como mecanismos eficaces para lograr que el desempeño del cargo de secuestre sea adelantado por personas que aparte de las condiciones de idoneidad puedan demostrar además relativa solvencia económica debidamente amparada para este tipo de labor. Póliza de garantías que se constituirá teniendo en cuenta el factor poblacional para de allí determinar el monto en salarios mínimos legales mensuales sobre los cuales deben constituirse. Las últimas listas de auxiliares de la justicia comenzaron a regir a partir de abril, las comunicaciones enviadas por las Oficinas Judiciales, de apoyo y servicios de los respectivos Distritos Judiciales los cuales quedaron integrados a nivel nacional con la disponibilidad de la información a través de la página Web de la Rama Judicial.
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Corruption and the Shadow Economy: An Empirical Analysis

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ABSTRACT

Corruption and the Shadow Economy: An Empirical Analysis

This paper analyzes the influence of the shadow economy on corruption and vice versa. We hypothesize that corruption and shadow economy are substitutes in high income countries while they are complements in low income countries. The hypotheses are tested for a cross-section of 120 countries and a panel of 70 countries for the period 1994-2002. Our results show that the shadow economy reduces corruption in high income countries, but increases corruption in low income countries. We also find that stricter regulations increase both corruption and the shadow economy.

JEL Classification: D73, H26, O17, O5

Keywords: corruption, shadow economy, regulation, tax burden

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1 Introduction

As corruption and shadow economy activities are a fact of life around the world, most societies attempt to control their activities through various measures like punishment, prosecution, or education. To gather information about the extent of corruption and the shadow economy or who is engaged in corrupt or underground activities, the frequencies with which these activities are occurring, and the magnitude of them is thus crucial for making effective and efficient decisions. Unfortunately, neither corruption nor the shadow economy easily lend themselves to measurement. It is thus rather difficult to get correct information about the extent of corruption and shadow economy activities in the goods and labour market, because all individuals engaged in those activities wish not to be identified, of course. Hence doing research in these two areas can be considered as a scientific passion for knowing the unknown.

In this paper we explore the relationship between the shadow economy and corruption. We thereby combine two strands of the literature. The first deals with the impact of corruption on the shadow economy; the second with the influence of the shadow economy on corruption. In both strands there are important gaps. Regarding the impact of corruption on the shadow economy, first, previous studies employ rather small samples. For example, Johnson et al. (1997) find that corruption affects the shadow economy positively (and the official economy negatively) – in a cross section of, however, only 15 countries. Similar results are presented in Johnson et al. (1998), with 39 countries in the relevant equation. Employing instrumental variables techniques and even reliable control variables was thus infeasible.

Second, the few studies investigating the impact of corruption on the shadow economy focus on rather heterogeneous country samples. There is no separation of high income and low income countries, the exception being Friedman et al. (2000), distinguishing Latin America, OECD and transition countries. However, Friedman et al. (2000) have only 15, 20 and, respectively, 7 observations in their sample, so their results are far from reliable. Indeed, there is good reason to expect the relationship between corruption and the shadow economy to differ in high and low income countries. In high income countries, bribing government officials when detected engaging in the shadow market is rarely an option. Corruption might thus be independent of the size of the shadow economy. As Choi and Thum (2004) and Dreher, Kotsogiannis and McCorriston (2005a) show, however, the shadow economy can mitigate government-induced distortions, so that corruption and the shadow economy could also be substitutes. Clearly, in high income countries entrepreneurs do not have to pay the bribes demanded by officials as they could always bring the corrupt officials to court.
Consequently, they can choose by themselves whether to pay a bribe or operate underground. In low income countries, to the contrary, entrepreneurs engaging in the shadow economy can reasonably expect to escape prison when their illegal engagement is detected. Officials collude with entrepreneurs and taxpayers in exchange for a bribe (e.g. Hindriks et al. 1999). To what extent corruption and the shadow economy are complements or substitutes is thus likely to vary among high and low income countries.

Third, the existing evidence is contradictory and insufficient. Friedman et al. (2000) claim "corruption is associated with more unofficial economy". However, in the relevant instrumental variables regression, when controlling for the income level, this holds for only three out of eight indices employed (p. 480). Further investigation – with a greater sample of countries – is needed.

Turning to the impact of the shadow economy on corruption, empirical evidence is virtually non-existent and the literature is not developed beyond the postulation of formal models. The exception is Dreher, Kotsogiannis, McCorriston (2005a), employing structural equations modeling to empirically confirm the negative impact from the shadow economy to corruption (in a sample of 18 OECD countries).

Finally, the use of perceptions based indices of corruption has recently been challenged. As one problem with these indices, it is not obvious, what they actually measure. According to Mocan (2004) perceived corruption is completely unrelated to actual corruption once other relevant factors are controlled for. Similarly, Weber Abramo (2005) shows that perceived corruption is not related to bribery.\(^1\) Analyzing the relationship between corruption and shadow economy using a measure of corruption that is not based on perceptions is thus clearly warranted.

This paper makes an attempt to fill these gaps. For the first time in the literature, we employ a huge number of estimates of the size of the shadow economy based on the same method and all coming from the same source. We employ a cross-section of 120 countries over the period 1999-2002 to empirically analyze the relationship between corruption and the shadow economy.\(^2\) We employ an index of actual corruption in addition to the usual perceptions based indices. The index has been developed in Dreher, Kotsogiannis and McCorriston (2005b) and is based on a structural model. A panel of about 100 countries is also analyzed. The country sample is split in high and low income countries in order to get additional insights about the relationship between corruption and the shadow economy.

\(^1\) See Andvig (2005) and Søreide (2005) for further criticism of perceptions based indices of corruption.
\(^2\) Appendix D contains a list of countries included in the empirical analysis.
The paper is organized as follows. In section 2, we derive our hypotheses, while section 3 discusses the data and method of estimation. In the fourth section, we present the empirical results. Finally section 5 gives a summary and draws some conclusions.

2 Hypotheses

Theoretically, corruption and the shadow economy can be either complements or substitutes. Choi and Thum (2004) present a model where the option of entrepreneurs to go underground constrains a corrupt official’s ability to ask for bribes. Dreher, Kotsogiannis and McCorriston (2005a) extend the model to the explicit specification of institutional quality. The model shows that corruption and shadow economy are substitutes in the sense that the existence of the shadow economy reduces the propensity of officials to demand grafts.

Johnson et al. (1997), to the contrary, model corruption and the shadow economy as complements. In their full-employment model, labour can be either employed in the official sector or in the underground economy. Consequently, an increase in the shadow economy always decreases the size of the official market. In their model, corruption increases the shadow economy, as corruption can be viewed as one particular form of taxation and regulation (driving entrepreneurs underground). Hindriks et al. (1999) also show that the shadow economy is a complement to corruption. This is because, in this case, the tax payer colludes with the inspector so the inspector underreports the tax liability of the tax payer in exchange for a bribe.3

Theoretically, the relationship between corruption and the shadow economy is thus unsettled. There is, however, reason to believe that the relationship might differ among high and low income countries. In high income countries, the official sector provides public goods like the rule of law, enforcement of contracts, and protection by an efficient police. Usually, only craftsmen or very small firms have (or take) the option of going underground. In this case, the shadow economy is hidden from tax inspectors and other officials. In other words, there are no bribes necessary or possible to buy the way out of the official sector. In high income countries – typically showing comparably small levels of corruption – individuals confronted with a corrupt official always have the choice to bring the official to court. Moreover, in high income countries corruption quite often takes place, for example, to bribe officials to get a (huge) contract from the public sector (e.g. in the construction sector). This contract is then handled in the official economy and not in the shadow economy. Hence, corruption in high income countries can be a means to achieve certain benefits which make

3 See Dreher and Siemers (2005) for a formalization of this argument.
work in the official economy easier, e.g., winning a contract from a public authority, getting a licence (e.g. for operating taxes or providing other services or getting the permission to convert land into “construction ready” land, etc.). In high income countries people thus bribe in order to be able engaging in more official economic activities. As Schneider and Enste (2000) point out, at least two thirds of the income earned in the shadow economy is immediately spent in the official sector. The shadow economy and the official sector might thus be complements. The corresponding increase in government revenue and strengthened institutional quality is likely to decrease corruption. The prediction of a negative (substitutive) relation between corruption and the shadow economy is in line with the models of Choi and Thum (2004) and Dreher, Kotsogiannis and McCorriston (2005a).

In low income countries, to the contrary, we expect different mechanisms to prevail. Instead of working partly in the official sector and offering additional services underground as in high-income countries, enterprises completely engage in underground activity. Examples for enterprises operating completely underground are restaurants, bars, or haircutters – and even bigger production companies. As one reason for this, the public goods provided by the official sector are in many developing countries less efficient as compared to high income countries. Big companies, however, are comparably easy to detect and – in order to escape taxation and punishment – they have to bribe officials, thereby increasing corruption. Corruption often takes place in order to pay for activities in the shadow economy, so that the shadow economy entrepreneur can be sure not to be detected by public authorities. Here, shadow economy and corruption are likely to reinforce each other, as corruption is needed to expand shadow economy activities and – at the same time – underground activities require bribes and corruption. To get some additional income from the shadow economy entrepreneur, it is natural for public officials to ask for bribes and thus benefit from the shadow market. In low income countries, we therefore expect a positive (complementary) relation between corruption and the shadow economy. This corresponds to the predictions of the models of Hindriks et al. (1999) and Johnson et al. (1997).

In summary we expect:

**Hypothesis 1:** In low income countries, shadow economy activities and corruption are complements.

**Hypothesis 2:** In high income countries, shadow economy activities and corruption are substitutes.

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4 Consequently, Dreher, Kotsogiannis and McCorriston (2005a) test their model employing data for OECD countries only.
Regarding our control variables, we follow Johnson et al. (1997, 1998) and Friedman et al. (2000). Our covariates thus belong to three groups: tax rates and government revenues, measures of regulation, and proxies of institutional quality. Johnson et al. (1997, 1998) argue that the shadow economy is expected to be higher when there is more regulation and thus more discretion for officials. Politicians might use the right to regulate to pursue their own interest, such as supporting allies. Politicians can also use the right to regulate to enrich themselves by offering relief from regulation in exchange for bribes (Shleifer and Vishny 1993, Dreher and Siemers 2005):

**Hypothesis 3:** The more intensive the official economy is regulated, the higher is the shadow economy.

**Hypothesis 4:** The more intensive the official economy is regulated, the higher is corruption.

As firms in the unofficial sector largely escape taxation, a higher share of the informal sector should be correlated with lower tax revenue (in percent of GDP). However, a heavy fiscal burden is likely to drive enterprises underground, a result obtained by Loayza (1996) for Latin America and by Johnson et al. (1997) for transition economies. When other relevant determinants of the shadow economy are controlled for we thus expect:

**Hypothesis 5:** A huge fiscal burden increases the size of the shadow economy.

Regarding corruption, bribes are paid to avoid paying taxes or following regulations, so that a high fiscal burden is hypothesized to increase corruption.

**Hypothesis 6:** The higher the fiscal burden, the higher is corruption.

Better institutional quality, finally, increases the benefits entrepreneurs can derive from operating in the official sector, most likely leading to a reduction of the unofficial sector. Almost by definition, better institutions also imply lower levels of corruption. We therefore hypothesize:

**Hypothesis 7:** Better institutional quality reduces the size of the shadow economy.

**Hypothesis 8:** Better institutional quality reduces corruption.

The next section outlines our method of estimation and presents the data.
3. Data and Estimation Technique

We start with estimating regressions for a cross-section of countries. The equations take the following form:

\[ Y_t = \alpha + \beta_1 X_t + \beta_2 Z_t + \epsilon_t, \]

where Y and X represent either corruption or, respectively, the shadow economy and Z is a vector of control variables.

In order to increase the number of observations, all data are averages over the period 2000-2002. Data for the shadow economy are taken from Schneider (2005a). Schneider calculates the size and development of the shadow economy of 145 countries, including developing, transition and highly developed OECD countries over the period 1999 to 2003 employing the dyadic mimic and currency demand estimation technique.\(^5\) The average size of the shadow economy as a percent of official GDP in 2002/03 in 96 developing countries was 38.7\%, in 25 transition countries 40.1\%, in 21 OECD countries 16.3\%, and in 3 communist countries 22.3\%.

To measure corruption, we employ an index provided by the International Country Risk Guide. This indicator is based on the analysis of a world-wide network of experts.\(^6\) On the original scale, the index has a range from 0 – representing highest corruption – to 6 (no corruption). We rescaled the index, so that higher values represent more corruption. We have 120 countries in our sample for which both data for the shadow economy and corruption are available.

Again following the previous literature, each regression also includes the log of per capita GDP, taken from the World Bank’s (2003) World Development Indicators. Measures for institutional quality and regulatory burden are from Gwartney and Lawson (2004), the Heritage Foundation (2005), and Kaufmann et al. (2003). The variables are discussed in more detail when we present the regression results. Appendix B lists all variables with their exact sources and definitions; Appendix C reports descriptive statistics.

After including each explanatory variable individually to our regressions, we follow a general to specific approach eliminating those variables with the smallest t-value until we end up with a model containing only those variables (in addition to per capita GDP, the index of corruption and, respectively, the shadow economy) that are significant at the ten percent level at least.

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\(^5\) See also Schneider (2005b).

\(^6\) Note that the focus of this index is on capturing political risk involved in corruption. Since it is the only perception-based data on corruption providing consistent time series, the index has nevertheless been widely used in empirical studies.
In the full model, we check for the influence of outliers using an algorithm that is robust to them. The robust regression technique weighs observations in an iterative process. Starting with OLS, estimates are obtained through weighted least squares where observations with relatively large residuals get smaller weight. This results in estimates not being overly influenced by any specific observation.

The sample is then split in two income (per capita) groups to test our hypothesis 1 and 2. Depending on which covariates are included in the regressions, there are between 43-71 countries in the low income group. The number of countries with high income is between 37-48. Due to the substantially reduced number of observations we have to interpret the results of some regressions cautiously.

Clearly, taking corruption and the shadow economy as exogenous determinants of each other contradicts our \textit{a priori} hypotheses. We therefore employ instrumental variables to deal with the potential endogeneity of corruption and the shadow economy. We employ two sets of instruments for each variable. First, the determinants of corruption and the shadow economy identified in the general to specific approach are employed. Second, we use the instruments for corruption suggested by Friedman et al. (2000): Ethnic and religious fractionalization, a country’s latitude, and French, socialist, German, and Scandinavian legal origin. The variables have been shown to be correlated with institutional development across a wide range of countries (La Porta et al. 1999). Regarding the shadow economy, a range of variables determining the costs of doing business in a country have recently been developed by the World Bank (Djankov et al. 2002). According to the results of Friedman et al. (2000) entrepreneurs go underground mainly to reduce the burden of bureaucracy. The variables measuring costs and required time to open a business and flexibility with respect to hiring and firing workers thus appear to be natural instruments for the shadow economy. We employ them as our second set. Our second equation takes the form:

$$X_i = \gamma' I_i + \epsilon_i,$$

with \( I \) representing the vector of instrumental variables. F-tests on the joint significance of our instruments show that they are good predictors of the degree of corruption and, respectively, the shadow economy. In most (but not all) cases, the overidentifying restrictions are also accepted.

\footnote{Countries are in the first group if their 2004 GNI per capita does not exceed $3,255, and in the second otherwise. We choose to split the sample instead of using interaction terms as specification tests reject most of the regressions including all countries but accept most sub-sample regressions.}
Turning to the panel estimations, our data cover the years 1994-2002, for 70 countries. We employ averages over three years for all variables. However, some of the data are not available for all countries or every year. Therefore, our panel data are unbalanced and the number of observations depends on the choice of explanatory variables. Again, we also present results employing instrumental variables. We only employ those instruments that show some variation over time. Equation (1) and (2) transform to:

\[
Y_{\mu} = \alpha + \beta_1 X_{\mu} + \beta_2 Z_{\mu} + \epsilon_{\mu},
\]

(3)

\[
X_{\mu} = \gamma' I_{\mu} + \epsilon_{\mu},
\]

(4)

The next section presents the results.

4. Empirical Results

4.1 Stepwise Regression Results

Before we present the results of the full model, we turn to the regressions including one explanatory variable at the time. Results for the shadow economy are reported in Tables A-1 to A-6 in the Appendix. Except for the index of corruption, we have kept the original signs on the variables, so that different organizations’ ratings differ in whether a high numerical value corresponds to “better” values. The Heritage Foundation measure of fiscal burden refers to average and marginal corporate and income taxation. Its index of tariff and non-tariff barriers to trade captures international trade taxation and regulation. A higher score (on a scale of 1-5) implies a higher burden of taxation, i.e. higher average and marginal tax rates and, respectively, higher taxes on trade. The Fraser Institute’s measures of taxes (Gwartney and Lawson 2004) show higher scores for countries with lower tax rates, on a scale of 1-10. We employ their indices for the top marginal income tax rate and taxes on international trade. In addition, we employ tax revenue and overall revenue (both in percent of GDP) from the World Bank’s (2003) World Development Indicators.

The results show, surprisingly, that our measures of tax burden are not correlated with the shadow economy at the five percent level of significance (when we control for per capita GDP). There is thus no support for our hypothesis 5. However, at the ten percent level of significance higher fiscal burden is associated with less unofficial activity. This is in line with the results of Friedman et al. (2000) for a cross section of 69 countries, showing that higher tax rates imply a smaller shadow market and Johnson et al. (1998).

According to our results – and contrary to hypothesis 6 – corruption is significantly more severe in countries with smaller fiscal burden. Higher barriers to trade significantly
increase corruption. This is in line with the theoretical model and empirical evidence presented in Dreher and Siemers (2005) for capital account restrictions: Economic agents facing more severe restrictions engage in bribery to pursue their business anyway.

Turning to the importance of regulations, we employ seven measures produced by the Heritage Foundation and the Fraser Institute. Again, the Fraser Institute’s measures range from 0 to 10, where higher values indicate less regulations. The indices refer to regulations in the credit market, minimum wage regulation, price regulation, administrative procedures, and the time to spend with government bureaucracy. We take two indices from Heritage. The first measures wage and price regulation, the second is an overall measure of the degree of regulations in the economy. Again the scale ranges from 1 to 5, with higher values indicating regulations that are worse for business.

As can be seen in the tables, at the five percent level at least, the shadow economy expands with fewer regulations in the credit market, higher minimum wages and stricter administrative procedures. While the first result is surprising, the latter two are in line with hypothesis 3. At least at the five percent level of significance, corruption is more severe with stronger regulation in the credit market, stronger wage and price regulations, and the overall Heritage index of regulations, supporting hypothesis 4.

Regarding institutional quality, we employ three indices constructed by the Fraser Institute, and two from the World Bank (Kaufmann et al. 2003). On the scale of the Fraser indices (0-10), higher values imply a “better” legal system. We employ their indices for judicial independence, impartial courts, and the integrity of the legal system. The World Bank’s government effectiveness and rule of law indicators range from -2.28 to 2.59 and, respectively, -2.04 to 2.36, with higher scores showing “better” environments.

The results are straightforward: both corruption and the shadow economy are significantly smaller with better rule of law, greater government effectiveness, more judicial independence, impartial courts, and higher integrity of the legal system, supporting hypotheses 7 and 8.

So far, the results also show that corruption is rarely a significant determinant of the shadow economy. In those regressions where its coefficient is significantly different from zero, higher corruption implies a higher shadow economy. Similarly, the shadow economy is significantly associated with more corruption in some regressions. However, corruption and the shadow economy are never significant when variables controlling for the quality of institutions are included. Clearly, without the inclusion of additional control variables the regressions showing a significant effect of the shadow market or, respectively, of corruption,
are likely to be misspecified. The RESET test indicates that relevant variables are not included. In most regressions, there is also evidence that the residuals are not normally distributed.

### 4.2 Regression Results of the Full Model

Table 1 presents the results of the full model explaining the size of the shadow economy. As can be seen, only three variables turned out to be robust determinants of the unofficial sector. The shadow market shrinks with stronger regulations in the credit market, contradicting our \textit{a priori} expectation. The coefficient is significant at the one percent level both in the OLS and the robust regression. Also at the one percent level, government effectiveness reduces the size of the informal sector. This is intuitive: the more effective the government, the greater the benefits of operating in the legal sector. Moreover, the risk of getting caught engaging in illegal activities is higher with more effective governments. Stronger minimum wage regulation also increases the shadow economy, with a coefficient significant at the one percent level in the OLS regression, and at the five percent level in the robust regression. The result is in line with our hypothesis 3: Stronger regulatory burden drives entrepreneurs underground.\(^8\)

As the results of Table 1 show, corruption does not significantly affect the shadow economy. This is in contrast to the results of Johnson et al. (1998) reporting corruption to be among the major determinants of the unofficial sector. However, their regressions neglect the impact of institutional and governmental quality. Once institutional quality and government effectiveness is taken into account, neither GDP per capita nor corruption have a significant impact on the shadow economy. The results of Table 1 show that this is true for both income groups. This is in line with the results of Björnskov (2005) showing that the perceptions based index of corruption developed by Kaufmann et al. (2003) cannot be separated statistically from their other five indices of governance. Similarly, Andvig (2005), and Weber Abramo (2005) argue that perceptions based indices reflect the quality of a country's institutions rather than its actual degree of corruption.

Table 2 reports results for the full model explaining perceived corruption. As can be seen, price regulation leads to more corruption, while corruption is lower with better rule of law and greater democracy. While the fiscal burden significantly reduces corruption at the ten percent level of significance according to the OLS results, the coefficient is not significant in

\(^8\) The correlation between credit market regulation and the rule of law is about 0.7, but the Variance Inflation Factors (VIFs) are consistently low, so there should be no problem identifying effects due to collinearity.
the robust regression. GDP per capita has no significant impact on corruption in the overall sample – and neither does the shadow economy. However, a bigger shadow economy reduces corruption in high income countries, with a coefficient significant at the one percent level. Corruption and the shadow economy are thus substitutes in high income countries. Quantitatively, a ten percentage points increase of the shadow economy (in percent of GDP) reduces the index of corruption by 0.7 points in high income countries. The standardised regression (beta) coefficient is 0.47.

We proceed with our instrumental variables approach. Table 3 shows that the results for the shadow economy are very similar to those presented above. Again, the index of corruption is not significant at the five percent level in any regression (while corruption reduces the shadow market at the ten percent level of significance in high income countries). The Sargan test accepts the overidentifying restrictions at the one percent level in all but the final regressions, where the restrictions are accepted at the ten percent level. Table 4 shows the correlation between the two sets of instruments and the residuals of the full model. The table shows that the correlation between the instruments and the residuals is reasonably low. The table also shows the comparably high correlation between most of the instruments and the endogenous variable (corruption).

Tables 5 and 6 replicate the analysis with corruption as the dependent variable. Again, the results are similar to those presented previously. However, the shadow economy no longer significantly affects corruption in high income countries.

Finally, we report results for the combined cross-section time-series analysis in Tables 7 (shadow economy) and 8 (corruption). They show that corruption increases the size of the shadow economy. When both income groups are included, this is true when the regression is estimated with fixed or random effects, and when corruption is instrumented with the time varying set of instruments. An increase in the index of corruption by one point increases the shadow economy (in percent of GDP) by 1.3-3.5 percentage points (which amounts to standardised (beta) coefficients between 0.12-0.32). In high income countries, corruption also increases the size of the informal sector, while it has no significant impact in low income countries.

Finally, Table 8 shows that corruption is higher with a bigger informal sector also. In the fixed and random effects specifications, its coefficient is significant at the one percent level. The same is true in low income countries, where corruption again rises with the size of

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9 Note that we do not instrument them with variables that do not change over time.
the shadow market. In high income countries no significant impact exists. The same is true when the shadow economy is instrumented.

In summary, there is some evidence that corruption and the shadow economy are complements in countries with low income (hypothesis 1), while going underground is an alternative to corruption in high income countries (hypothesis 2).

4.3 Further Discussion
We test the robustness of our results employing two alternative indicators of perceived corruption. The first is the corruption perceptions index developed by Transparency International (TI), ranging from zero to ten. The second index is from the World Bank’s ‘governance matters’ database (Kaufmann et al. 2003) with values between -1.85 and 2.58. We transform both indices so that higher values represent greater perceived corruption.

The results show that there is no significant relationship between corruption and the shadow economy when the TI index is used. There is one exception: In high income countries, corruption decreases with a greater shadow economy, with a coefficient significant at the five percent level. The result is presented in Table 9. Table 9 also shows that the result remains when the World Bank index of corruption is used instead. No other regression shows a significant relation between the World Bank index and the size of the shadow economy (not reported in the table).

Perceptions based indices are, however, not free of problems. One such problem refers to the correlation between perceived corruption and actual corruption. According to Mocan (2004) the two are completely unrelated once other relevant factors are controlled for. Similarly, Weber Abramo (2005) shows that perceived corruption is not related to bribery. Our results might thus arise from the poor quality of the perceptions based indices of corruption. We therefore employ an alternative index of actual corruption to test the stability of the results. The index has been developed in Dreher, Kotsogiannis and McCorriston (2005b) and is based on a structural model. The statistical method applied infers the magnitude of corruption from both the likely causes and likely effects of corruption. The index is available for about 100 countries for the year 2000 and ranges from 1 to 10, where higher values again represent more corruption.

When replicated with the index of actual corruption the regressions show that corruption does not significantly influence the size of the underground sector in any regression. We do therefore not present the results in a table. However, there is a significant impact of the shadow economy on corruption. The results of the OLS and robust regressions
are presented in Table 10; Table 11 presents the IV estimates. As can be seen, corruption increases with the size of the underground sector, with coefficients significant at the ten percent level in the OLS and robust regressions. The disaggregated results show that the positive impact of the shadow economy on corruption is driven by low income countries. The results show that the magnitude of the coefficient is economically relevant. In low income countries, a one percentage point increase in the shadow economy (in percent of GDP) increases the index of corruption by 0.06 points (equivalent to a standardized beta coefficient of 0.36). The coefficient of the shadow economy is significant at the five percent level in low income countries, while it is insignificant in high income countries.

The results are similar when the shadow economy is instrumented with the two sets of instruments introduced above. When the determinants of the shadow economy identified by the general to specific approach are employed, corruption is again significantly higher with a larger shadow economy. This is true in the overall sample and in the low income sample (at the five percent level of significance). When the costs and flexibility of doing business are employed as instruments instead, the results are similar.

Table 12 summarizes our results. Overall, they show that an increase in perceived corruption over time also increases the shadow economy. This confirms the models of Johnson et al. (1997, 1998) and Hindriks et al. (1999). Across countries, however, greater perceived corruption does not lead to a greater shadow economy. To some extent this also supports the results of Méon and Sekkat (2004) showing the within-country variation to be important in their analysis of corruption on foreign direct investment and exports.

Regarding the impact of the shadow economy on perceived corruption, our results for the overall sample are similar to those for the other way round. In the cross-country regressions, all coefficients are completely insignificant. An increase in the shadow economy over time increases corruption according to the fixed and random effects estimator, but not when the endogeneity of the shadow is controlled for. Turning to the sub-samples, the results show that higher perceived corruption significantly reduces the shadow economy in high income countries, confirming the models of Choi and Thum (2004) and Dreher, Kotsogiannis and McCorriston (2005a). In low income countries, to the contrary, corruption tends to increase with a higher shadow economy, again confirming the models of Johnson et al. (1997, 1998) and Hindriks et al. (1999). This is true for the impact of perceived corruption in the within-groups specification and actual corruption in all specifications.

Note that the index of actual corruption shows no variation over time, so we can not replicate the panel regressions.
In summary, the results of our empirical analysis suggest that corruption and the shadow economy tend to be substitutes in high income countries, but complements in low income countries. There is thus some support for our main hypotheses (1 and 2). The analysis also shows, however, that the results do to some extent depend on the method of estimation.

The next section concludes.

5. Conclusions
In this paper we have made a first attempt to deal with the dual relationship between corruption and the shadow economy. We hypothesized that the shadow economy and corruption are substitutes in high income countries. In low income countries, to the contrary, we expected the shadow economy and corruption to be complements. The empirical findings are more or less in line with these two hypotheses, although the results depend to some extent on how the regressions are specified and how corruption is measured. In summary there is evidence that going underground is an alternative to corruption in high income countries (this means a substitutive relationship) while corruption and the shadow economy are complements in countries with low and middle income. We also find a positive impact of regulation on the shadow economy, while our results regarding taxation are mixed. Our results show that heavier regulation leads to more corruption, while better rule of law and greater democracy imply less corruption.

What type of conclusions can we draw from these results? In general we must admit we have no clear and robust pattern that confirms our hypotheses among the range of indicators and specifications employed. Clearly, one of the most important problems in empirical studies on corruption and the shadow economy is the unavailability of high quality data both across countries and – more severely – over time. Our analysis confirms the importance of the choice of indicator on the results. If we use actual corruption figures as calculated by Dreher, Kotsogiannis and McCorriston (2005b) instead of indices of perceived corruption, e.g., our results show a strongly significant impact of the shadow economy on corruption in low income countries. However, these data are only available for one year. Testing our hypotheses with consistent panel data of actual corruption thus remains for future research.
References


Dreher, Axel; Christos Kotsogiannis and Steve McCorriston, 2005a, How do Institutions Affect Corruption and the Shadow Economy? University of Konstanz and University of Exeter, mimeo.

Dreher, Axel; Christos Kotsogiannis and Steve McCorriston, 2005b, Corruption around the World: Evidence from a Structural Model, University of Konstanz and University of Exeter, mimeo.


Heritage Foundation, 2005, Index of Economic Freedom, Washington, DC.


Schneider, Friedrich, 2005a, Shadow Economies of 145 countries all over the world: Estimation results of the period 1999-2003, University of Linz: Department of Economics, Discussion paper Linz, Austria.


World Bank, 2003, World Development Indicators, CD-Rom, Washington, DC.
Table 1: Determinants of the Shadow Economy – Full Model

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<tr>
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Notes: OLS and robust (RR) regressions; robust absolute t-statistics in parentheses. * denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level. Higher values represent more corruption (ICRG), less regulation (Fraser), and better quality (World Bank). Constant included but not reported.
### Table 2: Determinants of Corruption – Full Model

<table>
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<th>Income High</th>
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<td>0.003</td>
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<td>Fiscal Burden (Heritage)</td>
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<td>-0.08</td>
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<tr>
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</tr>
<tr>
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<td>(3.67***</td>
<td>(3.67***</td>
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<td>(1.12)</td>
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Notes: OLS and robust (RR) regressions; robust absolute t-statistics in parentheses.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level.
Higher values represent more corruption (ICRG), higher burden (Heritage), less regulation (Fraser), better quality (World Bank), and more democracy.
Constant included but not reported.
Table 3: Determinants of the Shadow Economy, Full Model, Instrumental Variables

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<td>Low</td>
<td>High</td>
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<td>(2.31**)</td>
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<td>(2.55**)</td>
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<td>(1.90*)</td>
<td>(2.32**)</td>
<td>(2.83***)</td>
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<td>(2.59**)</td>
<td>(2.35**)</td>
<td>(2.07**)</td>
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<tr>
<td>Adjusted R2</td>
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<td>0.60</td>
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<tr>
<td>Observations</td>
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<td>24</td>
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<td>Sargan Test (Prob. &gt; F)</td>
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Notes:
(1) Corruption instrumented with Fiscal Burden (Heritage), Regulation of Prices (Fraser), Rule of Law (World Bank), Democracy.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level
Higher values represent more corruption (ICRG), less regulation (Fraser), and better quality (World Bank).
Constant included but not reported.

Table 4: Instruments for Corruption – Correlation between Instruments and Residuals/Endogenous Explanatory Variable

<table>
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<tr>
<th></th>
<th>Residuals of Full Model</th>
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<tr>
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</tr>
<tr>
<td>Fiscal Burden (Heritage)</td>
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<td>-0.46</td>
</tr>
<tr>
<td>Regulation of Prices (Fraser)</td>
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<td>-0.72</td>
</tr>
<tr>
<td>Rule of Law (World Bank)</td>
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<td>Democracy</td>
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<td>Ethnic fractionalization</td>
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Table 5: Determinants of Corruption, Full Model, Instrumental Variables

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<th>All</th>
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<th>High</th>
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<td>-0.02</td>
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<td>Log GDP per capita</td>
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<td>1.11</td>
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<td>-0.06</td>
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Adjusted R2 0.69 0.39 0.56 0.57 0.22 0.67
Observations 69 45 24 94 68 26
Sargan Test (Prob. > F) 0.14 0.33 0.06 0.09 0.06 0.45

Notes:
(1) Shadow Economy instrumented with Credit Market Regulations (Fraser), Minimum Wage Regulation (Fraser), Government Effectiveness (World Bank).
(2) Shadow Economy instrumented with Starting a Business (Duration), Starting a Business (Costs), Flexibility to Hire, Flexibility to Fire.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level
Higher values represent more corruption (ICRG), higher burden (Heritage), less regulation (Fraser), better quality (World Bank), and more democracy.
Constant included but not reported.

Table 6: Instruments for the Shadow Economy – Correlation between Instruments and Residuals/Endogenous Explanatory Variable

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<th>Residuals of Full Model</th>
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<td>Government Effectiveness (World Bank)</td>
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<td>Flexibility to Fire</td>
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Table 7: Determinants of the Shadow Economy, Full Model, Panel

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<th>Income Low</th>
<th>High</th>
<th>All</th>
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<td>0.69</td>
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<td>(4.81***)</td>
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<td>(1.98**)</td>
<td>(3.48***)</td>
</tr>
<tr>
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<td>-2.95</td>
<td>-14.60</td>
</tr>
<tr>
<td></td>
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<td>(4.20***)</td>
<td>(0.86)</td>
<td>(0.42)</td>
<td>(1.88*)</td>
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<tr>
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<td>(1.25)</td>
<td>(0.25)</td>
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<td>Minimum Wage Regulation (Fraser)</td>
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<td>-0.73</td>
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<tr>
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<td>(3.97***)</td>
<td>(5.54***)</td>
<td>(4.50***)</td>
<td>(1.76*)</td>
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<td>(1.00)</td>
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<tbody>
<tr>
<td>R2 (overall)</td>
<td>0.99</td>
<td>0.56</td>
<td>0.23</td>
<td>0.99</td>
<td>0.45</td>
</tr>
<tr>
<td>Observations</td>
<td>118</td>
<td>118</td>
<td>69</td>
<td>49</td>
<td>116</td>
</tr>
<tr>
<td>F-test (Prob&gt;F)</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Normality test (Prob&gt;chi2)</td>
<td>0.00</td>
<td>0.03</td>
<td>0.02</td>
<td>0.02</td>
<td>0.00</td>
</tr>
<tr>
<td>Sargan Test (Prob. &gt; F)</td>
<td>0.10</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes:
The low income group has not enough observations.
FE: fixed country effects included.
RE: random effects model.
IV: Corruption instrumented with Fiscal Burden (Heritage), Regulation of Prices (Fraser), Rule of Law (World Bank), Democracy.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level
Higher values represent more corruption (ICRG), less regulation (Fraser), and better quality (World Bank).
Table 8: Determinants of Corruption, Full Model, Panel

<table>
<thead>
<tr>
<th></th>
<th>All</th>
<th>All</th>
<th>Income</th>
<th>Income</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Low</td>
<td>High</td>
<td></td>
</tr>
<tr>
<td>Shadow Economy</td>
<td>0.09</td>
<td>0.02</td>
<td>0.10</td>
<td>0.09</td>
<td>0.01</td>
</tr>
<tr>
<td></td>
<td>(2.88***)</td>
<td>(2.64***)</td>
<td>(2.77***)</td>
<td>(0.76)</td>
<td>(0.12)</td>
</tr>
<tr>
<td>Log GDP per capita</td>
<td>2.10</td>
<td>0.15</td>
<td>1.54</td>
<td>2.99</td>
<td>3.88</td>
</tr>
<tr>
<td></td>
<td>(2.39**)</td>
<td>(1.49)</td>
<td>(1.16)</td>
<td>(2.15**)</td>
<td>(2.85***)</td>
</tr>
<tr>
<td>Fiscal Burden (Heritage)</td>
<td>-0.33</td>
<td>-0.44</td>
<td>-0.27</td>
<td>-0.33</td>
<td>-0.69</td>
</tr>
<tr>
<td></td>
<td>(1.51)</td>
<td>(4.00***)</td>
<td>(1.12)</td>
<td>(0.59)</td>
<td>(2.42***)</td>
</tr>
<tr>
<td>Regulation of Prices (Fraser)</td>
<td>-0.06</td>
<td>-0.06</td>
<td>-0.07</td>
<td>0.03</td>
<td>-0.09</td>
</tr>
<tr>
<td></td>
<td>(1.04)</td>
<td>(1.44)</td>
<td>(0.99)</td>
<td>(0.17)</td>
<td>(1.00)</td>
</tr>
<tr>
<td>Rule of Law (World Bank)</td>
<td>-0.64</td>
<td>-0.75</td>
<td>-0.48</td>
<td>-0.53</td>
<td>-2.61</td>
</tr>
<tr>
<td></td>
<td>(1.03)</td>
<td>(4.18***)</td>
<td>(0.67)</td>
<td>(0.31)</td>
<td>(2.39***)</td>
</tr>
<tr>
<td>Democracy</td>
<td>0.08</td>
<td>-0.05</td>
<td>0.08</td>
<td>0.76</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>(2.21**)</td>
<td>(2.54***)</td>
<td>(2.33**)</td>
<td>(1.07)</td>
<td>(0.27)</td>
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</tbody>
</table>

Method

<table>
<thead>
<tr>
<th>Method</th>
<th>FE</th>
<th>RE</th>
<th>FE</th>
<th>FE</th>
<th>IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>R2 (overall)</td>
<td>0.91</td>
<td>0.58</td>
<td>0.54</td>
<td>0.91</td>
<td>0.21</td>
</tr>
<tr>
<td>Observations</td>
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<td>183</td>
<td>131</td>
<td>52</td>
<td>116</td>
</tr>
<tr>
<td>F-test (Prob&gt;F)</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Normality test (Prob&gt;chi2)</td>
<td>0.00</td>
<td>0.77</td>
<td>0.09</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Sargan Test (Prob. &gt; F)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.03</td>
</tr>
</tbody>
</table>

Notes:
FE: fixed country effects included.
RE: random effects model.
IV: Corruption instrumented with Fiscal Burden (Heritage), Regulation of Prices (Fraser), Rule of Law (World Bank), Democracy.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level
Higher values represent more corruption (ICRG), higher burden (Heritage), less regulation (Fraser), better quality (World Bank), and more democracy.
<table>
<thead>
<tr>
<th></th>
<th>TI</th>
<th>World Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shadow Economy</td>
<td>-0.06</td>
<td>-0.01</td>
</tr>
<tr>
<td></td>
<td>(2.35**)</td>
<td>(2.76**)</td>
</tr>
<tr>
<td>Log GDP per capita</td>
<td>0.19</td>
<td>-0.29</td>
</tr>
<tr>
<td></td>
<td>(0.49)</td>
<td>(2.80**)</td>
</tr>
<tr>
<td>Fiscal Burden (Heritage)</td>
<td>-0.29</td>
<td>-0.14</td>
</tr>
<tr>
<td></td>
<td>(0.52)</td>
<td>(1.62)</td>
</tr>
<tr>
<td>Regulation of Prices (Fraser)</td>
<td>-0.30</td>
<td>-0.06</td>
</tr>
<tr>
<td></td>
<td>(2.55**)</td>
<td>(1.91*)</td>
</tr>
<tr>
<td>Rule of Law (World Bank)</td>
<td>-3.38</td>
<td>-1.41</td>
</tr>
<tr>
<td></td>
<td>(3.93*)</td>
<td>(8.44***</td>
</tr>
<tr>
<td>Democracy</td>
<td>-0.08</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>(1.69)</td>
<td>(1.18)</td>
</tr>
<tr>
<td>Adjusted R2</td>
<td>0.80</td>
<td>0.90</td>
</tr>
<tr>
<td>Observations</td>
<td>24</td>
<td>27</td>
</tr>
<tr>
<td>F-test (Prob&gt;F)</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Normality test (Prob&gt;chi2)</td>
<td>0.00</td>
<td>0.07</td>
</tr>
<tr>
<td>Heteroscedasticity test (Prob&gt;chi2)</td>
<td>0.14</td>
<td>0.47</td>
</tr>
<tr>
<td>RESET (Prob&gt;F)</td>
<td>0.30</td>
<td>0.83</td>
</tr>
</tbody>
</table>

Notes: OLS regressions; robust absolute t-statistics in parentheses.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level.
Higher values represent more corruption (Transparency International (TI) and World Bank), higher burden (Heritage), less regulation (Fraser), better quality (World Bank), and more democracy.
Constant included but not reported.
Table 10: Determinants of Corruption (DKM) – Full Model

<table>
<thead>
<tr>
<th></th>
<th>OLS</th>
<th>RR</th>
<th>Income Low</th>
<th>Income High</th>
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</thead>
<tbody>
<tr>
<td>Shadow Economy</td>
<td>0.04</td>
<td>0.04</td>
<td>0.06</td>
<td>-0.10</td>
</tr>
<tr>
<td></td>
<td>(1.77*)</td>
<td>(1.69*)</td>
<td>(2.49**)</td>
<td>(1.50)</td>
</tr>
<tr>
<td>Log GDP per capita</td>
<td>-0.17</td>
<td>-0.31</td>
<td>-0.16</td>
<td>-0.58</td>
</tr>
<tr>
<td></td>
<td>(0.53)</td>
<td>(0.95)</td>
<td>(0.44)</td>
<td>(0.39)</td>
</tr>
<tr>
<td>Fiscal Burden (Heritage)</td>
<td>0.10</td>
<td>0.11</td>
<td>0.35</td>
<td>-1.72</td>
</tr>
<tr>
<td></td>
<td>(0.33)</td>
<td>(0.24)</td>
<td>(0.73)</td>
<td>(1.51)</td>
</tr>
<tr>
<td>Regulation of Prices (Fraser)</td>
<td>-0.19</td>
<td>-0.20</td>
<td>-0.26</td>
<td>-0.18</td>
</tr>
<tr>
<td></td>
<td>(1.46)</td>
<td>(1.18)</td>
<td>(1.70*)</td>
<td>(0.45)</td>
</tr>
<tr>
<td>Rule of Law (World Bank)</td>
<td>0.88</td>
<td>1.13</td>
<td>0.76</td>
<td>-0.46</td>
</tr>
<tr>
<td></td>
<td>(1.50)</td>
<td>(1.98**)</td>
<td>(1.24)</td>
<td>(0.22)</td>
</tr>
<tr>
<td>Democracy</td>
<td>-0.07</td>
<td>-0.06</td>
<td>-0.03</td>
<td>0.28</td>
</tr>
<tr>
<td></td>
<td>(0.97)</td>
<td>(0.67)</td>
<td>(0.30)</td>
<td>(0.86)</td>
</tr>
<tr>
<td>Adjusted R2</td>
<td>0.01</td>
<td></td>
<td>0.16</td>
<td>0.69</td>
</tr>
<tr>
<td>Observations</td>
<td>90</td>
<td>90</td>
<td>65</td>
<td>25</td>
</tr>
<tr>
<td>F-test (Prob&gt;F)</td>
<td>0.33</td>
<td>0.37</td>
<td>0.05</td>
<td>0.61</td>
</tr>
<tr>
<td>Normality test (Prob&gt;chi2)</td>
<td>0.03</td>
<td>0.03</td>
<td>0.06</td>
<td>0.01</td>
</tr>
<tr>
<td>Heteroscedasticity test (Prob&gt;chi2)</td>
<td>0.87</td>
<td>0.57</td>
<td>0.22</td>
<td></td>
</tr>
<tr>
<td>RESET (Prob&gt;F)</td>
<td>0.23</td>
<td></td>
<td>0.46</td>
<td>0.14</td>
</tr>
</tbody>
</table>

Notes: OLS and robust (RR) regressions; robust absolute t-statistics in parentheses.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level.
Higher values represent more corruption (Dreher, Kotsogiannis, McCorriston 2005b), higher burden (Heritage),
less regulation (Fraser), better quality (World Bank), and more democracy.
Constant included but not reported.
**Table 11: Determinants of Corruption (DKM), Full Model, Instrumental Variables**

<table>
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<th></th>
<th>All</th>
<th>Low</th>
<th>High</th>
<th>All</th>
<th>Low</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shadow Economy</td>
<td>0.14</td>
<td>0.10</td>
<td>-0.32</td>
<td>0.12</td>
<td>0.12</td>
<td>0.04</td>
</tr>
<tr>
<td></td>
<td>(2.59**)</td>
<td>(2.65**)</td>
<td>(1.22)</td>
<td>(2.45**)</td>
<td>(2.50**)</td>
<td>(0.19)</td>
</tr>
<tr>
<td>Log GDP per capita</td>
<td>0.41</td>
<td>0.26</td>
<td>-0.94</td>
<td>0.13</td>
<td>0.12</td>
<td>-0.16</td>
</tr>
<tr>
<td></td>
<td>(0.76)</td>
<td>(0.41)</td>
<td>(0.46)</td>
<td>(0.35)</td>
<td>(0.27)</td>
<td>(0.11)</td>
</tr>
<tr>
<td>Fiscal Burden (Heritage)</td>
<td>0.09</td>
<td>0.82</td>
<td>-3.51</td>
<td>0.11</td>
<td>0.39</td>
<td>-1.47</td>
</tr>
<tr>
<td></td>
<td>(0.18)</td>
<td>(1.18)</td>
<td>(2.20**)</td>
<td>(0.34)</td>
<td>(0.71)</td>
<td>(1.31)</td>
</tr>
<tr>
<td>Regulation of Prices (Fraser)</td>
<td>-0.44</td>
<td>-0.41</td>
<td>-0.16</td>
<td>-0.41</td>
<td>-0.45</td>
<td>-0.20</td>
</tr>
<tr>
<td></td>
<td>(2.10**)</td>
<td>(2.00**)</td>
<td>(0.41)</td>
<td>(2.45**)</td>
<td>(2.29**)</td>
<td>(0.42)</td>
</tr>
<tr>
<td>Rule of Law (World Bank)</td>
<td>1.58</td>
<td>0.67</td>
<td>-4.04</td>
<td>1.66</td>
<td>1.29</td>
<td>0.82</td>
</tr>
<tr>
<td></td>
<td>(1.80*)</td>
<td>(0.83)</td>
<td>(1.23)</td>
<td>(2.61**)</td>
<td>(1.94*)</td>
<td>(0.28)</td>
</tr>
<tr>
<td>Democracy</td>
<td>-0.08</td>
<td>0.04</td>
<td>0.18</td>
<td>-0.12</td>
<td>-0.07</td>
<td>0.20</td>
</tr>
<tr>
<td></td>
<td>(0.79)</td>
<td>(0.34)</td>
<td>(0.98)</td>
<td>(1.50)</td>
<td>(0.76)</td>
<td>(0.60)</td>
</tr>
<tr>
<td>Adjusted R2</td>
<td>0.30</td>
<td>0.23</td>
<td>-0.18</td>
<td>-0.04</td>
<td>0.25</td>
<td>-0.23</td>
</tr>
<tr>
<td>Observations</td>
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<td>43</td>
<td>23</td>
<td>86</td>
<td>62</td>
<td>24</td>
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<tr>
<td>Sargan Test (Prob. &gt; F)</td>
<td>0.89</td>
<td>0.17</td>
<td>0.01</td>
<td>0.83</td>
<td>0.87</td>
<td>0.21</td>
</tr>
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</table>

Notes:
(1) Shadow Economy instrumented with Credit Market Regulations (Fraser), Minimum Wage Regulation (Fraser), Government Effectiveness (World Bank).
(2) Shadow Economy instrumented with Starting a Business (Duration), Starting a Business (Costs), Flexibility to Hire, Flexibility to Fire.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level
Higher values represent more corruption (Dreher, Kotsogiannis, McCorriston 2005b), higher burden (Heritage), less regulation (Fraser), better quality (World Bank), and more democracy.
Constant included but not reported.
Table 12: Summary

<table>
<thead>
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<th>Dependent Variable:</th>
<th>Shadow Economy</th>
<th>Corruption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent Variable:</td>
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<td></td>
</tr>
<tr>
<td>All Low High All Low High</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICRG index of corruption</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OLS 1.88</td>
<td>3.57</td>
<td>-0.84</td>
</tr>
</tbody>
</table>
| (1.20) | (1.34) | (0.97) | (0.41) | (1.14) | (3.57***)
| Robust regression 1.32 | 0.00 |   |   |   |   |
| (0.82) | (0.43) |   |   |   |   |
| IV, set 1 3.72 | 3.12 | 5.41 | -0.03 | -0.01 | -0.09 |
| (1.17) | (0.86) | (1.40) | (1.28) | (0.42) | (1.57) |
| IV, set 2 -4.04 | 5.14 | -1.85 | -0.02 | -0.02 | -0.11 |
| (1.33) | (0.78) | (1.91*) | (0.66) | (0.46) | (1.45) |
| Panel, fixed effects 1.34 | 1.36 | 0.69 | 0.09 | 0.10 | 0.09 |
| (2.63**) | (1.42) | (1.98**) | (2.88*** | (2.77*** | (0.76) |
| Panel, random effects 1.59 | 0.02 |   |   |   |   |
| (4.81*** | (2.64***) |   |   |   |   |
| Panel IV 3.46 | 0.01 |   |   |   |   |
| (3.48***) | (0.12) |   |   |   |   |
| TI index of corruption |               |            |
| OLS | -0.06 |   |   |   |
| (2.35**) |   |   |   |   |
| World Bank Index of corruption |               |            |
| OLS | -0.01 |   |   |   |
| (2.76**) |   |   |   |   |
| DKM index of corruption |               |            |
| OLS | 0.04 | 0.06 | -0.10 |   |   |
| (1.77*) | (2.49**) | (1.50) |   |   |   |
| Robust regression 0.04 |   |   |   |   |
| (1.69*) |   |   |   |   |   |
| IV, set 1 0.14 | 0.10 | -0.32 |   |   |
| (2.59**) | (2.65**) | (1.22) |   |   |   |
| IV, set 2 0.12 | 0.12 | 0.04 |   |   |
| (2.45**) | (2.50**) | (0.19) |   |   |   |

Notes:
Instruments for the shadow economy are: (1) Credit Market Regulations (Fraser), Minimum Wage Regulation (Fraser), Government Effectiveness (World Bank); (2) Starting a Business (Duration), Starting a Business (Costs), Flexibility to Hire, Flexibility to Fire.
Instruments for corruption are: (1) Fiscal Burden (Heritage), Regulation of Prices (Fraser), Rule of Law (World Bank), Democracy; (2) Ethnic Fractionalization, Religious Fractionalization, Latitude, French Legacy, Socialist Legacy, German Legacy, Scandinavian Legacy.

* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level
**Appendix A**

**Table A-1: Determinants of the Shadow Economy – Tax Burden**

<table>
<thead>
<tr>
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<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
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<tbody>
<tr>
<td>Corruption (ICRG)</td>
<td>1.45</td>
<td>1.71</td>
<td>1.91</td>
<td>2.18</td>
<td>3.04</td>
<td>3.26</td>
</tr>
<tr>
<td></td>
<td>(1.41)</td>
<td>(1.54)</td>
<td>(1.90*)</td>
<td>(2.40**)</td>
<td>(1.62)</td>
<td>(1.98*)</td>
</tr>
<tr>
<td>Log GDP per capita</td>
<td>-5.28</td>
<td>-5.61</td>
<td>-5.41</td>
<td>-5.28</td>
<td>-3.82</td>
<td>-3.68</td>
</tr>
<tr>
<td></td>
<td>(7.61***)</td>
<td>(7.62***)</td>
<td>(5.62***)</td>
<td>(5.70***)</td>
<td>(2.16**)</td>
<td>(2.31**)</td>
</tr>
<tr>
<td>Fiscal Burden (Heritage)</td>
<td>-2.47</td>
<td>-0.05</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1.89*)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Top marginal income tax rate (Fraser)</td>
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<tr>
<td></td>
<td></td>
<td>0.26</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.29)</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Taxes on international trade (Fraser)</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>0.26</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.29)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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Notes: OLS regressions; robust absolute t-statistics in parentheses.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level.
Higher values represent more corruption (ICRG), higher burden (Heritage) and smaller burden (Fraser).
Constant included but not reported.
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Notes: OLS regressions; robust absolute t-statistics in parentheses.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level.
Higher values represent more corruption (ICRG), more regulation (Heritage), and less regulation (Fraser).
Constant included but not reported.
Table A-3: Determinants of the Shadow Economy – Institutional Quality

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Notes: OLS regressions; robust absolute t-statistics in parentheses.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level.
Higher values represent more corruption (ICRG) and better quality (World Bank, Fraser).
Constant included but not reported.
Table A-4: Determinants of Corruption – Tax Burden

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Notes: OLS regressions; robust absolute t-statistics in parentheses.
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level.
Higher values represent more corruption (ICRG), higher burden (Heritage) and smaller burden (Fraser).
Constant included but not reported.
Table A-5: Determinants of Corruption – Measures of Regulation

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Notes: OLS regressions; robust absolute t-statistics in parentheses. * denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level. Higher values represent more corruption (ICRG), more regulation (Heritage) and less regulation (Fraser). Constant included but not reported.
### Table A-6: Determinants of Corruption – Institutional Quality

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Notes: OLS regressions; robust absolute t-statistics in parentheses. 
* denotes significant at 10% level; ** significant at 5% level; *** significant at 1% level.
Higher values represent more corruption (ICRG) and better quality (World Bank, Fraser). 
Constant included but not reported.
### Appendix B: Sources and Definitions

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
<th>Source</th>
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<tr>
<td>Shadow Economy</td>
<td>Size of the shadow economy in percent of GDP calculated with dynamic and currency demand estimation techniques.</td>
<td>Schneider (2005a)</td>
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<tr>
<td>Corruption (ICRG)</td>
<td>Measures corruption in the political system as a threat to foreign investment based on the analysis of a worldwide network of experts. Rescaled so that 0 represents no corruption and 6 highest corruption.</td>
<td>International Country Risk Guide (ICRG)</td>
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<tr>
<td>Corruption (TI)</td>
<td>Corruption Perception Index. Rescaled so that 0 represents no corruption and 10 highest corruption.</td>
<td>Transparency International</td>
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<tr>
<td>Corruption (DKM)</td>
<td>Index inferred from a structural model using both the likely causes and likely effects of corruption. The index ranges from 1 to 10, where higher values represent more corruption.</td>
<td>Dreher, Kotsogiannis and McCorriston (2005b)</td>
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<td>GDP per capita</td>
<td>GDP per capita is gross domestic product divided by midyear population.</td>
<td>World Bank (2003)</td>
</tr>
<tr>
<td>Fiscal burden (Heritage)</td>
<td>The index of the fiscal burden refers to average and marginal corporate and income taxation where a score of 1 signifies an economic environment most conducive to economic freedom, while a score of 5 signifies least economic freedom.</td>
<td>Heritage (2005)</td>
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<tr>
<td>Top marginal income tax rate (Fraser)</td>
<td>Show higher scores for countries with lower tax rates, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
</tr>
<tr>
<td>Taxes on international trade (Fraser)</td>
<td>Show higher scores for countries with lower tax rates, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
</tr>
<tr>
<td>Trade barriers (Heritage)</td>
<td>Captures international trade taxation and regulation. A higher score implies a higher burden of taxation, i.e. higher average and marginal tax rates and, respectively, higher taxes on trade.</td>
<td>Heritage (2005)</td>
</tr>
<tr>
<td>Taxes (percent of GDP)</td>
<td>Tax revenue in percent of GDP.</td>
<td>World Bank (2003)</td>
</tr>
<tr>
<td>Revenue (percent of GDP)</td>
<td>Current revenue (excluding grants) in percent of GDP.</td>
<td>World Bank (2003)</td>
</tr>
<tr>
<td>Credit Market Regulation (Fraser)</td>
<td>Show higher scores for countries with less regulation, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
</tr>
<tr>
<td>Minimum Wage Regulation (Fraser)</td>
<td>Show higher scores for countries with less regulation, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
</tr>
<tr>
<td>Credit Market Regulation (Fraser)</td>
<td>Show higher scores for countries with less regulation, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
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<tr>
<td>Regulation of prices (Fraser)</td>
<td>Show higher scores for countries with less regulation, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
</tr>
<tr>
<td>Administrative procedures (Fraser)</td>
<td>Show higher scores for countries with fewer procedures, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
</tr>
<tr>
<td>Time with government bureaucracy (Fraser)</td>
<td>Show higher scores for countries with less bureaucracy, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
</tr>
<tr>
<td>Wage and price regulation (Heritage)</td>
<td>Index of wage and price regulation where a score of 1 signifies an economic environment most conducive to economic freedom, while a score of 5 signifies least economic freedom.</td>
<td>Heritage (2005)</td>
</tr>
<tr>
<td>Regulation (Heritage)</td>
<td>Index of regulation where a score of 1 signifies an economic environment most conducive to economic freedom, while a score of 5 signifies least economic freedom.</td>
<td>Heritage (2005)</td>
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<tr>
<td>Rule of law (World Bank)</td>
<td>Ranges from -2.58 to 2.48, with higher scores showing &quot;better&quot; environments.</td>
<td>Kaufmann et al. (2003)</td>
</tr>
<tr>
<td>Variable</td>
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<td>Source</td>
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<tr>
<td>----------</td>
<td>-------------</td>
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<tr>
<td>Government effectiveness (World Bank)</td>
<td>Ranges -2.31 to 2.22, with higher scores showing “better” environments.</td>
<td>Kaufmann et al. (2003)</td>
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<tr>
<td>Judicial independence (Fraser)</td>
<td>Show higher scores for countries with greater judicial independence, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
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<td>Impartial courts (Fraser)</td>
<td>Show higher scores for countries with greater impartiality, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
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<td>Integrity of legal system (Fraser)</td>
<td>Show higher scores for countries with higher integrity, on a scale of 1-10.</td>
<td>Gwartney and Lawson (2004)</td>
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<tr>
<td>Ethnolinguistic fractionalization</td>
<td>Fractionalization$<em>j = 1 - \sum s</em>{ij}$ with $s_{ij}$ being the share of group $i$ in country $j$.</td>
<td>Alesina et al. (2003)</td>
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<td>Latitude</td>
<td>Absolute value of latitude.</td>
<td>Easterly and Sewadeh (2001)</td>
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<td>Legal origin</td>
<td>Dummies representing French, German, Socialist, and Scandinavian legal origin.</td>
<td>La Porta et al. (1999)</td>
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<td>Costs to start business</td>
<td>Measures the costs of the start-up of commercial or industrial firms with up to 50 employees and start-up capital of 10 times the economy's per-capita Gross National Income. All procedures required to register a firm are counted, including screening procedures by overseeing government entities, tax- and labour-related registration procedures, health and safety procedures, and environment-related procedures. The costs of these procedures are calculated as percentage of income per capita.</td>
<td>Djankov et al. (2002)</td>
</tr>
<tr>
<td>Duration to start business</td>
<td>Measures the duration of the start-up of commercial or industrial firms with up to 50 employees and start-up capital of 10 times the economy's per-capita Gross National Income. All procedures required to register a firm are counted, including screening procedures by overseeing government entities, tax- and labour-related registration procedures, health and safety procedures, and environment-related procedures. Time is recorded in calendar days.</td>
<td>Djankov et al. (2002)</td>
</tr>
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<td>Hiring flexibility index</td>
<td>The hiring cost indicator measures all social security payments (including retirement fund; sickness, maternity and health insurance; workplace injury; family allowance; and other obligatory contributions) and payroll taxes associated with hiring an employee. The cost is expressed as a percentage of the worker’s salary.</td>
<td>Botero et al. (2004)</td>
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<td>Firing flexibility index</td>
<td>The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when dismissing a redundant worker, expressed in weekly wages.</td>
<td>Botero et al. (2004)</td>
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<td>Alesina et al. (2003)</td>
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## Appendix C: Descriptive Statistics

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<td>2.35</td>
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### Appendix D: Countries included in the Analysis

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<td>Paraguay</td>
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<td>Hong Kong, China</td>
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<td>Iraq</td>
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THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY COTE D'IVOIRE

ARTICLE 7 UNCAC

PUBLIC SECTOR

COTE D’IVOIRE (EIGHTH MEETING)

- **Concernant le magistrat**

Des conditions d’accès à la fonction
De la mission de de contrôle de L’inspection Générale des Services Judiciaires et Pénitentiaires.

L’accès à la profession de juge et de procureur est réglementer par la loi de 1978 portant Statut de la Magistrature.

Depuis 2008, le concours d’accès à la profession est organisé par l’Institut National de la Formation Judiciaire (INFJ)

Le candidat doit produire, entre autres documents, un casier judiciaire datant de moins de trois mois.

Une enquête de moralité est sollicitée par l’école, auprès des services de la police judiciaire et de la gendarmerie dès l’admission du candidat au concours.

Cependant, le Conseil supérieur de la Magistrature, avant de nommes les stagiaires en qualité de magistrat, peu faire procéder à une nouvelle enquête de moralité

De la formation du magistrat …

- **Concernant les services pénitentiaires**

Il est exigé au titre des documents à fournir pour le recrutement du personnel des services pénitentiaires, un casier judiciaire pour vérifier les antécédents personnels ;

L’Institut National de Formation Judiciaire est en charge de la formation du personnel administratif ;

Formations des magistrats et du personnel des services pénitentiaires sur les risques de corruption propres à leur profession
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY CZECH REPUBLIC

ARTICLE 7 UNCAC

PUBLIC SECTOR

CZECH REPUBLIC (EIGHTH MEETING)

In relation to measures concerning article 7 of the Convention and the public sector, States parties and signatories may wish to cite and summarize measures that:

• Establish and strengthen systems to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, including whether specific procedures exist for the recruitment and hiring of senior officials in criminal justice institutions, if they are different from other civil servants;

Both the government's anti-corruption strategy for the years 2013-2014 and the subsequent anti-corruption action plan for the year 2015, which was issued on the basis of the government's Anti-Corruption Conception for the years 2015-2017, included the preparation of a new law on public prosecution. One of the main focuses of the reform is ensuring the independence of the public prosecution service from political influence also in the area of recruitment, hiring, retention, promotion public prosecutors.

The Ministry of Justice prepared a draft Law on the Public Prosecutor’s Office and, following the comment procedure, submitted it to the government on 12 October 2015 for further deliberation. On 21 April 2016, the government submitted the draft law to Parliament.

The most significant changes proposed by the draft law include arrangements to increase the independence of the Supreme Public Prosecutor and other chief public prosecutors, to ensure the transparency of their selection and to eliminate the risk of possible external influence especially by the executive; changes to the status of public prosecutors, whose function will in the future be carried out as a public function (i.e. the subsidiary use of the Labour Code will be excluded); the abolishment of the High Public Prosecutor’s Office and the establishment of a nationwide Special Prosecutor’s Office focused mainly on the most serious forms of property and economic crimes and corruption; the creation of a consultative body, the Advisory Board which will be linked to the Supreme Public Prosecutor’s Office and be composed of public prosecutors from different levels elected for six-year terms. The draft law, if adopted, would also introduce/regulate regular performance evaluation of public prosecutors and their work schedule, and restrict the issuance of so-called negative guidance/allow such guidance to be rejected if it is obviously in contradiction to the established interpretation of the law. It also aims at increasing transparency in internal relations, reducing the possibility of covert interference in how specific matters are dealt with and strengthening the accountability of individual prosecutors for the outcome of cases.

With regard to the upcoming elections to the Chamber of Deputies of Parliament of the Czech Republic, which will be held on 20. and 21. 10. 2017, it is unlikely that the bill will be approved.
Current situation:

Public prosecutors are appointed by the Ministry of Justice for an indefinite period upon a proposal of the Supreme Public Prosecutor. They must be Czech citizens, have full legal capacity, no criminal conviction, be over 25 years old, have achieved university education by studying a masters study programme in the area of law at a university in the Czech Republic, have successfully passed the final examination and have moral attributes guaranteeing due execution of the office. As for judges, in order to assess the moral character of candidates, the previous and current life is taken into account, including the absence of criminal and administrative sanctions, the content of different references, sometimes assessment from previous employment, etc. The final examination is taken, after a 36 month internship, before the examination board which is appointed by the Ministry of Justice and includes public prosecutors, judges and other legal experts. Some other examinations specified by law – such as the bar examination and the judges examination – have the same status as the final examination concluding the prosecutorial internship.

Selection of candidate public prosecutors is under the responsibility of Regional Public Prosecutors. Mostly it includes a written test (model situation) and an oral interview, usually attended by the head of prosecutor’s offices where posts are to be occupied, which is focused on confirming the expert level of the applicant in substantive and procedural criminal law. The selection of candidates by Regional Public Prosecutors and the appointment decisions by the Ministry of Justice do not have to be reasoned and are not subject to appeal by unsuccessful candidates.

Public prosecutors are assigned by the Minister of Justice upon a proposal of the Supreme Public Prosecutor to perform their position at a specific public prosecutor’s office with their previous approval. The Minister of Justice may transfer a public prosecutor to another public prosecutor’s office of the same or higher instance with his/her approval or at his/her request; as a rule, a public prosecutor can be transferred to a public prosecutor’s office of a lower instance at his/her request only. Unless due performance of the responsibilities of the Public Prosecutor’s Office can be secured by the above procedure, the Minister of Justice may, upon hearing the opinion of the chief public prosecutor of the public prosecutor’s office concerned, transfer a public prosecutor even without his/her approval or application to another public prosecutor’s office if its organisation or jurisdiction has been changed by law; the decision by the Ministry of Justice may be appealed to the administrative court. Temporary assignment of a public prosecutor to another public prosecutor’s office, to the Ministry of Justice or the Judicial Academy requires his/her approval.

The promotion of public prosecutors is not regulated in detail by the APPO. Section 19(2) only states that when public prosecutors are transferred to a higher public prosecutor’s office, their level of expertise is taken into account. The authorities indicate that the draft Law on the Public Prosecutor’s Office defines the minimum experience required, namely five years for Regional Public Prosecutor’s Offices and eight years for the High Public Prosecutor’s Office and the Supreme Public Prosecutor’s Office.

The Supreme Public Prosecutor is appointed – and can be removed – by the government at the proposal of the Minister of Justice, for an indefinite period of time. S/he is appointed from among the public prosecutors, so s/he has to fulfil the same requirements for appointment. The decision by the government to dismiss the Supreme Public Prosecutor does not have to
be reasoned. As far as the Supreme Public Prosecutor deputies are concerned, they are appointed and may be removed by the Minister of Justice at the proposal of the Supreme Public Prosecutor.

The appointment of other chief public prosecutors is regulated by section 10 APPO as follows. The Minister of Justice appoints high public prosecutors at the proposal of the Supreme Public Prosecutor, regional public prosecutors at the proposal of the relevant high public prosecutor, and district public prosecutors at the proposal of the relevant regional public prosecutor. Chief public prosecutors are appointed for an indefinite period of time. The Minister may remove them from office 1) in case of a serious breach of duties resulting from the execution of the public prosecutor’s competence or 2) at the proposal of the relevant chief public prosecutor of the superior level. The Minister may also appoint or remove chief public prosecutors of Regional or District Public Prosecutors’ Offices at the proposal of the Supreme Public Prosecutor. The authorities indicate that decisions on appointment of chief public prosecutors are not reasoned, whereas decisions on their dismissal are reasoned and are subject to appeal under the Administrative Procedure Code.

- Implement adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption in criminal justice institutions and the rotation, where appropriate, of such individuals to other positions;

The Public Prosecutor’s Office is aware of the need to specialize on individual types of criminal activity in order to secure sufficient expert knowledge and experience of the individual public prosecutors on the area of crime in question. There are specialized public prosecutors within the system of Public Prosecutor’s Office on corruption criminality. The issue of specialization of public prosecutors is governed by the Instruction of General Nature no. 4/2009, the Sample Rules of Organization, as amended. The Instruction of General Nature is an internal regulatory act of the Public Prosecutor’s Office system and it is binding to all public prosecutors, and also for other employees of the Public Prosecutor’s Office, if the Supreme Public Prosecutor so stipulates (see Section 12 (1) of APPO). For the area of money laundering the said Instruction of General Nature in Annex 1 and 2 stipulates under item I. Economic and property crime, paragraph B) corruption, criminality of public officials (with exemption of security forces and intelligence services). These specializations are mandatory at all Prosecutor’s Offices. The allocation of individual public prosecutors to each specialization is decided by the chief public prosecutor of the respective Public Prosecutor’s Office. In general each public prosecutor handles cases according to his specialization. The list of occupation of specializations and changes thereof are notified to the Supreme Public Prosecutor’s Office, which keeps a list of specializations and allocation of public prosecutors; this list is updated quarterly and published on the Extranet website of Public Prosecutor’s Office, and as such it is accessible to all public prosecutors and other expert employees of the Public Prosecutor’s Office.

Since 2011 the Public Prosecutor’s Office system includes a position of National Correspondent for fight against corruption and search and draining of proceeds from crime. This was put to practice on the basis of a Provision of the Supreme Public Prosecutor no. 25/2011, which established the position of National Correspondents for various areas of criminal activity. Currently this issue is regulated by Provision of the Supreme Public Prosecutor no. 2/2013, on National Correspondents and their expert teams, as amended; this Provision also follows up on Section 25 of the Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, as amended. With effect as of 1. 5. 2016, this
Provision was amended (amendment effected by Provision no. 8/2016), whereas the amendment consisted in certain redistribution of agenda among National Correspondents, specifically among other things by establishing a position of **National Correspondent for combating corruption**. National Correspondent, or his expert team, not only form a point of cooperation for the National Member in Eurojust in the given area, but also serve as a guarantor of interdepartmental cooperation and cooperation with foreign countries; they also analyze case law and specialized publications, participate on execution of questionnaires, educational activities secured in particular by the Judicial Academy, on interdepartmental cooperation and meetings, they attend or propose attendance on domestic and foreign conferences. Currently there are a total of ten National Correspondents, appointed also for other areas.

From the methodology point of view on the area of criminal prosecution of corruption, the **existence of Extranet of the Public Prosecutor’s Office** is also worth mentioning. Extranet of the Public Prosecutor’s Office is not accessible to the general public, it is an internal source of information within the Public Prosecutor’s Office system. It is available to all public prosecutors and all expert employees of the Public Prosecutor’s Office. Extranet of the Public Prosecutor’s Office is used for publishing and permanent availability of various materials, mostly of methodological nature (methodology, opinions, case law, news, minutes from meetings etc.), also for the area of corruption criminality.

Furthermore it is worth mentioning that especially the area of corruption criminality is regularly the subject of **educational events organized by the Judicial Academy**, which are attended by public prosecutors, as well as judges.

It is also important to mention, that in the area of corruption Public Prosecutor’s Offices issue the **Internal Anti-corruption Programme** (hereinafter only “IACP”). This is the internal document stemming from the Government Strategy to Fight Corruption for the Years 2013 and 2014, the Government Anti-Corruption Conception for the Years 2015 to 2017 and the Framework of internal anti-corruption programme and sets the control and management mechanisms in the areas with a risk of corruptive conduct. IACP contains also the education of public prosecutors and other employees of Prosecution service in the anti-corruption area.

- **Prescribe criteria concerning candidature for and election to public office for members of criminal justice institutions, if applicable, as well as measures to enhance transparency in the funding of candidatures and of contributions to political parties, where applicable.**

It is mentioned above.
CZECH REPUBLIC (THIRD MEETING)

In order to increase efficiency and stabilization of state administration new Act on Civil Servants has been elaborated. The Act uniquely determines the margins between political and clerical occupied seats in public administration, ensures depoliticisation, professionalization and stabilization of public administration, sets a system of remuneration and designs clear and meaningful solution to the issue of accepting gifts by representatives of public authorities. The emphasis should be placed on the presentation of the basic duties of the official, including mandatory training. Deadline for submission of the draft Law on Civil Servants has been newly set on 30th June 2012.
ECUADOR (EIGHTH MEETING)

Artículo 207: “El Consejo de Participación Ciudadana y Control Social promoverá e incentivará el ejercicio de los derechos relativos a la participación ciudadana, impulsará y establecerá mecanismos de control social en los asuntos de interés público, y designará a las autoridades que le corresponda de acuerdo con la Constitución y la ley (…)”. En efecto la Constitución establece que las autoridades de varias instituciones de la Función Judicial y Función de Transparencia, serán designadas mediante un concurso de méritos y oposición que será sujeto a veedurías e impugnación ciudadana. Las autoridades reguladas por esta disposición, para su conformación, son: Fiscal General del Estado (art. 208.11); Contralor General del Estado (art. 208.11); Defensor del Pueblo (art. 208.11); Defensor Público (art. 208.11); Presidente del Consejo Nacional Electoral (art. 208.12); Presidente del Tribunal Contencioso Electoral (art. 208.11); Procurador General del Estado (art. 208.10); Superintendentes (art. 213); Magistrados de la Corte Constitucional (art. 25); Vocales del Consejo de la Judicatura (art. 180).

Por su parte, el Artículo 225, determina: “El sector público comprende: 1. Los organismos y dependencias de las funciones Ejecutiva, Legislativa, Judicial, Electoral y de Transparencia y Control Social (…)”; y el Artículo 227, establece: “La administración pública constituye un servicio a la colectividad que se rige por los principios de eficacia, eficiencia, calidad, jerarquía, desconcentración, descentralización, coordinación, participación, planificación, transparencia y evaluación.

El artículo 434, señala: “Los miembros de la Corte Constitucional se designarán por una comisión calificadora que estará integrada por dos personas nombradas por cada una de las funciones, Legislativa, Ejecutiva y de Transparencia y Control Social. La selección de los miembros se realizará de entre las candidaturas presentadas por las funciones anteriores, a través de un proceso de concurso público, con veeduría y posibilidad de impugnación ciudadana. En la integración de la Corte se procurará la paridad entre hombres y mujeres.”

Planes y políticas públicas nacionales:

Plan Nacional del Buen Vivir, 2013-2017, establece en sus objetivos: Objetivo 1: Consolidar el Estado democrático y la construcción del poder popular; (…) 1.13 Fortalecer los mecanismos de control social, la transparencia de la administración pública y la prevención y la lucha contra la corrupción, (…) c. Fomentar mecanismos de seguimiento y evaluación de la transparencia y de los procesos de rendición de cuentas de los niveles de gobierno y las funciones del Estado, como garantía del control social. (…) g. Consolidar en todos los niveles de gobierno la aplicación de procedimientos para transparentar la asignación y ejecución de recursos presupuestarios.
Y, en su Objetivo 6, define: Consolidar la transformación de la justicia y fortalecer la seguridad integral, en estricto respeto a los derechos humanos, numerales: (...) 6.2. Mejorar y modernizar la administración de la justicia; literales: b. Generar mecanismos idóneos de ingreso, promoción, evaluación y régimen disciplinario en la carrera judicial y en los demás órganos de administración de justicia señalados en la Constitución, y d. Diseñar e implementar un sistema de acreditación de operadores del sistema de justicia; y (...) 6.8. Promover una cultura social de paz y la convivencia ciudadana en la diversidad, literal: f. Promover veedurías ciudadanas para mejorar los servicios de seguridad y evitar la corrupción.

Programas de formación y capacitación para aplicación de los Códigos de Ética y demás normativa relacionada a prevención de la corrupción:

Las Escuelas: de la Función Judicial, Fiscalía, de Policías y la Dirección Nacional de Capacitación, ha definido, principalmente, en sus programas de formación inicial y algunos en los de formación continua; los contenidos que incluyen el abordaje de los Códigos de Ética, además de los principios de transparencia, integridad y la prevención y denuncia de casos de Corrupción.
EGYPT (SECOND MEETING)

Concerning the requirements of article 7 Public sector development: Through the Ministry of State for Administrative Development, the Committee has taken the following steps:

- Prepare a new draft law on public functions to replace law 47/1978 in order to enhance the principles of competitiveness, merit and aptitude in the selection of civil servants, match wages with performance and establish efficient policies for reward and retribution. The draft law has been disseminated to the public and civil society organizations for advice and discussion. A number of steps have been initiated towards the promulgation of the law, including:

- Hiring of civil servants, by appointment or contractually, through advertisement directed at the whole population in a way that guarantees an equal opportunity to all and equality among citizens, and specify recruitment criteria for civil servants in a framework of transparency, integrity and impartiality in the public interest. The existing system has been amended, as the Minister of State for Administrative Development decision number 25 for 1997 has been replaced by a new decision number 7 for 2010 on rules and checks for the recruitment system in order to establish serious and exact principles and mechanisms that ensure openness and equal opportunity in contracts related to work in the State. This is accomplished by automating the process and publishing all vacant government positions on the Egyptian Government’s electronic service portal http://jobs.gov.eg. The decision also establishes a control and follow-up mechanism in which the society itself is the controller, because all decisions to conclude contracts are made public.

- Setting up of the government procurement portal (as a result of the cooperation between the Ministry of State for Administrative Development, the Ministry of Finance and the General Organization for Government Services) in the context of establishing the principle of transparency and integrity in the State’s government apparatus, rationalizing government spending and improving Egypt’s transparency indicators. This is the first such portal in the Middle East (etenders.gov.eg), and is designed to help the government publish tenders in all areas through the Internet. The prime minister’s decision number 33 for 2010 mandates that all government bodies publish bids electronically on the government procurement portal by publishing requirements and specifications for bids and limited and local tenders that
they issue and whatever amendments thereon on the portal, without prejudice to their announcement in the way stipulated by the law for bids and tenders number 89/1998. The decision also establishes a mechanism for follow-up and control in this regard, in which civil society plays the role of controller because all decisions to conclude contracts or award bids or tenders are made public. The first stage of the portal has been completed, and the second stage is in the process of completion, so that the entire cycle for bids and tenders will be undertaken in the electronic site.

- Improving the performance of public services and simplifying their procedures and transparency by connecting national databases. As citizens expect to receive better, faster and more efficient services, there was urgent need to establish a legal framework to regulate the availability and handling of data and information, rules for coordinating between concerned public agencies in this matter, examine cases in which private entities and civil society organizations have been harmed in the area of data and information, conduct field research and collect data. In anticipation of a law on the free handling of information and prepare government units to apply an integrated information system, new dispositions have been issued concerning the executive directors of information (prime minister’s decision number 2552 for 2009 on creating the post of executive director of information in ministries’ and governorates’ departments) that specify rules for their selection and appointment, and the tasks that are assigned to them, in order to produce a clear positive effect on the citizens, and thus on the services provided to them with great efficiency.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY GABON

ARTICLE 7 UNCAC
PUBLIC SECTOR

GABON (EIGHTH MEETING)

a) La transparence et la responsabilité du recrutement à la retraite des agents publics des institutions de justice pénale :

Au Gabon, l’autorité judiciaire est exercée par le Conseil Supérieur de la Magistrature. Il veille à la bonne administration de la justice et statue de ce fait sur les nominations, les affectations, les avancements et la discipline des magistrats. La Cour judiciaire est la plus haute juridiction de l’État en matière civile, commerciale, sociale et pénale. Ainsi, la justice pénale est rendue dans les cours d’appel et tribunaux de l’ordre judiciaire. Le magistrat de cette juridiction qui veille à l’application de la loi et à la protection des libertés individuelles, rend la justice au nom du peuple. Il n’est soumis, dans l’exercice de ses fonctions, qu’à l’autorité de la loi.

La mobilité du personnel de la Cour judiciaire se fait par nomination, affectation, mutation ou promotion prononcées chaque fin d’année judiciaire par le Conseil Supérieur de la Magistrature. Au cours de la carrière d’un magistrat, il bénéficie des nominations sur décision du Conseil Supérieur de la Magistrature qui détermine le grade, la classe, l’échelon et les fonctions auxquels il peut être nommé. Les magistrats de deuxième grade sont appelés à exercer dans les tribunaux et ceux du premier grade dans les cours d’appel. Les magistrats du grade hors hiérarchie exercent dans les cours judiciaires ou en qualité de conseiller du Ministre. Le changement de spécialité ne s’applique pas au corps des magistrats.

Toutefois, pour les nécessités de service, et sur décision du Conseil Supérieur de la Magistrature, un magistrat d’un grade supérieur peut être appelé à exercer des fonctions d’un niveau inférieur, tout en conservant les avantages attachés à son grade. Les fonctions exercées par les magistrats de chaque grade sont définis par le décret de nomination. Le magistrat en détachement continue à bénéficier de l’avancement d’échelon. L’avancement normal et automatique se fait en respectant le nombre d’années d’ancienneté de chaque grade, mis à part les nominations des magistrats de grade hors catégorie. Il est attribué par sa hiérarchie, chaque année, à tout magistrat en activité à la Cour judiciaire, une note chiffrée suivie d’une appréciation générale exprimant sa valeur professionnelle, communiquée au Conseil Supérieur de la Magistrature. Il est mis à la retraite à l’âge de soixante cinq ans.

b) Les procédures de sélection et de formation des membres des institutions de justice pénale :

L’indépendance du magistrat gabonais signifie, certes, qu’il doit décider en toute âme et conscience, mais il doit avoir des connaissances juridiques toujours nécessaires et

1 Article 10 de la loi n°7/94 du 16 septembre 1994 portant organisation de la justice en République Gabonaise.
2 2e alinéa de l’article 68(nouveau) de la loi n° 47/2010 du 12 janvier 2011 portant révision de la Constitution.
primordiales. Ces connaissances sont acquises essentiellement lors de sa formation initiale. Les élèves magistrats stagiaires intégrés dans le corps des magistrats pour servir dans l'Ordre judiciaire sont titulaires de la maîtrise (Master) en droit et diplômés de l'Ecole Nationale de la Magistrature ou de tout autre établissement spécialisé équivalent agréé par l'État. Le concours est le mode exclusif d'admission à l'Ecole Nationale de Magistrature.

Toutefois, le statut particulier des magistrats permet l'intégration directement dans le corps des magistrats et la nomination aux différentes fonctions de ce corps des :

- avocats titulaires de la maîtrise en droit et ayant au moins dix ans d'expérience dans leur profession ;
- greffiers titulaires de la maîtrise en droit et ayant au moins dix ans d'expérience dans leur fonction.

Le nombre de magistrats nommés dans ce cas ne peut dépasser le cinquième des vacances constatées.\(^3\)

Après deux ans de formation à l'Ecole Nationale de Magistrature, l'élève magistrat diplômé s'initie à ses futures fonctions et fait la preuve qu'il est apte à les exercer avant d'être titularisé lors de son stage de douze mois renouvelable une fois. Au terme dudit stage, il est soit titularisé, soit licencié, soit astreint à une nouvelle période de stage. Au cours de son stage, il peut être sanctionné pour les fautes correspondant à l'avertissement, le blâme et le licenciement, conformément aux dispositions du statut général des fonctionnaires.

La formation et le perfectionnement professionnel des magistrats de la Cour judiciaire sont assurés au moyen des séminaires et des stages professionnels à la charge de l'État ou de tout autre organisme national ou international. La transparence en la matière exige une plus grande diffusion chaque année des annonces de séminaires et des possibilités de stages professionnels. La désignation d'un magistrat à prendre part à un stage est, en principe, subordonnée à la note chiffrée qui lui est attribuée chaque année.

Au niveau national, les magistrats de la Cour judiciaire participent aux différents ateliers de formation sur le blanchiment des capitaux, le financement de terrorisme, l'enrichissement illicite et la corruption. Toutefois, il n'y a pas encore de spécialisation de magistrats dans ces matières dans les tribunaux et cours d'appel judiciaire.

c) Les critères pour la mandature et l'élection à un mandat public de membres des institutions de la justice penale :

Nul magistrat ne peut être nommé à une fonction dans la Cour judiciaire s'il n'est magistrat de grade hors hiérarchie. De même, le Conseil Supérieur de la Magistrature désigne les magistrats de grade hors hiérarchie des groupes supérieurs (6 et 7) comme membres des institutions, avec la possibilité, selon les cas, d'avoir un mandat renouvelable ou non renouvelable (la Commission Nationale de Lutte contre l'Enrichissement Illicite\(^4\), l'Agence Nationale d'Investigation Financière, l'Agence Judiciaire de l'État, la Commission Electorale Nationale Autonome et Permanente\(^5\), etc.).

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\(^3\) Article 24 de la loi n° 12/94 du 16 septembre 1994 portant statut des magistrats.
GEORGIA (SECOND MEETING)

Simplified Personnel Recruitment Process in Public Sector

Amendments to the Law of Georgia on Civil Service establish simplified recruitment procedures in public sector. Consequent to the amendments:

- Competitions will be announced electronically through the web-site of the Civil Service Bureau;
- Deadlines for the submission of applications and competition will be reduced.
GERMANY (THIRD MEETING)

The criteria mentioned in Article 7 with regard to access to public service are governed by constitutional law in Germany. Under Article 33 (2) of the Basic Law every German is “equally eligible for any public office according to his or her aptitude, qualifications and professional achievements.” The Convention requirement of “objective criteria such as merit, equity and aptitude” (Article 7 no. 1 a) has thus been fulfilled.
ARTICLE 7 UNCAC

PUBLIC SECTOR

GREECE (EIGHTH MEETING)

A) In relation to article 7 of the Convention:
1) With regard to the recruitment/appointment procedure of the judiciary in Criminal Justice Institutions (i.e. Courts and Prosecutors’ Offices), we should inform you that it can take place only after their success in a relevant demanding competition and their graduation from the National School of Judges.

Furthermore, it should be noted that, as provided for in article 88, paras 1 and 5, of the Constitution of Greece: (a) the appointment of Judges and Prosecutors is established by a Presidential Decree, in accordance with a law defining their qualifications as well as their recruitment procedure, (b) their term in Office is life-long and (c) the retirement age limit for those magistrates up to the rank of the Judge in the Court of Appeals or the Vice-Prosecutor in the Appeals Prosecutor’s Office and the corresponding ranks coincides with the completion of their sixty-fifth year. The retirement age limit, however, for the Senior Judges (i.e. those of the President of the Court of Appeals or the Appeals Prosecutor and the corresponding ranks), is the sixty-seventh year.

Moreover, pursuant to articles 90, par. 1, of the Constitution and 78 of Law 1756/1988 on «The Code on the Organisation of the Courts and the Status of Judges», as applicable, the Supreme Judicial Council for Civil and Criminal Justice, chaired by the President of the Supreme Court «Areios Pagos», in the presence of the General Prosecutor of the same Court, is regarded as the responsible and competent body for the professional development of the judiciary of Civil and Criminal Courts and Prosecutors’ Offices.

Last, as far as the judicial staff of the Courts and Prosecution Offices is concerned, it should be said that, as provided for in article 92, paragraphs 1 and 3, of the Constitution, their permanence in Office is secured. Also, according to the same provisions, the Judicial Staff Service Boards, consisting by majority of Judges and Prosecutors, are considered to be the competent bodies for the status and development of the Courts and Prosecution Offices’ personnel.

2) First of all, we should inform you that, in our country, the competent body, tasked with the training of the judiciary of Civil and Criminal Courts and Prosecutors’ Offices on Prevention and Combating Corruption issues, is the National School of Judges.

Thus, within the framework of the cooperation of the abovementioned School with the «Hercule III» programme of the European Union, two seminars on «Fraud at the expense of EU interests - Agricultural subsidies and smuggling of tobacco products» as well as on «Tax Evasion Crimes. Addressing problems after Law 4337/2015 and Tax-Law issues» were held in November 2016 and in March 2017, respectively, for Judges in Civil, Criminal and Administrative Courts, as well as Prosecutors. Moreover, the latter will have the opportunity to attend, within 2017, a training seminar on «Justice - Administration and Combating Corruption in the Public Sector» to be held by the same School.
Finally, in the context of the participation of the National School of Judges in training programs for the judiciary, organized by European Union training bodies, the European Judicial Training Network (EJTN) in particular, it should be noted that a) in October 2016, a Deputy Prosecutor attended a seminar on «Economic Crimes, Asset Recovery and Confiscation in the EU», which was held in London, b) in November 2016, another Deputy Prosecutor participated in a seminar on «La corruption: detection, prevention, repression», which was held in Paris, and c) in March 2017, a Prosecutor attended a seminar on «Training Cooperation - Follow the Money: Financial Investigations» organized by EJTN in cooperation with CEPOL in Budapest.

3) With reference to criteria concerning the election to a public (political) office for the judiciary tasked with the administration of Criminal Justice, it should be stressed that according to Article 69, paras 1, 3 and 4, of the Greek Constitution, they (i.e. the Judges and the Prosecutors) are forbidden to provide any other employed/waged service, to practice any profession, to be assigned administrative tasks, as well as to participate in the Government. As a result, there is no possibility for them to take on public (political) office, parallel to their official duties.
I. Información requerida, respecto a los artículos 7, 8 y 11 de la Convención de Naciones Unidas Contra la Corrupción

Respecto al artículo 7.

El Decreto 18-2016 Reformas a la Ley Orgánica del Ministerio Público Decreto 40-94, establece el mecanismo de Carrera Profesional del Ministerio Público, como un sistema de selección, igualdad de oportunidades, nombramiento, ascenso, traslado, evaluación del desempeño, y sistema disciplinario de los trabajadores del Ministerio Público, mecanismo que permite estabilidad en los colaboradores y amplitud en las oportunidades de crecimiento profesional, esto permite que se reduzca el nivel de susceptibilidad a actos de corrupción.

La Carrera Profesional incluida en las reformas, fue establecida en concordancia con los estándares internacionales. El Sistema de carrera profesional del Ministerio Público abarca a la carrera fiscal, carrera técnica y carrera administrativa, dichas carreras se rigen por los principios de: idoneidad, objetividad, integridad y probidad, transparencia, no discriminación y estabilidad.

La Unidad de Capacitación del Ministerio Público de conformidad con la política institucional y las necesidades del servicio, convoca a un curso de selección a los aspirantes a fiscales que hayan aprobado el concurso. Para consolidar dichos procesos la UNICAP ha desarrollado actualmente una malla curricular aprobada por el Despacho Superior en la que se contempla la capacitación de personal especializado para la investigación de delitos relacionados con corrupción.

Adicionalmente las reformas a ley orgánica del Ministerio Público consideran los resultados como requisitos para analizar y aprobar acciones administrativas con el personal como ascensos, capacitaciones.
De manera atenta me dirijo a usted, con relación a Memorandum No. 147.17-531, en el que se solicita información sobre iniciativas y prácticas pertinentes en relación a los temas de debate en la octava sesión del Grupo de Trabajo Intergubernamental de Composición Abierta sobre Prevención de Corrupción.

Al respecto el Ministerio Público informa que en relación al fortalecimiento de la lucha contra la corrupción, se han realizado los esfuerzos siguientes:

Se ha desarrollado propuesta de reforma en materia de Justicia a la Constitución Política de la República de Guatemala, para promover nuevos mecanismos en la selección de funcionarios encargados de la administración del sistema de justicia.

Como rutas de trabajo a corto, mediano y largo plazo la Fiscal General y Jefe del Ministerio Público, presentó en forma conjunta con los presidentes del Organismo Ejecutivo, Organismo Legislativo y Organismo Judicial, la Política Criminal Democrática del Estado de Guatemala, la cual establece los delitos de corrupción como prioridad a investigar y perseguir penalmente, estableciéndose en dicha política los lineamientos para la prevención, investigación y sanción de los hechos de corrupción.

Del mismo modo se aprobaron las reformas a la Ley Orgánica del Ministerio Público, con la cual se fortalece la autonomía, la carrera fiscal, se amplían las oportunidades y el acceso a mejoras laborales, basados en procesos de formación sistemáticos y mejora permanente.

Implementación y fortalecimiento de la Fiscalía Anticorrupción que actualmente investiga casos de alto impacto vinculados a actos de corrupción, lo cual en el aspecto de comunicación lleva implícito el mensaje de prevención de actos de corrupción.

La implementación y fortalecimiento de la Fiscalía de Asuntos Internos y la de Delitos Administrativos, permite promover las sanciones de empleados y funcionarios que cometen delitos relacionados con la corrupción en el ejercicio de sus funciones.

El Ministerio Público forma parte del sistema nacional de información pública, para lo cual proporciona información de oficio y a petición de interesados, garantizando con ello su compromiso con la rendición de cuentas y la transparencia.

Sin particular, me suscribe reiterando las muestras de mi consideración y estima.
GUATEMALA (SECOND MEETING)

Artículo 7: Sector Público.

- Actualmente se le está dando seguimiento a la iniciativa legislativa 3909, que contiene las reformas a la Ley del Servicio Civil que buscan la descentralización de los Recursos Humanos del Organismo Ejecutivo y la operacionalización de los procesos para atender las acciones de personal en forma ágil y oportuna respondiendo a las necesidades de la ciudadanía.

- Guatemala cuenta desde el mes de junio del año de 2009, con la Ley de Comisiones de Postulación con el propósito de regular y establecer mecanismos y procedimientos, objetivos y concretos, en cuanto a la selección de las nóminas de candidatos a cargos que ejercen funciones públicas de relevancia para el Estado de Guatemala tales como los Magistrados de la Corte Suprema de Justicia, de la Corte de Apelaciones, Contralor General de Cuentas, Fiscal General de la República y Jefe del Ministerio Público, Procurador de los derechos humanos y cualquier otro que fuere designado por intermedio de Comisiones de Postulación.
ARTICULO 7: SECTOR PÚBLICO

1. Cada Estado Parte, cuando sea apropiado y de conformidad con los principios fundamentales de su ordenamiento jurídico, procurará adoptar sistemas de convocatoria, contratación, retención, promoción y jubilación de empleados públicos y, cuando proceda, de otros funcionarios públicos no elegidos, o mantener y fortalecer dichos sistemas.

Para el cumplimiento del Artículo en mención, Guatemala aplica lo contenido en la Ley de Servicio Civil y su Reglamento, misma que se describe a continuación:

LEY DE SERVICIO CIVIL Y SU REGLAMENTO (Aprobada por el Congreso de la República, Decreto 1748): Constituye la normativa aplicable a personal contratado en forma permanente, es decir, con dependencia institucional. Ley a través de la cual el Estado de Guatemala realiza los procesos de convocatoria, contratación, promoción, evaluación del desempeño, régimen disciplinario, derechos, obligaciones y jubilación de los servidores públicos. Los órganos superiores encargados de la aplicación de esta ley le corresponde a: Junta Nacional de Servicio Civil y Oficina Nacional de Servicios Civil.

La Junta Nacional de Servicio Civil, se integra con tres miembros titulares y dos suplentes, designados por el Presidente de la República para un periodo de tres años.

La Oficina Nacional del Servicio Civil. Es el órgano ejecutivo encargado de la aplicación de esta ley. Debe estar integrada por un director y un subdirector y por el demás personal indispensable para su funcionamiento y ejecutividad en todo el territorio de la República.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY
ISLAMIC REPUBLIC OF IRAN

ARTICLE 7 UNCAC

PUBLIC SECTOR

ISLAMIC REPUBLIC OF IRAN (EIGHTH MEETING)

The system of employment and recruitment of the civil servants of the Islamic Republic of Iran is divided into two categories. First, recruitment and employment of the staff of executive branch of the state which is governed by the Islamic Republic Civil Services Management Law (approved by the Islamic Consultative Assembly on September 30, 2007). Second, recruitment and employment of the judges and judicial officials which is governed by the Judges Employment Law and the Training Conditions (approved by the Islamic Consultative Assembly on March 17, 1969).

In order to provide equal employment and recruitment opportunities, both the laws and their executive instructions as well as other laws stipulate creation of fully transparent processes, without partiality and based on meritocracy. These objectives achieved by creation of precise superior processes, control and evaluation as well as the qualifications of the recruited people, reward and punishment of the employees, the method of call for employment, the way of holding the exams, the authority to hold the exams and evaluate the written tests, holding interviews and screening of the applicants, holding training courses and particularly holding special training courses for the judges, joining the organization, assessment of their performance, dealing with administrative offences, cutting of employment ties (from retirement to dismissal, expulsion and imprisonment).

Articles 3, 35, 36, 37, 38, 39, and 57 of the Chapter 11 of the Constitution of the Islamic Republic of Iran stipulate full independence of the Judiciary. In addition to the Constitution, the general policies in the field of judicial security and protection of the honor and independence of the judges also emphasize on the independent of the Judiciary.
1. Establish and strengthen systems to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, including whether specific procedures exist for the recruitment and hiring of senior officials in criminal justice institutions, if they are different from other civil servants;

In order to ensure transparency in recruitment and promotion proceedings in criminal justice institutions, the Israeli system has developed a tightly regulated tender procedure which is managed by the Civil Service Commission, in accordance with section 19 of the Civil Service Law (Appointments), 1959. Candidates for recruitment to the civil service, including criminal justice institutions, undergo a multi-stage screening process in the course of the tender procedure that includes professional examinations and personal interviews, at the end of which a select few are accepted.

Pursuant to section 21 of the Civil Service Law (Appointments), it is possible for a position to be exempted from the tender procedure only in very rare circumstances. One such example relates to particularly sensitive positions which require high level security clearance.

With regard to post-retirement restrictions, lawyers at the State Prosecutor’s Office are subject not only to the usual restrictions that apply to public employees under the Public Service Law (Post-Retirement Restrictions), 1969, but also to other restrictive provisions that apply only to persons belonging to law enforcement or intelligence agencies (sections 5A5D and 14A of the said Law).

The Judiciary

Despite the fact that judges are considered to be governmental employees, they are subject to a unique set of laws and regulations regarding recruitment and promotion. Articles 5, 7 and 9 to 11 of Basic Law: The Judiciary, 1984 and articles 5 to 7A and 11 to 13 of the Courts Law, 1984, establish rules governing the appointment of judges, conditions for their conduct in their positions as judges and for their retirement.

According to Basic Law: the Judiciary, judges are nominated by the Committee for the Nomination of Judges, and are formally appointed by the President of Israel. The Committee is composed of nine members: three judges (the Chief Justice of the Supreme Court and two Supreme Court justices), two Ministers (one of whom is the Minister of Justice), two members of the Israeli Parliament (Knesset) and two representatives of the Israel Bar Association. The Minister of Justice is the chairperson of the Committee. Thus, all branches of government take part in the judicial nomination process. It should be noted that for some quasi-judicial positions, the appointment
The procedures for nominating judges in Israel and the composition of the Committee ensure that the considerations taken into account in the nomination of judges are relevant. Such considerations include legal stature, experience, capability and integrity. In order to ensure transparency, notices of vacancies of judicial posts are published in the official Government gazette (“Reshumot”). The publication is intended to allow any citizen to file an objection to a candidate's nomination, within 20 days of the posting. An applicant who wishes to submit his or her candidacy to the Committee must fill out a questionnaire prescribed by the Committee. The qualifying candidate must appear before a sub-committee of the Committee for the Nomination of Judges, which presents its findings to the Committee. In addition, candidates may be proposed by the Minister of Justice, the Chief Justice of the Supreme Court or by three Committee members. The Committee for the Nomination of Judges decides on the appointment of a judge by majority vote of members taking part in the ballot. Appointments to the Supreme Court are decided by a majority vote of 7 out of the Committee's 9 members.

Each candidate for judicial appointment must successfully complete a specialized training course, except when a candidate was proposed by three Committee members and they decide that no training is necessary (a rarely used option). The course includes an evaluation of the candidates' judicial skills, conducted by two district court judges and one Supreme Court justice, and observed by psychologists. During their time in office, judges continually undergo seminars through the Institute of Advanced Judicial Studies.

Before the commencement of their term, judges take an oath of office before the President of the Israel, pledging “allegiance to the State of Israel and its laws, to dispense true justice, not to distort the law or to show favor”. This oath of office must be repeated every time the judge receives a new judicial position.

A judge's term of office commences upon taking oath, and ends only as prescribed by law, namely: mandatory retirement (at age 70), resignation, or death. A judge may also be elected or appointed to another position, or removed from office – whether by resolution of the Committee for the Nomination of Judges passed by a majority of at least seven members, or by decision of the Disciplinary Tribunal of Judges. In addition, a judge may be required to retire before reaching retirement age, if the Committee for the Nomination of Judges, on the basis of a medical opinion, establishes that due to his/her health he/she is unable to continue carrying out his/her functions. Finally, pursuant to the Basic Law: the Judiciary, 1984, any transfer to a different court is subject to the judge's consent, unless the Chief Justice of the Supreme Court or the Disciplinary Court for Judges decides otherwise.

The salary of judges and other sums paid to them during their tenure or subsequently, or to their beneficiaries after their death, are determined by law or by decision of the Knesset (Israeli parliament) or one of its committees. As noted above, a judge may not be engaged in another occupation or take up a public function, except as prescribed by law, or with the consent of the Chief Justice of the Supreme Court and the Minister of Justice.

**The Israel Police**

The Israel Police Headquarters Orders specify the recruitment procedures and the threshold conditions for recruitment to the Israel Police. Candidates must meet the recruitment criteria
prescribed in these procedures, which are intended to ensure fair, orderly and egalitarian procedures.

The following are the essential steps in the recruitment process to the Israel Police:

- Candidates must pass a series of exams.
- Due to the high degree of professionalism and sensitivity required of police investigators and prosecutors, higher test scores are necessary for these positions.
- Candidates must undergo personality tests to assess their characteristics and behavior patterns and determine if they are suitable to become police officers.
- When examining the candidate's personal information and details, any existing military service history, records of debts, traffic reports and police records must be examined and taken into account.
- A candidate's closed criminal cases are discussed by the criminal registration committee. A candidate with open criminal cases will not be recruited until they are closed and examined by the committee.

The Israel Police is also subject to a specific set of rules regarding the detection and prevention of potential conflicts of interest. Candidates for certain positions or ranks are assessed to ensure that they will have no conflicts of interest in these positions. In addition, every candidate for the Israel Police must state whether they have relatives employed by the Israel Police, in order to prevent conflicts of interest.

The Israel Police has strict procedures when it comes to promoting officers, according to which, among other requirements, the disciplinary and criminal past of each candidate for promotion is examined.

Retirement procedures from the Israel Police Force are set in the Civil Service Law (Retirement), 1970. Any police employee wishing to retire, for any reason whatsoever, is treated in accordance with this law. The Public Service Law (Post-Retirement Restrictions), 1969 also applies to the Israel Police. Moreover, every pension payment is approved by the Ministry of Finance’s Retirement Division. In light of this role, the Israel Police, like other public service organizations, is under the supervision and control of the Retirement Division.

2. Implement adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption in criminal justice institutions and the rotation, where appropriate, of such individuals to other positions; and

In order to maintain transparency and eliminate corruption, the Civil Service Law and Civil Service Rules (Appointments), (Restrictions on Family Relation), 2007, (hereinafter- “the Rules”) govern cases in which family members work in criminal justice institutions, and in the civil service in general.

Article 1 of the Rules states that a "relative" of a civil service employee include a spouse, including a common-law partner, a parent, a grandparent, a son, a daughter, a brother, a sister, a brother-in-law, a sister-in-law, a father-in-law, a mother-in-law, an uncle, an aunt, a nephew, a niece, a grandchild, including family relationships created as a result of adoption or due to marriage of a parent.
When applying for employment in the civil service, each employee is required to fill out a form stating whether or not he/she has relatives employed by the civil service, including in the judicial system, and if so, the employee is required to state all information necessary regarding each specific family member. Article 3 of the Rules states that if a family relationship is established between two employees within an office or a sub-unit, and the employees are in a supervisor-subordinate or other work relationship or in a situation of conflict of interests, one of the employees will be assigned to another position in the office or the sub-unit. If the reassignment is not possible, the responsible manager may, with the authorization of the Civil Service Commission, determine conditions for their continued employment in their positions for a period not exceeding one year.

3. *Prescribe criteria concerning candidature for and election to public office for members of criminal justice institutions, if applicable, as well as measures to enhance transparency in the funding of candidatures and of contributions to political parties, where applicable.*

There are no special rules in Israel governing the election to public office of members of criminal justice institutions.

According to article 56 of the Knesset Elections Law, 1969 (hereinafter "The Election Law"), high ranking civil servants, including members of the criminal justice institutions, are not allowed to run for public office, while they are still employed in the civil service. Article 56 (3) of the Election Law states that very high ranking officers, including police officers of commander ranking or higher and the Commissioner of the Prisons System, must wait three years following their discharge from service before they may run for public office. Lower ranking civil servants are only required to wait 100 days after leaving the service. It is to be noted that article 13A of the Knesset Members Immunity, Rights and Obligations Law, 1951, prohibits Knesset members from engaging in any other business or occupation. Volunteer work is permitted as long as there is no kind of remuneration.

As for transparency in the funding of candidatures and contributions to political parties, in order to curb potential corruption and limit the dependence of public officials on private actors, political parties in Israel receive most of their funding from the state's budget, and private contributions are only allowed in small sums. The Political Parties Financing Law, 1973 provides comprehensive administrative arrangements regarding the public funding of elections and political parties, and regarding contributions made to political parties and expenditures made by them.

In addition to public financing of election expenses, political parties with representation in the Knesset are entitled to funding for ongoing expenditures.

The Political Parties Financing Law prohibits parties from receiving donations from a corporation and donations made in cash or anonymously. Donations must be published and known well to the public; they are usually on the party's website and on the States Comptroller's website.

The Political Parties Financing Law also requires political parties to manage their accounts in accordance with the State Comptroller's instructions, including keeping proper receipt records for each donation. Political parties are also required to submit detailed annual reports to the State Comptroller, who has the authority to fine them in case of violations of the law. Both after elections and on a yearly basis, the State Comptroller issues detailed reports on the conduct of the parties. Receiving a donation or making a contribution contrary to the law constitutes a criminal offense punishable by one year imprisonment.

Provisions regarding expenditures of, and donations to, political candidates in party primaries are set out in the Political Parties Law, 1992. There is no public funding for candidates participating
in party primaries. For this reason, candidates in primaries are allowed to receive larger donations than political parties, but these amounts are still very limited. Candidates in primaries may not receive donations from a corporation or from an anonymous donation.

As in political parties, candidates in primaries must manage their accounts in accordance with the State Comptroller's instructions and submit a detailed report to the comptroller after the primaries. Candidates must report to the State Comptroller on any contribution received within 14 days, and in the period immediately preceding the elections – within 24 hours. This information is published regularly on the State Comptroller's website and is available for public scrutiny. The State Comptroller is authorized to impose fines for violations of the law, and submits a detailed report on the financial conduct of each candidate.

Accepting donations in violation of the law and failure to report donations received, as well as the giving of prohibited donations are criminal offenses.

With respect to elections in local authorities, the Municipalities Law (Funding of Elections), 1993 regulates public funding for local lists and mayoral candidates, as well as the relevant limits regarding contributions and expenditures.
ISRAEL (SECOND MEETING)

The recruitment, classification and selection of candidates for employment in the Civil Service in Israel is conducted by way of public calls for applications (referred to in Israel as "public tenders"), published in the main daily newspapers, on the relevant Ministry's website as well as on the Civil Service Commission's website.

Additionally, educational sessions and professional training for civil servants concerning the tender process are regularly conducted. The regulatory framework is embodied in the Civil Service Law (Appointments), 1959. Details regarding the professional training programs are available on the Civil Service Commission's website.

The Political Parties Law, 1992 provides comprehensive administrative arrangements for registration of political parties in Israel. Additionally, the Political Parties Funding Law, 1973 provides a comprehensive regulatory framework for monetary and campaign contributions awarded to political parties and political candidates. The General Elections Committee's website provides the relevant information regarding the election process, based on these provisions.
Article 7- Public Sector

Jamaica has a set of provisions related to systems for the hiring of persons in the public service, including the criminal justice system, on the basis of merit. The Public Service Commission (PSC), established through the Constitution of Jamaica, oversees the appointment and removal of persons to public offices. The Public Service Regulations contain a number of provisions on the powers of the PSC that are instructive:

- Regulation 14 states that the Public Service Commission shall make recommendations to the Governor General with respect to appointments, promotions and transfers of suitable officers, while Regulation 15 establishes the supervisory role of that Commission on the selection of persons for admission to the public service.

- Regulation 16 determines that vacancies in the public service will be advertised where there are no suitable candidates already in the service or “that having regard to qualifications, experience and merit it would be advantageous and in the best interest of the public service that the services of a person not already in the service be secured”.

- Regulation 19 provides that “the Commission shall be responsible for the form and manner in which applications are to be made for appointment to public offices within its purview and for the conduct of any examinations for recruitment to such offices, and
shall determine whether any candidate has the necessary qualifications for appointment to such offices. In that regard, "the Commission may interview candidates for appointment and shall consider in respect of each candidate: (a) his educational qualifications; (b) his general fitness; (c) any previous employment of his in the public service or otherwise; and (d) any reports for which the Commission may call from persons such as the principal, headmaster or headmistress of a candidate's university, college or school or any referees named by the candidate".

- In regards to probationary service, Regulation 23 states that on first appointment to the public service, an officer will be required to serve a probationary period of one year unless a shorter term is specified in his letter of appointment. At intervals of six months and nine months during the probationary period, permanent Secretaries and Heads of Departments shall submit to the Chief Personnel Officer a report on every officer appointed on probation in their Ministries or Departments. One month before the end of the probationary period, Permanent Secretaries and Heads of Departments shall submit a further report and a recommendation that (a) the officer be confirmed in the appointment; (b) that the probationary period be extended; or (c) that the officer's services be terminated. This same regulation states that subject to the provisions of the Public Service Regulations, the appointment on probation of any officer may, at any time during the period of probation and without any reason being given, be terminated by the Governor-General acting on the recommendation of the Commission upon one month's notice in writing or payment of one month's salary in lieu thereof.

- Chapter 1 of the Staff Orders for the Public Service of 2004 regulates appointments to the public service and deals with the following: how appointments are made, authority to make appointments, eligibility, entry into service, probation, confirmation of appointment and other types of appointments.
In relation to measures concerning article 7 of the Convention and the public sector, States parties and signatories may wish to cite and summarize measures that:

Establish and strengthen systems to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, including whether specific procedures exist for the recruitment and hiring of senior officials in criminal justice institutions, if they are different from other civil servants;

Measures to ensuring transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions are as follows:

The systems and measures adopted by Mauritius to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions are as follows:

Judges of the Supreme Court

As per Article 76 of the Constitution of Mauritius, the Judges of the Supreme Court are the Chief Justice, the Senior Puisne Judge and such number of Puisne Judges as may be prescribed by the National Assembly. Article 77 of the Constitution deals with the appointment of judges of the Supreme Court and stipulates that the Chief Justice shall be appointed by the President after consultation with the Prime Minister. The Senior Puisne Judge shall be appointed by the President, acting in accordance with the advice of the Chief Justice. The Puisne Judges shall be appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission. The tenure of office of Judges of the Supreme Court are stipulated in Article 78 of the Constitution.

Magistrates and Legal Officers

Magistrates and legal officers are appointed by an independent body namely the Judicial and Legal Service Commission set up by virtue of Section 85 of the Constitution which enunciates as follows:

Judicial and Legal Service Commission

(1) There shall be a Judicial and Legal Service Commission which shall consist of the Chief Justice, who shall be the Chairman, and the following members - the Senior Puisne Judge; the Chairman of the Public Service Commission; and one other member (in this section referred to as ‘the appointed member’) appointed by the President, acting in accordance with the advice of the Chief Justice.

(2) The appointed member shall be a person who is or has been a judge of a court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court.

(3) Where the office of the appointed member is vacant or the appointed member is for any reason
unable to perform the functions of his office, the President, acting in accordance with the advice of the Chief Justice, may appoint a person qualified for appointment as such a member to act as a member of the Commission and any person so appointed shall continue to act until his appointment is revoked by the President, acting in accordance with the advice of the Chief Justice.

**Disciplinary Control over Judicial Officers**

Section 86 (1) of the Constitution provides as follows:

(1) Power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Judicial and Legal Service Commission.

**Appointment of Court Staff**

The appointment of the Court Staff on the other hand is done by the Public Service Commission. Section 88 of the Constitution sets up the Public Service Commission which provides that:

(1) There shall be a Public Service Commission, which shall consist of a Chairman, 2 Deputy Chairman and 4 other Commissioners appointed by the President.’

Section 85 of the Constitution provides for Appointment of public officers and section 85 (1) provides that:

Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting such offices and to remove such persons from office shall vest in the Public Service Commission.

Section 85(3) of the Constitution specifies that section 85 shall not apply to -

- the office of Chief Justice or Senior Puisne Judge;
- any office, appointments to which are within the functions of the Judicial and Legal Service Commission

Section 118 of the Constitution of Mauritius empowers the Public Service Commission (PSC) to make its own rules to regulate and facilitate its performance and its functions. Moreover, the PSC is not subject to the direction or control of any other person or authority, except the Public Bodies Appeal Tribunal and the Supreme Court.

Any public officer aggrieved by the decision of the PSC may appeal against that decision to the Public Bodies Appeal Tribunal or to the Supreme Court.

The Public Service Commission is empowered by Regulation 13 of the PSC Regulations 1961 to exercise supervision over and approve-

a) all schemes for admission to any public office by examination, whether specified or not in the relevant schemes of service, and all schemes for the award of scholarships for training for the public service; and

b) all methods of recruitment, including the appointment and procedure of boards for the
Additionally, the PSC is empowered under Regulation 14 of the PSC Regulations 1961, to exercise its powers of appointment and promotion, including, promotion by selection to:

a) the maintenance of the high standard of efficiency necessary in the Public Service;
b) give due consideration to qualified officers serving the Public Service and to other Mauritian citizens provided they hold the required qualifications, and
c) in the case of officers serving in the public service, take into account qualifications, experience, merit and suitability for the office in question before seniority.

Prosecution Services

The Office of the Director of Public Prosecutions (ODPP) is made up of:

(a) the Director of Public Prosecutions (DPP);
(b) legal staff (Prosecution State Counsel and Prosecuting State Attorneys); and
(c) non-legal staff.

Set up under Article 72 of the Constitution, the post of DPP is a constitutionally independent one which is not “subject to the direction or control of any other person or authority”. For administrative reasons, the budget of the Office of the DPP falls under the Attorney Generals’ Office. There are specific provisions regarding the eligibility for appointment to the post of DPP, and the manner in which such appointment is to be made, both in the Constitution and the Judicial and Legal Service Commission Regulations 1967.

The DPP enjoys security of tenure inasmuch as he/she can only be removed from office by the President after the removal has been recommended by a tribunal specifically set up to consider the matter. There are only two grounds on which a DPP may be removed from office, namely: inability to discharge the functions of his/her office (whether arising from infirmity of body or mind or any other cause) and misbehaviour.

The legal staff of the Office of the DPP is appointed by the Judicial and Legal Services Commission. Even though the Commission exercises disciplinary control over the staff, clear rules are provided in the Judicial and Legal Service Commission Regulations 1967 as to the grounds on which disciplinary proceedings may be initiated and the manner in which they may be conducted.

Being law professionals, both the DPP and his/her legal staff are guided, if they are barristers, by the Code of Ethics for Barristers or, if they are attorneys, by the Code of Ethics for Attorneys. Each code sets down written standards of professional conduct to be observed by either set of law professionals.

In addition, as law professionals, unless exempted by the Chief Justice, each member of the legal staff has the obligation to undertake 12 hours of Continuous Professional Development courses, of which 2 hours has to mandatorily be Ethics courses.

The non-legal staff of the ODPP is governed by the Public Services Commission. Specific, clear and
transparent provisions are set out in the Public Services Commission Regulations 1967 with regards to the appointment, promotion and discipline of those officers.

The link to the website of the ODPP is: http://dpp.govmu.org/English/Pages/default.aspx

Please refer to the website of the Supreme Court for further information
http://supremecourt.govmu.org

**Mauritius Police Force and the Mauritius Prisons Service**

The Discipline Forces Services Commission is the body responsible for the recruitment in the Mauritius Police Force and the Mauritius Prisons Service. The DFSC has been established under sections 90 of the Constitution. It operates in total independence and particularly taking into account the manner and mode of appointment of the Chairperson, Commissioners and the impartiality of their operations. The Commissioner of Police is appointed under Article 91 of the Constitution.

Disciplinary Control over Judicial Officers

Section 86 (1) of the Constitution also provides as follows:

(1) Power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Judicial and Legal Service Commission.

Implement adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption in criminal justice institutions and the rotation, where appropriate, of such individuals to other positions; and

Selection and training of individuals for public positions considered especially vulnerable to corruption in criminal justice institutions

**Mauritius Police Force and the Mauritius Prisons Service**

The Police Training School is responsible for the training of both Trainee Police Constable and serving members of the Police Force on issues related to crime and policing with a view to enhancing their knowledge and skills. The University of Mauritius in collaboration with the University of Portsmouth provided a BSc Police Studies course over a period of time which has allowed many Police Officers to enhance their knowledge/competence in the field.

Furthermore, the Mauritius Police Force has adopted an Integrity Building Programme. The programme is led by the Anti-Corruption Committee comprising high level Police Officers and chaired by a Deputy Commissioner of Police.

Awareness/sensitization sessions for Police Officers of all ranks are regularly held. Anti-Corruption is now part of the Police Training School curriculum for recruits. All promotional grades of the Mauritius Police Force have to undergo the compulsory training on corruption
prevention run by the ICAC in collaboration with the Police Training School.

The ICAC in collaboration with the Mauritius Police Force also conducts regularly focussed sessions and empowerment workshops with Police Officers of specific grades - Station Managers and Station Commanders, Police Sergeants, Police Officers of the Traffic Branch, etc.

The Prison Training School (PTS) (ISO 9001:2008 certified) on the other hand caters for the training needs of prison officers. The PTS has been working in close collaboration with the Ministry of Civil Service and Administrative Reforms and the Mauritius Standards Bureau to provide an enhanced service.

**The Institute for Judicial and Legal Studies** of Mauritius was launched on the 27 July 2012. The Institute for Judicial and Legal Studies Act 2011 establishes the Institute for Judicial and Legal Studies which is entrusted with the responsibility to:

- conduct or supervise courses, seminars or workshops for the continuous training of judicial and legal officers;
- organise and conduct courses for court staff with a view to improving the administration of justice;
- promote proficiency and ensure the maintenance of standards in the Judiciary and among law practitioners and legal officers, and in the delivery of court services in general; and

The role of Judges today does not only consists of dispute resolution. Judges are now also called upon to decide on broader issues such as social values and human rights. Thus the importance of legal training which enhances the quality of judicial decisions and provides the opportunity to Judicial Officers to deepen their legal knowledge and to develop complementary skills.

**Prescribe criteria concerning candidature for and election to public office for members of criminal justice institutions, if applicable, as well as measures to enhance transparency in the funding of candidatures and of contributions to political parties, where applicable.**

The Constitution of Mauritius and Representations of the People’s Act 1958 provides the legal framework for the holding of elections. Section 33 of the Constitution of Mauritius establishes the qualifications for membership to the Assembly as follows:

As per the provisions of section 34 of the Constitution, a person shall be qualified to be elected as a member of the Assembly if, and shall not be so qualified unless, he -

(a) is a Commonwealth citizen of not less than the age of 18 years;

(b) has resided in Mauritius for a period of, or periods amounting in the aggregate to, not less than 2 years before the date of his nomination for election;

(c) has resided in Mauritius for a period of not less than 6 months immediately before that date; and

(d) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in
the proceedings of the Assembly.

Members of criminal justice institutions are by definition public officers and as such should not have any affiliation with any political party. As per Article 34 of the Constitution, no person shall be qualified to be elected as a member of the Assembly who is public officer. The public officer has to resign from his or her post to stand as a candidate.

The Government Programme 2015-2019 provides, inter-alia, that the Government will eradicate fraud, corruption, malpractices and irregularities in all aspects of public life and restore our national values. To this end, a Financing of Political Parties Act will be enacted. The Government Programme further provides that the Electoral Supervisory Commission will be given wider powers to control and sanction fraud, corruption and conflict of interests during election time and also to monitor political funding and abuse of position or power.

In this context, the Government has set up a Ministerial Committee to make recommendations on electoral reforms. The Ministerial Committee has already submitted its recommendations on the financing of political parties.

Based on the Select Committee report on the Funding of Political Parties and Electoral Campaigns in Mauritius and the recommendations of the Ministerial Committee, a Bill is currently being prepared. The objectives of the measures contained in the proposed Bill are expected to enhance accountability, transparency and integrity in the candidature for and election to public office.
ARTICLE 7 UNCAC
PUBLIC SECTOR

MAURITIUS (SECOND MEETING)

Article 7: Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:
   (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
   (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
   (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
   (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

1.1 Recruitment in the Public Sector
Recruitment in the Mauritian public service is well structured. The Public Service Commission and Disciplined Forces Service Commission (formerly Police Service Commission) in Mauritius have had a glorious past of nearly 49 years. The Public Service Commission and Disciplined Forces Service Commission are stewards of excellence, safeguarding the principles that underlie the professionalism and integrity of the Mauritian Public Service.

The Public Service Commission and Disciplined Forces Service Commission are not mere recruiting agencies. They are independent agencies that fulfill the vital role of ensuring that Mauritius has a professional, non-partisan and representative Public Service. The Public Service Commission is vested with executive powers under the Constitution of Mauritius.

1.2 Public Bodies Appeal Tribunal
Following the coming into operation of the Public Bodies Appeal Tribunal Act as from June 2009, any public officer may, appeal against any decision of the Public Service Commission pertaining to an appointment exercise made within the service. Such appeal should be lodged with the tribunal within 21 days of the notification of that decision.

1.3 Performance Management System
The current Government introduced a Performance Management System (PMS) across the civil service in 2008.

1.4 The Equal Opportunity Act
The Equal Opportunity Act enacted recently is another piece of legislation which further strengthens our democratic base and good governance structure. It aims at ensuring that every person has an equal opportunity to attain his objectives in various spheres of activities and that no person is placed, or finds himself, at a disadvantage. It prohibits all forms of discrimination in a direct or indirect manner.

The Act provides for the setting up of an Equal Opportunities Division under the national Human Rights Commission to work towards the elimination of discrimination and the promotion of equality of opportunity and good relations between persons of different status. The Division is mandated to carry out investigations, undertake research, develop programmes, prepare appropriate guidelines and codes and where necessary refer any matter to the Director of Public prosecution.

The Act establishes an Equal Opportunities Tribunal to hear and determine complaints referred to it by the Equal Opportunities Division, issue interim orders and determine whether the complaint was justified. The act also provides for a right of appeal to the Supreme Court of against orders of the Tribunal.

1.5 Integrity Programme for New Recruits
The ICAC has developed an “Integrity Programme for New Recruits”. This programme consists of workshops seminars and talks targeting all new recruits in the civil service during the year. The objectives are to empower them to decode acts of corruption and foster a culture of integrity in them.

1.6 Training of Public Officers
The Ministry of Civil Service and Administrative Reforms has been vested with the responsibility for training of public officers in Mauritius. One of the basic tenets of training in the Civil Service is to equip newly recruited/promoted officers with the necessary knowledge and skills in the execution of their jobs. Training of public officers has up to now been conducted at different levels of the hierarchy by way of:-
  · in-house training (Induction/Foundation and Refresher courses).
  · sponsorship for various award courses conducted locally and by distance learning mode
  · sponsorship scheme for post-graduate courses
  · scholarships under bilateral, technical assistance and other schemes.

1.7 Remuneration and equitable pay scales
The Pay Research Bureau (PRB) was set up in 1977 as a permanent and independent institution to keep under continuous review the pay and grading structures and conditions
of service in the public sector. The exercise is conducted on a five-year basis, the last being in 2008.

1.8 Code of Ethics for Public Officers

There is a Code of Ethics for Public officers which sets out the standards of correct conduct expected of Public Officers. It emphasizes the importance of a responsible, responsive and caring Civil Service and is intended to promote effective administration and responsible behavior in the public sector. It complements existing legislation and rules and its guiding principles are designed to maintain and enhance values that inspire trust and confidence in the integrity of Public Officers.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

2.1 Elections to Public Office

The Constitution of Mauritius sets out the management structure for the organisation and conduct of elections. The Representation of the People Act, the Rodrigues Regional Assembly Act, the Local Government Act and Regulations governing the National Assembly, Rodrigues Regional Assembly, Local Government Council Elections are, inter alia, the principal instruments governing the organisation and conduct of elections. The Representation of the People Act prescribes the criteria concerning candidature for and election to public office.

The Electoral Commissioner's Office is headed by the Electoral Commissioner, whose office is a public one and who is appointed by the Judicial and Legal Service Commission.

2.2 Code of Conduct for National Assembly Elections 2010

A code of conduct was developed by the Electoral Supervisory Commission and was rendered mandatory for the general election held 2010. The code applied to all participants to the election, including political parties or political party alliances, candidates, their agents, sub-agents, employees, supporters and backers.

The code aims at complementing the legal provisions in force regarding the holding and conduct of elections in Mauritius, more specially those provisions regarding bribery, treating, undue influence, illegal practice, irregularity as well as those regulations governing election expenses which have to be strictly and scrupulously complied with. Its objective is to ensure the integrity of the electoral process and to enable the election to take place freely and fairly, in an atmosphere of tolerance, conducive to free campaigning, unrestricted but responsible public debate so that the electorate may make an informed choice.
NIGERIA (THIRD MEETING)

Art 7(1) - Recruitment of Personnel, Regulation of Remuneration
There is a Federal Civil Service Commission which has the responsibility to recruit personnel into the Civil Service after due advertisements and interviews. Further, to ensure equitable representation in appointments to offices, the Federal Character Commission set up under the Constitution monitors and ensures merit and ‘federal character’ in appointments and promotions to offices in the Public Service. Currently the country is implementing a National Strategy for Public Service Reforms superintended by the Bureau for Public Service Reforms (BPSR) to ensure proper implementation of the laws and administrative processes in compliance with the UNCAC and other instruments. The Strategy focuses on a performance based management system to ensure efficiency and promote a merit-based approach. The National Salaries, Income and Wages Commission regulate wages of Public Servants and provides for a consolidated salary scheme within the Public Service. The challenges of implementation of this article is trying to create a balance between merit and efficiency and ensuring federal character, inclusiveness, and adequate representation across the ethnic and religious diversity.

Training of Public Servants
Nigerian Public Servants benefit from structured training and capacity building programs to ensure proper performance of duties. There are dedicated service-wide training institutions such as the Public Service Institute (PSI), as well as sector specific training institutions. Nigeria has also benefited from several training programs facilitated by bilateral and multi-lateral donors.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY NORWAY

ARTICLE 7 UNCAC

PUBLIC SECTOR

NORWAY (EIGHTH MEETING)

The Judicial Appointments Board is appointed by the Government to consider applications and to make recommendations regarding appointment of judges.

All open judicial positions are publically announced and the official application lists are made available online.

Judges should meet high standards as regards to professional qualifications and personal characteristics, cf. the Courts of Justice Act § 55. The Board has developed a publically available policy document (revised in May 2016) that describes the different aspects of the appointment process and the eligibility requirements.

On the basis of the applications, interviews of applicants and the Board’s assessment thereof, the Board submits a recommendation to the Ministry of Justice, including a prioritized list of three candidates. The Board’s prioritized list is made available to the public, but not the grounds for the recommendation, cf. the Courts of Justice Act § 55 i. The appointment is done by the Government (King in Council). In principle the Government may, after consulting the Board, appoint an applicant that is not amongst the three recommended candidates, but this has never been done. However, there has been a few cases where one of the alternative candidates has been appointed.

The Judicial Appointments Board is an independent body. It was established in 2002 and evaluated in 2006. The members of the Board are appointed by the Government (King in Council).

The Judicial Appointments Board consists of three judges from the Supreme Court, the courts of appeal or the district courts, one lawyer, one jurist employed in public sector and two members who are not jurists, cf. § 55 a.

The Council of Europe’s Group of States against Corruption (GRECO) has recently evaluated corruption prevention in respect of Norwegian members of parliament, judges and prosecutors.1 GRECO has previously made two recommendations regarding corruption prevention in respect of judges. One was about openness on temporary appointments of judges, and the other was on the strengthening of training and awareness including ethics and conflict of interest. GRECO considers now that both recommendations has been implemented satisfactorily.

Prison services

The Civil Servants Act applies to recruitment procedures and follow-up on personnel in the Norwegian Correctional Service. Pursuant to this act, all positions shall be noticed in public, which contributes to a fair competition. The Correctional Service has formed a service
manual for all employees in the service. In this manual, there are rules on how public notices on open positions shall be announced, application procedures and who that may decide on who to hire, legal competence etc.

The curriculum at the University College of Norwegian Correctional Service educates prison officers. The education has no fixed curriculum on corruption. There is, however, a broad curriculum on ethics, professional behaviour, and security that to some extent concerns corruption.

**Public prosecution**

In general, recruitment to public prosecution follows the same rules as applies to recruitment of public servants in general.

Applicants to positions in public prosecution must have a satisfactory conduct. Information on the requirement of good conduct is announced in the vacancies. Applicants may have to document their conduct by presenting a certificate of good conduct.

Personnel in public prosecution must be lawyers. No exemptions for this requirement are made in the Higher Prosecuting Authorities and with a very few exemptions for public prosecutors serving in the Prosecuting authority in the Police. In addition to criminal law and criminal procedure, ethics has become a more central topic in the curriculum at faculties of law at Norwegian universities in recent years. As a part of this, professional code of ethics for the most common legal positions is given, including public prosecution. This curriculum should provide personnel in public prosecution with good preconditions for acting within the boundaries of conduct as given in law, regulations and codes of conduct.

Once recruited, prosecutors in the Norwegian Police undergoes an extensive basic training. Ethics and rapport of the professional role is included in this training. Completed basic training is a precondition for prosecutors in the police force to be granted extended authorisation. A considerable number of public prosecutors have background from the Police, and thus, have completed this basic training. In addition, the Director of Public Prosecutions regularly arranges seminars for newly recruited prosecutors and training is also provided through seminars. A public commission has recommended strengthening the training for prosecutors.

Positions in Public Prosecution are not subject to rotations due to time limits to the prosecutors’ appointment. Public Prosecutors are senior civil servants who, according to the Norwegian Constitution, cannot be removed without verdict. This legal protection contributes to ensure independence and protects against improper influence or pressure. The Director of Public Prosecutions, however, can be dismissed by decision by the King in Council, with no prior verdict. This arrangement implies that the Public Prosecution, in principle, is not beyond political control. In individual cases, however, the Prosecution Authority is independent from political authorities.
PAKISTAN (EIGHTH MEETING)

In order to ensure the transparency and accountability in the process of recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, adequate legislation and strict supervision of superior judiciary is existing in the country. The conduct of civil servants is regulated through Civil Servant Act, 1973 coupled with Government Servant Efficiency & Disciplinary Rules. The Anti-Corruption laws are applicable to all the Civil servants including judicial officers at district level. The superior judiciary is governed through Supreme Judicial Council, established under the Constitution of Pakistan, 1973. The conduct of police is regulated under the Police Order and there is no exception from application of Anti-Corruption laws, if found, liable for any act of corruption or corrupt practices. A very stringent mechanism is provided under the Army Act for dealing with criminal misconduct of the part of Army officers, known as Court Martial. In recent past Supreme Court of Pakistan has took Suo Moto actions on noticing illegalities in the recruitment, induction, promotion etc. in the law enforcement agencies i.e., Police, NAB and in the Civil Service and declared various appointments, induction and promotion etc as void. So much so, the appointments made in High Courts, have also been scrutinized and various appointments made therein were terminated. Through these landmark judgments of the Supreme Court, guiding principles have been laid down to streamline the Civil Service structure of Pakistan and to ensure the transparency & integrity in criminal justice institutions.

24. Prevention Committee on Local Govt. Department, Govt. of Sindh 31-10-2016 Newly constituted NAB (Multan) 25. Prevention Committee on Enhancing Effective Control of Flood Loses 01-01-2016 Under Process 26. Prevention Committee on Canal Irrigation System (Mogahs) 17-11-2016 Newly constituted 27. Prevention Committee on Illegal Occupation of State Land 17-11-2016 Newly constituted 28. Prevention Committee on Irregularities in process of Procurement of Wheat and Distribution of Gunny Bags 17-11-2016 Newly constituted Additionally, the promotions have been linked with successful completion of various promotion courses and for this purpose permanent institutions have been established with high standard of education and scrutiny process. For judicial officers, National Judicial Academy has been established for effective training of judicial officers. The confirmation of initial appointments and subsequent promotions has been attached with successful completion of basic and advance courses in these professional institutions / academies established for the purpose.

2. More information will be shared in further course of time, please.
Integrity in criminal justice institutions (article 7.8 and 11 of the UNCAC).

Adequate legislation as well as strict supervision of superior judiciary in the country ensures transparency and accountability in the process of recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions. The conduct of civil servants is regulated through Civil Servant Act, 1973 coupled with Government Servant Efficiency & Disciplinary Rules. The Anti-Corruption laws are applicable to all civil servants, including judicial officers at district level. The superior judiciary is governed through Supreme Judicial Council, established under the Constitution of Pakistan, 1973. The conduct of police is regulated under the Police Order and there is no exception from application of Anti-Corruption laws, if found, liable for any act of corruption or corrupt practices. A very stringent mechanism is provided under the Army Act for dealing with criminal misconduct of the part of Army officers, known as Court Martial.

In the recent past, the Supreme Court of Pakistan has taken suo moto actions on illegalities in the recruitment, induction, promotion etc. in the law enforcement agencies i.e. Police, NAB and in the Civil Service, and declared various appointments, induction and promotions etc. as void. So much so, the appointments made in High Courts, have also been scrutinized and various appointments made therein were terminated. Through these landmark judgments of the Supreme Court, guiding principles have been laid down to streamline the Civil Service structure of Pakistan and to ensure the transparency and integrity in criminal justice institutions. Additionally, the promotions have been linked with successful completion of various promotion courses and for this purpose permanent institutions have been established with high standard of education and scrutiny process. For judicial officers, National Judicial Academy has been established for effective training of judicial officers. The confirmation of initial appointments and subsequent promotions have been linked to successful completion of basic and advance courses in these professional institutions/academies established for the purpose.
PAKISTAN (SECOND MEETING)

Pakistan has created an independent body in the shape of Federal Public Service Commission that is responsible to recruit right personnel for the executive jobs related to the functions of the Federation. The selection is purely based on merit determined through a transparent mechanism.

The officials undergo rigorous training at various prestigious national institutions of learning and training. They are sufficiently familiarized with laws, rules and regulations of Pakistan. They are also trained in their relevant fields in order to function in an effective and transparent manner as envisaged in the relevant laws. The selected officials are compensated through a salary package that is commensurate with basic needs. However, the salaries are being revised every year in the form of increments and also raises during budgets keeping in view fiscal space available to the government.
En relación con las medidas relativas al artículo 7 de la Convención y al sector público, los Estados Parte y los signatarios pueden citar y resumir medidas para:

- Establecer y fortalecer sistemas para asegurar la transparencia y la rendición de cuentas en la contratación, retención, promoción y jubilación de funcionarios públicos en instituciones de justicia penal, en particular si existen procedimientos específicos para el reclutamiento y contratación de altos funcionarios las instituciones de justicia penal si estos son diferentes de otros funcionarios públicos;

**Respuesta:** En relación a la contratación, retención, promoción y jubilación de funcionarios públicos el Órgano Judicial de la República de Panamá ha promovido a través de la promulgación de la Ley 53 de 2015, normas atinentes a la Carrera Judicial, en la cual se contempla como avance en materia de jubilación en su artículo 82, un bono de antigüedad calculado desde los 10 años de servicio en la Institución. Sobre el particular, podemos mencionar que desde la entrada en vigencia de esta ley, ha sido otorgado a 27 funcionarios, 10 se encuentran en trámite en la Contraloría y 22 en trámite de Acuerdo en la Sala IV de Negocios Generales de la Corte Suprema de Justicia.

Esta misma ley establece los procedimientos para el reclutamiento y contratación de funcionarios públicos, que en nuestro caso son denominados servidores judiciales. Para tales efectos, el procedimiento es común para servidores de alto nivel como para los regulares. Se hace la distinción entre la esfera judicial y administrativa, más no así a la jerarquía.

En este último punto, vale la pena aclarar que nos encontramos gestionando el presupuesto ante el Órgano Ejecutivo para su ejecución, sin embargo, conviene resaltar que para la selección de los últimos puestos judiciales y administrativos del Sistema Penal Acusatorio, se adoptaron medidas ad-hoc por parte del Pleno de la Corte Suprema de Justicia, que se asemejaran lo más posible a los parámetros, tomando en cuenta cursos y exámenes previos, entrevistas con los Magistrados, postulaciones y finalmente votaciones que por mayoría determinaban la selección. Todo esto de
manera interina mientras se obtiene el presupuesto para implementar integralmente la carrera y oficializar las designaciones mediante concursos.

- Implementar procedimientos adecuados para la selección y capacitación de individuos para cargos públicos consideradas especialmente vulnerables a la corrupción en las instituciones de justicia penal y la rotación, en su caso, de tales personas a otros cargos.

Respuesta: Tal cual describimos en el párrafo anterior, para el área de justicia penal, el Órgano Judicial de Panamá, a través de su Instituto Superior de la Judicatura, se ha preocupado por brindar una capacitación en materia procesal a los aspirantes a cargos de Jueces, Magistrados y Defensores, sujeta a evaluaciones; así como adiestramientos y pasantías continuas para el mejoramiento del desempeño, supervisado por “coaches” nacionales y observadores de agencias de cooperación internacional.

Ahora bien, sobre la rotación debemos señalar que el artículo 249 del Código Judicial contempla la inamovilidad de Jueces, Magistrados y personal subalterno a efectos de suspensión o traslado, lo cual ha sido respetado.

Ver;

http://www.organojudicial.gob.pa/noticias/inicio-convocatoria-para-el-sistema-penal-acusatorio/

- Prescribir criterios relativos a la candidatura y la elección de un funcionario público para ser miembros de instituciones de justicia criminal, si procede, así como medidas para aumentar la transparencia en la financiación de las candidaturas y de contribuciones a los partidos políticos, cuando proceda.

Respuesta: En el Estado panameño existe por mandato Constitucional en el artículo 212 la definición de la incompatibilidad de administrar justicia con la participación en la política, y como quiera que existe un proceso descrito en líneas anteriores sobre los nombramientos, en nada guarda relación la financiación a candidaturas.
Artículo 7. Sector público
1. Cada Estado Parte, cuando sea apropiado y de conformidad con los principios fundamentales de su ordenamiento jurídico, procurará adoptar sistemas de convocatoria, contratación, retención, promoción y jubilación de empleados públicos y, cuando proceda, de otros funcionarios públicos no elegidos, o mantener y fortalecer dichos sistemas. Éstos:
   a) Estarán basados en principios de eficiencia y transparencia y en criterios objetivos como el mérito, la equidad y la aptitud;
   
   b) Incluirán procedimientos adecuados de selección y formación de los titulares de cargos públicos que se consideren especialmente vulnerables a la corrupción, así como, cuando proceda, la rotación de esas personas a otros cargos;
   c) Fomentarán una remuneración adecuada y escalas de sueldo equitativas, teniendo en cuenta el nivel de desarrollo económico del Estado Parte;
   d) Promoverán programas de formación y capacitación que les permitan cumplir los requisitos de desempeño correcto, honorable y debido de sus funciones y les proporcionen capacitación especializada y apropiada para que sean más conscientes de los riesgos de corrupción inherentes al desempeño de sus funciones. Tales programas podrán hacer referencia a códigos o normas de conducta en las esferas pertinentes.

2. Cada Estado Parte considerará también la posibilidad de adoptar medidas legislativas y administrativas apropiadas, en consonancia con los objetivos de la presente Convención y de conformidad con los principios fundamentales de su derecho interno, a fin de establecer criterios para la candidatura y elección a cargos públicos.

3. Cada Estado parte considerará asimismo la posibilidad de adoptar medidas legislativas y administrativas apropiadas en consonancia con los objetivos de la presente Convención y de conformidad con los principios fundamentales de su derecho interno, para aumentar la transparencia respecto de la financiación de candidaturas a cargos públicos electivos y, cuando proceda, respecto de la financiación de los partidos políticos.

4. Cada Estado Parte, de conformidad con los principios fundamentales de su derecho interno, procurará adoptar sistemas destinados a promover la transparencia y a prevenir conflictos de intereses, o a mantener y fortalecer dichos sistemas.
En Panamá, mediante a la Ley 9 de 1994, se creó la Carrera Administrativa, que contempla a favor de los funcionarios públicos sistemas de convocatoria, promoción, procedimientos de selección, reconocimiento de méritos, remuneración adecuada, entre otras. También y dependiendo de la entidad y la naturaleza de sus obligaciones, se han establecido otras carreras con similares principios a los que recoge la Carrera Administrativa, como la Carrera Judicial.

Las instituciones del gobierno periódicamente promueven programas de formación y capacitación para los funcionarios y la divulgación del Código de Ética por parte del Consejo de Transparencia.

En la actualidad se discute el tema concerniente a determinar un monto límite de donaciones que los partidos políticos puedan recibir, en atención a que en candidaturas pasadas se han llegado a recibir donaciones de hasta $39 millones, lo que no encuentra justificación se comparan los salarios que devengarían los políticas al ocupar los cargos públicos que ostentan.

Tenemos varios ejemplos entre ellos en la normativa de contrataciones publicas, que se busca procurar la transparencia ya prevenir conflictos de intereses, y a que se lo prohíbe a los Jefes y departamentos encargados, contratar ya sea personalmente o a través de interpuesta persona, con la entidad que representan e incluso, nombrar a personas vinculadas por consaguinidad o afinidad.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY PARAGUAY

ARTICLE 7 UNCAC

PUBLIC SECTOR

PARAGUAY (EIGHTH MEETING)

Artículo 7. Sector público:
1. Cada Estado Parte, cuando sea apropiado y de conformidad con los Principios fundamentales de su ordenamiento jurídico, procurará adoptar sistemas de convocatoria, contratación, retención, promoción y jubilación de empleados públicos y, cuando proceda, de otros funcionarios públicos no elegidos, o mantener y fortalecer dichos sistemas. Estos:

a) Estarán basados en principios de eficiencia y transparencia y en criterios objetivos como el mérito, la equidad y la aptitud;
b) Incluirán procedimientos adecuados de selección y formación de los titulares de cargos públicos que se consideren especialmente vulnerables a la corrupción, así como, cuando proceda, la rotación de esas personas a otros cargos;
c) Fomentarán una remuneración adecuada y escalas de sueldo equitativas, teniendo en cuenta el nivel de desarrollo económico del Estado Parte;
d) Promoverán programas de formación y capacitación que les permitan cumplir los requisitos de desempeño correcto, honorable y debido de sus funciones y les proporcionen capacitación especializada y apropiada para que sean más conscientes de los riesgos de corrupción inherentes al desempeño de sus funciones. Tales programas podrán hacer referencia a códigos o normas de conducta en las esferas pertinentes.

2. Cada Estado Parte considerará también la posibilidad de adoptar medidas legislativas y administrativas apropiadas, en consonancia con los objetivos de la presente Convención y de conformidad con los principios fundamentales de su derecho interno, a fin de establecer criterios para la candidatura y elección a cargos públicos.

3. Cada Estado Parte considerará asimismo la posibilidad de adoptar medidas legislativas y administrativas apropiadas, en consonancia con los objetivos de la presente Convención y de conformidad con los principios fundamentales de su derecho interno, para aumentar la transparencia respecto de la financiación de candidaturas a cargos públicos electivos y, cuando proceda, respecto de la financiación de los partidos políticos.

4. Cada Estado Parte, de conformidad con los principios fundamentales de su derecho interno, procurará adoptar sistemas destinados a promover la transparencia y a prevenir conflictos de intereses, o a mantener y fortalecer dichos sistemas.
المادة 7: القطاع العام

المادة 7

1. يسري قانون دولي محدد، فيما يقتضه الأمر، ووافيا للمبادئ الأساسية للنظام القانوني، إلى اعتماد وترسيم وتنظيم نظام تنظيم السجلات الجنائية، وتشريعات الموظفين الذين يتولون هذه الوظائف، واستخدامهم واستبايعهم وقاضياتهم إلى النظام كلياً.

2. تقوم على مبادئ المكافحة والشفافية والمحاسبة الفعّالة، مثل المحاكم، والคอيد، والإشراف، والإشراف، والرقابة.

3. تشتمل على إجراءات تناسب للاختيار والتدريب، لتولي الدورات التدريبية للأشخاص المعنيين، التي تتمتع بالمرجعية لمجلس بأمانة وضمان تنفيذها على النظام عند استلامه.

4. تقصى على تقديم أبحاث مفصلة، ووضع جداول أبحاث مفصلة، مع سرَّة توجيه، ودورات تدريب للمحتوى، للدول في مجالها.

5. تتشابك على وضع برامج تدريبية، وتشريعية للمحتوى أو توجيهي، أو تعليمي، أو الدورات التدريبية للأشخاص المعنيين، لتفعيل مبادئ المكافحة والشفافية والمحاسبة الفعّالة، وتوجيههم، وتشجيع توصيف هذه البرامج إلى دول أخرى، أو معايير سلوكية في المجالات التي تتعلق عليها.
هل امتثلت دولتكم لهذا الحكم؟

1. نعم

2. يرجى وصف (بياناتها وتنظيفها) التدابير/الخطوات التي قد اتخذتها دولتكم أو تخطط لاتخاذها، بالإضافة إلى الإطار الزمني ذات الصلة، لضمان الامتثال الكامل لهذا الحكم من الاتفاقية.

الموظفون العموميون:

لقد امتثلت دولة قطر للحكم الوارد في هذه المادة، حتى قبل التصديق على الاتفاقية، حيث صدر ابتداء القانون رقم (9) لسنة 1967 بإصدار قانون الوظائف العامة، ثم صدر القانون رقم (1) لسنة 2001 بإصدار قانون الخدمة المدنية، وقانون إدارة المرافق البشرية الصادر بالقانون رقم (8) لسنة 2009، وأخيرا قانون المرافق البشرية المدنية رقم 15/2016. الذي ألغي القانون السابق، وأصبح هو المعمول به. والذي يسري على الموظفين المدنيين بالوزارات والأجهزة الحكومية الأخرى والهيئات والمؤسسات العامة. وهذا القانون يعد الشريعة العامة للموارد البشرية في الدولة ويعود إليه مكافحته التشريعات الأخرى في الدولة في حالة خلوها من نص يعالج المسألة المعروضة ومن ذلك التشريعات المعنية بالقضايا وأعضاء النائب العام والشرطة، كما صدر دليل وصف وتصنيف الوظائف العامة.

وينظم قانون الموارد البشرية المدنية سالف الذكر حكافة أحكام الوظيفة العامة ويضع معايير وأسس وأجراءات الوظيفة العامة بالدولة بداية من التعيين في الوظيفة والترقية والنقل والندب والإعارة والمساءلة التأديبية وحتى إنهاء الخدمة. أي أن هذه القواعد تنظم الحياة الوظيفية للموظف، وتتوافر بها جميع المعايير الواجبة بنص المادة (7) من الاتفاقية.

وعمن استعراض أحكام جمل من القانون والدليل المشار إليهما يتضح ما يلي:

1. توافر مبادئ الكفاءة والشفافية، والمعايير الموضوعية مثل الجدارة والإنصاف والأمانة.

- التعيين:
حرص المشرع على إبراز جميع المبادئ المشار إليها، حيث نص القانون رقم (15) لسنة 2016 في المادة (8) منه على أن يكون الاختيار لشغل الوظائف بالتعيين على أساس الجدارة وعن طريق الإعلان.

وأشترط المشرع، في المادة (6) من القانون، أن تتوفر لدى المعين بأحد الوظائف الحكومية، المؤهلات والشروط المطلوبة لشغل الوظيفة، وأن يجتاز الاختبارات والمسابقات وبرامج التأهيل التي تقررها الجهات الحكومية. وتأكدوا على هذه المبادئ أشترط المشرع في المادة (15) من القانون، قضاء الموظف المعين لأول مرة فترة اختبار مدتها ثلاثة أشهر قبلة للتجميد لمدة مماثلة. تبدأ من تاريخ مباشرة العمل، يتم خلالها تقدير مدى صلاحيته بموجب تقرير يصدره مدير الإدارة المعنية.

 فإذا ثبت عدم صلاحيته أُهِـب خدمته.

وحرص المشرع أيضاً عند تحديد معيار الأقدامية بين الموظفين المعينين في تاريخ واحد، على إبراز الحكفاءة والشفافية والمعايير الموضوعية مثل الجدارة والإنصاف والأهمية، حيث قرر أنه إذا حكى الموظفين لأول مرة في الوظائف التي تشغل باختبار، اعتبرت الأقدامية بين المعينين بحسب الأسبقية الواردة بالترتيب النهائي للنتائج الاختبار، عند التساوي في الترتيب، تكون الأقدامية للأعلى مؤهلًا، فالأعلى في تقدير المؤهل، فالأعلى في درجات الحصول على المؤهل، فالأقدم تخرجًا، فالأكبر سنًا.

أما إذا حكى الموظفين لأول مرة في الوظائف التي تشغل دون اختبار، اعتبرت الأقدامية بين المعينين حكماً يلي:

(أ) إذا حكى الشهادة الدراسية أحد الشروط الواجب توافرها فيمن يشغل الوظيفة، تكون الأقدامية طبقاً للمؤهل الأعلى.

(ب) إذا حكى الوظيفة تتطلب خبرة عملية، تكون الأقدامية طبقاً لمدة الخبرة.
ت يكون ترتيب الأقدمية عند الترقية على أساس الأقدمية في الدرجة السابقة مباشرة.

وقد حدّد الفصل الثالث من القانون رقم (15) لسنة 2016، المنظم للموارد البشرية المدنية ضوابط وشروط التعيين في الوظيفة العامة، والتي قد تشمل بالأساسي أو بالاختيار. تحمّل حكمًا عدد قرار وزير الدولة: لشؤون مجلس الوزراء رقم (17) لسنة 2010 بشأن دليل ووصف وتصنيف وترتيب الوظائف شروط شغل الوظائف الواردة بحكاية المجموعات العامة والنوعية.

لكما صدر القرار الأميري رقم (6) لسنة 2016 بالهيكل التنظيمي لوزارة التنمية الإدارية والعمل والشؤون الاجتماعية، حيث أثارت بإدارة تنمية الموارد البشرية الوطنية التنسيق مع إدارة سياسات وتطوير الموارد البشرية. فيما يتعلق بالسجلين برامج الباحثين عن عمل، توظيف تعيينهم بالجهات الحكومية وفقاً لمؤهلاتهم وخبراتهم السابقة، وفي ضوء شروط الوظائف لدى الجهات الحكومية.

- نظام إدارة الأداء:

حرص المشرّع في الفصل السادس من القانون المنظم للموارد البشرية الحكومية على إلزم الجهات الحكومية بوضع نظام لإدارة الأداء وقرر تقييم أداء الموظف سنوياً وفق أسس ومعايير واضحة وأهداف محددة. وبمطالعة التنظيم المحدد الموظف الذي وضعه المشرع لنظام إدارة الأداء وتقاريره السنوية، والأثار المتصلة على هذه التقارير في الحياة الوظيفية للموظف. يتبين لنا أن المشرع قد راعى مبادئ الحكمة والشفافية والمعايير الموضوعية مثل الجدارة والإنصاف والأخلاق.

- الترقية:

أشارت المشرّع في الترقية بالأقدمية أنه يشترط مستوى تقييم أداء الموظف في السنتين الأخيرتين من جيد. وقضية المدة البينية المحددة بدليل ووصف وتصنيف وترتيب الوظائف العامة. هكذا أن المشرع أشارت في الترقية الاستثنائية إلى الدرجة الأولى مباشرة دون التقيد بشرط المدة البينية أو المؤهل، أن يكون تقييم أداء الموظف بمثابة ممتاز في آخر تقريرين لتقييم أدائته.
وقيد الترقية الاستثنائية بضرورة وجود فاصل زمني بين الترقيتين الاستثنائيتين (5 سنوات)، وذلك لمحاربة أي فساد قد ينشأ عن إطلاق النص دون قيد.

- في الواجبات الوظيفية والأعمال المحظورة والمساءلة التأديبية:

حرص المشرع على إبراز المبادئ المشرفة في الفصل العاشر من القانون المنظم للموارد البشرية، حيث نص صراحة على الواجبات الوظيفية والأعمال المحظورة، وبصفة خاصة مبادئ الشفافية والإنصاف. فجاءت نصوص هذا الفصل لتحث الجهة الحكومية على التعامل مع الخلافة التأديبية بهذه القواعد وصولاً لمحاسبة تأديبية منصفة.

2. إجراءات مناسبة لاختيار وتدريب الأفراد لتولي المناصب الإدارية التي تعتبر ضرورية لفساد دوّة بصفة خاصة وضمان تناوبهم على المناصب عند الاقطضاء.

حرص المشرع على تعريف المجموعة النوعية لحكام من وظائف الإدارة العليا والوظائف الإشرافية وتحديد التأهيل العلمي لها.

وكم حرص المشرع على تخصيص الفصل الخامس من القانون للتدريب والتطوير بأن أداة بالجهة الحكومية وضع خطط للتدريب والتطوير تكون سنوياً. بعد تحديد احتياجات التدريب.

وغالباً ما يتم تدريب موظفي الجهات الحكومية بمعهد الإدارة العامة، وهو المؤسسة الحكومية المتخصصة في هذا المجال، كما أجاز المشرع التدريب في الجهات الخارجية ذات الخبرة والسمعة.

3. التشجيع على تقديم أجور مكافئة ووضع جداول أجور منصفة مع مراعاة مستوى النمو الاقتصادي للدولة.

في التقرير الخاص بمؤشر التنمية البشرية لعام 2015 الذي يصدره برنامج الأمم المتحدة الإنمائي، جاءت قطر في قائمة الدول العالية جداً في مؤشر التنمية البشرية بحلولها المركز (32).
على مستوى دول العالم، كما جاءت على رأس الدول العربية متبوعة بالمملكة العربية السعودية في المركز (39)، ثم الإمارات في المركز (41)، وبعدها البحرين في المركز (45).

وتعدّر دولة قطر على مستوى المنظومة الخليجية، بل والعربية بشكل عام، من الدول المتفانية اقتصادياً، إذ احتلت المرتبة الثالثة عشرة في قائمة التنافسية العالمية لعام 2015.

والثانية عربية بعد الإمارات العربية المتحدة التي جاءت في المرتبة الثانية عشرة حسب تقرير "الكتاب السنوي للكتابة العالمية" الصادر عن المعهد الدولي للتربية الإدارية (IMD) بسوييسرا، من بين 61 دولة، معظمها من الدول المتقدمة.

وبالنظر إلى الجدولين رقم (1)، (2) المرفقتين بالقانون المعتمد للقوانين الدولية، كما أن رواتب الموظفين داخل الجهات الحكومية من أعلى الدخول بالمنطقة العربية والعالم أيضاً.

التشجيع على وضع برامج تعليمية وتدريبية لتمكين أولئك الموظفين من الوفاء بمتطلبات الأداء الصحيح والناسب من أجل أذكاء وعيهم بمخاطر الفساد الملاحظة لأداء وظائفهم.

التدريب:

يسعى معهد الإدارة إلى تنمية وتطوير قدرات العنصر البشري بالإدارة الحكومية. ويتخصص المعهد بتدريب وتمكين الموظفين القطريين واحساسيّب الحكّابات الوظيفية اللازمة التي تمكنهم من القيام بمهامهم الوظيفية الموصولة إليهم. إضافة إلى مساهمة باستخدام القدرات الإبداعية والتي تقوم إلى بناء قوة عمل وطنية ذات إنتاجية عالية.

وقد أصدر معهد الإدارة العامة نحو ست عشرة خطة تدريبية سنوياً أشتملت في معظمها على مجموعة من البرامج التدريبية في المجالات الإدارية والمالية والمحاسبية والقانونية وغيرها من المواضيع ذات الصلة. بتنمية قدرات الموظفين البشريين اعتماداً في الجهات الحكومية. وقد حكانت مشاركتهما ومحتويات خطط التدريب تبنت إلى تجربة المعهد التدريبي في تصميم الخطط.

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إعداد التدريبية بناءً على الدراسات الميدانية التي حاكم يقول بها لتحديد الاحتياجات التدريبية لدى الجهات الحكومية.

وفقاً للقرار الأميري رقم (6) لسنة 2016 بالهيكل التنظيمي لوزارة التنمية الإدارية فإن معهد الإدارة العامة يتوّلّي تدريب موظفي الجهات الحكومية، حيث يقوم بهذا النشاط من خلال إدارتي التدريب والخدمات التدريبية.

كما أن لدى دولة قطر برنامج للابتعاث الحكومي، وهو برنامج أطلقته وزارة التنمية الإدارية والعمل والشؤون الاجتماعية. يتلخص في أنها قامت بتحديد احتياجات الجهات الحكومية من التخصصات المختلفة خلال عشر سنوات وقامت بالإعلان للابتعاث الحكومي في المؤسسات التعليمية المعتمدة بالداخل والخارج. وذلك للحصول على مؤهل علمي في التخصصات المطلوبة. وبعد حصول المبتعث على المؤهل العلمي المطلوب، يتم تعيينه مباشرة بالجهة التي طلبت هذا التخصص.

كما أن مركز الدراسات القانونية والقضائية ومركز حكم القانون ومحكمة الفساد هي محرك تدريب تساهم في بناء القدرات والمؤهلات والمعارف للموظفين العموميين بصفة عامة وأعضاء مؤسسات العدالة الجنائية بصفة خاصة.

القضاء:

وفقًا للقانون (10) لسنة 2003 بإصدار قانون السلطة القضائية (الفصل السادس و الفصلين والتربيعية والأقدمية (المادة 27)) يشترط فيمن يتولى القضاء:

- أن يكون مكمل الأمنية.
- أن يكون حاصلًا على إجازة الحقوق أو الشريعة أو القانون أو الشرعية أو ما يعادلها من إحدى الجامعات المعترف بها.
- لا يمكن قد أدين بحكم نهائي في جناية أو جنحنة مخلة بالشرف أو الأمانة، ولوجود قد رد إليه اعتباره.
لا يكون قد شرط في الترقية إلى الدرجة الأولى أن يكون تقدير الحكمة حالة للمرشح للترقية، ويشترط في الترقية إلى الدرجة الثانية أن يكون تقدير الحكمة حالة للمرشح للترقية، وفقاً لاحكام هذا القانون والقرارات التنفيذية، ولا تتجاوز الترقية إلا بعد انقضاء المدة المقررة في المادة السابقة (المادة 29).

أعضاء النيابة العامة:

وفقًا للقانون رقم (10) لسنة 2002 بشأن النيابة العامة، يصدر بتعيين النائب العام أمر أميري ويعكون بدرجة وزير، ويتم تعيين باقي أعضاء النيابة العامة بمرسوم بناء على اقتراح النائب العام.

ويشترط فيما يلي:

- أن يكون مكتسب الأمية.
- أن يكون حاصلاً على إجازة في الحقوق أو الشرعية والقانون أو ما يعادلهما من إحدى الجامعات المعترف بها.
- أن يكون قد حكم عليه نهائياً بالإدانة في جناية أو جنحة مخلة بالشرف أو الأمانة، ولو كان قد رد إليه اعتبار.
- أن يكون محمود السيرة، حسن السمعة.
- أن يقل عمر من يعين في وظيفة مساعد نائب عن إحدى وعشرين سنة.
الشرطة:

يعين ضباط الشرطة بقرار أميري بناء على اقتراح وزير الداخلية (المادة 11)، وتنشأ بوزارة الداخلية. لجنة تسمى "للمهنة العامة لشؤون الشرطة" تشكل من عدد من الأعضاء لا يقل عن خمسة، على أن يحكم غالبية الأعضاء من الضباط ذوي الرتب العليا، ويصدر بتشكيل اللجنة وتنظيم أعمالها وتحديد مكافحتها قرار من مجلس الوزراء بناء على اقتراح وزير الداخلية (المادة 9).

يشترط فيمن يعين ضابطاً في الشرطة، ما يأتي (المادة 12):

1- أن يكون من الجنسية العربية.
2- أن يكون قد بلغ من العمر عشرين سنة ميلادية.
3- أن يكون حسن السمعة والسلوك، وألا يكون قد سبق الحكم عليه بعقوبة في جريمة مخلة بالشرف أو الأمانة ما لم يكن قد رد إليه اعتباره.
4- ألا يكون قد فصل من الخدمة العامة بحكم أو قرار تأديبي نهائي لسبب إخلاء الجسم بواجباته عمله ما لم يكن قد مضى على صدور الحكم أو القرار سنتان.
5- ألا يكون منتمياً إلى أي تنظيم سياسي.
6- أن يكون لائقاً صحياً للخدمة، ويصدر بتحديد شروط اللياقة الصحية قرار من وزير الداخلية بناء على اقتراح اللجنة الطبية المختصة.
7- أن يكون متخرجًا من إحدى مكتبات أو معاهد الشرطة المعترف بها، التي يشترط للالتحاق بها الحصول على شهادة الثانوية العامة أو ما يعادلها.

ويعين ضباط الصف والأفراد بقرار من وزير الداخلية، ويشترط فيمن يعين ضابطاً أو ضابطاً صف أو فرداً، ما يأتي:

- ألا يقل عمره عن (18) سنة ولا يزيد على (35) سنة ميلادية.
أن يكون حسن السمعة والسلوك. وألا يكون قد سبق الحكم عليه بعقوبة في
جريمة مخلة بالشرف أو الأمانة ما لم يحكم قد رد إليه اعتباره
ألا يكون قد فصل من الخدمة العامة بحكم أو قرار تأديبي نهائي لسبب إخلاله
الجسم بواجباته عمله. ما لم يحكم قد مضى على صدور الحكم أو القرار سنتان.
5. أن يكون لائعا صحيا للخدمة. ويصدر بتحديد شروط اللياقة الصحية قرار من
وزير الداخلية بناء على اقتراح اللجنة الطبية المختصة.
المادة 7 (تابع)

القطاع العام

2. تنظيم كل دولة طرف أيضاً في اعتماد تدابير تشريعية وإدارية مناسبة، بما يتوافق مع أهداف هذه الاتفاقية ووفقاً للمبادئ الأساسية لقانونها الداخلي، لوضع معايير تتعلق بالترشيح للمناصب العمومية وانتخاب شاغليها.

3. تنظيم كل دولة طرف أيضاً في اتخاذ التدابير التشريعية والإدارية المناسبة، بما يتسق مع أهداف هذه الاتفاقية ووفقاً للمبادئ الأساسية لقانونها الداخلي، لتعزيز الشفافية في تمويل الترشيحات للكانش شاغلي المناصب العمومية والترشيح للمؤسسات العامة.

وفي تمويل الأحزاب السياسية، حيثما أتطابق الحال.

1- هل انتهت دولتكم لهذا الحكم؟ 

نعم

2- يرجى وصف بيانها وتلخيصها، التدابير والخطوات التي اتخذتها دولتكم أو تخطط لاتخاذها، بالإضافة إلى الإطار الزمني لضمان الامتثال الكامل لهذا الحكم من الاتفاقية.

عألج المشروع القطري للمعايير المتعلقة بالترشيح للمناصب العمومية في أكثر من موضع سواه، بما يتعلق بالترشح لمجلس الشورى أو الترشح للمجلس البلدي المركز وذلك على النحو التالي:

أولا: أعضاء مجلس الشورى:

وفقاً للمادة 76 من الدستور القطري، يتولى مجلس الشورى سلطة التشريع، ويقوم المراقبة العامة للدولة، كما يمارس الرقابة على السلطة التنفيذية، وذلك على الوجه المبين في هذا الدستور.
ويتألف مجلس الشوري من خمسة وأربعين عضواً. يتم انتخاب ثلاثين منهم عن طريق الاقتراع العام السري المباشر، ويعين الأمير للأعضاء الأخرى عشرة من الوزراء أو غيرهم والمادة 77 من الدستور.

يجب أن تتوافر في عضو مجلس الشورى الشروط التالية (المادة 80 من الدستور):

1- أن تكون جنسيته الأصلية قطرية.
2- ألا تقل سنه عند قفل باب الترشيح عن ثلاثين سنة ميلادية.
3- أن يجيد اللغة العربية قراءة وكتابة.
4- ألا يكون قد سبق الحكم عليه نهائياً في جريمة مخلة بالشرف أو الأمانة، ما لم يكن قد رد إليه اعتباره وفقاً للقانون.
5- أن تتوافر فيه شروط الناخب وفقاً لقانون الانتخاب.

كما وضعت المادة 9 لقانون 1970 الخاص بتنظيم الانتخابات العامة لمجلس الشورى عدداً من المعايير للأعضاء المنتخبين

ثانيا: أعضاء المجلس البلدي المركزي

وفقاً للمادة 3 من القانون رقم (12) لسنة 1998 بتنظيم المجلس البلدي المركزي يتكون المجلس من تسعة وعشرين عضواً يمثلون المدن والقرى والمناطق المختلفة، ووفقًا للمادة 8 يهدف المجلس إلى العمل بالوسائل المتاحة على تقدم البلاد في مجال الشؤون البلدية. وله في سبيل تحقيق أهدافه أن يمارس العديد من الاختصاصات والصلاحيات والمسؤوليات، منها مراقبة تنفيذ القوانين والقرارات والأنظمة.
وفقا للمادة 21 من مرسوم رقم (17) لسنة 1998 بنظام انتخاب أعضاء المجلس البلدي المركزي يجيب الانتخابات بالاقتراع السري، ويتخلى كل ناخب تقاضي أو أهتك، وفقا للمعهد المحدد بقرار وزير الداخلية بتقسيم الدوائر الانتخابية. ويبدي حقل ناخب رأيه في بطاقة الانتخاب.

وفقا للمادة 5 من قانون رقم (12) لسنة 1998 بتنظيم المجلس البلدي المركزي يشترط فيمن يرشح عضوا بالمجلس ما يلي:

1- أن تكون جنسيته قطرية، ويجب فيمن اكتسب الجنسية القطرية أن يكون والده مواليد قطر.
2- أن يكون قد بلغ من العمر ثلاثين سنة.
3- أن يجيد القراءة والكتابة.
4- أن يكون من المشهود لهم بالكفاءة والأمانة.
5- أن يكون قد سبق عليه الحكم في جريمة مخلة بالشرف أو الأمانة، ما لم يحكم قيد رد إليه اعتباره.
6- أن يكون مقيداً بجدول الناخبين في الدائرة التي يرشح نفسه فيها وله محل إقامة دائمة في حدودها.
7- أن يكون من العاملين في وزارة الدفاع أو الداخلية أو أي جهة عسكرية أخرى.

وفقا للمادة 9 من مرسوم رقم (17) لسنة 1998 يشكل وزير الداخلية في每 دائرة انتخابية لجنة تسمى "لجنة فحص الطعون والتظلمات" برئاسة أحد القضاة، وعضوية حقل من رئيس لجنة قيد الناخبين وممثل لوزارة الداخلية، وذلك للفصل في الطعون والالتمامات الخاصة بالقيد في جداول الناخبين، وتقدم الطلبات والالتمامات حسبًا إلى رئيس لجنة قيد الناخبين، على أن يرفعها إلى لجنة فحص الطعون والتظلمات في اليوم التالي لتقديمها إليه، وتفصل هذه اللجنة في الطلبات والالتمامات المستمرة إليها خلال سبعية أيام من تاريخ رفعها، ويعتبر قرارها نهائياً غير قابل للطعن بأي طريق، ويعدل جداول الناخبين وفقا للقرارات التي تصدرها اللجنة.
المادة 7 (تابع)
القطاع العام

4. تسعى حكمة دولة طرف، وفقاً للمبادئ الأساسية لقانونها الداخلي، إلى
اعتماد وترسيخ وتدعم نظم تعزز الشفافية وتمنع تضارب المصالح.

1- هل امتثلت دولتكم لهذا الحكم؟

2- يرجى وصف بيانها وTCHAبتها، التدابير والخطوات التي اتخذتها دولتكم أو تخطط لاتخاذها،
بالإضافة للأطر الزمني لضمان الامتثال الكامل لهذا الحكم من الاتفاقية.

أفرد الشرع القطرى أحكاماً مفصلة تحل ومعالجة تضارب المصالح للموظفين العموميين
بصفة عامة، وموظفي مؤسسات العدالة الجنائية بصفة خاصة على النحو التالي:

- القانون المنظم للموارد البشرية (15 لسنة 2016)، تضمن نصا خاصاً لتضارب المصالح، وهو نص
المادة (81)، حيث أن الموظف يجب أن يفعل أي عمل من شأنه وقوع تضارب في المصالح بين أنشطته
الخاصة ومصالح الجهات الحكومية ومشروعتاتها، أو أن يحظر من شأنه أن يؤثر بشكل
مباشر أو غير مباشر في مصلحة له أو لأحد أقاربه حتى الدورة الرابعة.

حكما نصت المادة (79)، (80) من القانون المشار إليه على الواجبات الوظيفية والأعمال
المحترمة على الموظف، حيث نصت الفقرة الثامنة من المادة (80) على أن يحظر على الموظف
مزاولة أي أعمال أو تجارة تعارض مع واجباته كموظف بالجهة الحكومية أو مع مصلحة
الجهة الحكومية، أو من شأنها أن تنشئ للموظف مصلحة مباشرة أو غير مباشرة في أي عقود
أو أعمال أو مناقصات تصل بنشاط الجهية الحكومية أو تهتم الجهات الحكومية طرفاً
فيها. ونصت الفقرة العاشرة من ذات المادة على أن يحظر على الموظف قبل الهدايا أو الهبات أو
الإكراميات أو المنح أو المبالغ النقدية أو غيرها، بنفسه أو بواسطة الغير، من أي شخص، مقابل
أو بسبب عمل يتعلق بوظيفته، لتحقيق مصلحة الغير.

الدستور: أشار الدستور في المادة 115 منه على منع تضارب المصالح لأعضاء مجلس الشورى فيما
يخص استغلال العضوية لصالحه الخاص أو لصالح من تربطه به علاقة خاصة.

قانون المرافعات: نص قانون المرافعات (المادة 100) على أنه يجوز رد القاضي لأحد الأسباب الآتية:

- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
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- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
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على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
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على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
- إذا كان له أو لزوجته دعوى مماثلة للدعوى التي ينظر.
- إذا وجدت له أو لزوجته خصومات مع أحد الخصوم أو زوجته بعد قيام الدعوى المطروحة
على القاضي، ما لم تحكم هذه الدعوى قد أقيمت بقصد رده عن نظر الدعوى المطروحة
عليه.
قانون المناقصات والمزايدات: حظرت (المادة 33) على موظفي الهيئة الحكومية، ممن يتولون مهام و اختصاصات وظيفية تتعلق بالعقود أو العقود التي تجريها هذه الهيئة، أن يكون لأي منهم مصلحة مباشرة أو غير مباشرة في تلك التعاقدات، كما لا يجوز لأي منهم أن يكون شريكًا لأحد المناقصين أو المزايدين أو وكيلًا عنه أو عضوًا في مجلس إدارته أو موظفًا لديه.

قانون ديوان المحاسبة: حظرت (المادة 45) على رئيس الديوان أو نانبيه، أثناء توليه منصبه، أن يبدأ مستشاره أو يشترط أو يستأجر مالًا من أموال الدولة، ولو بطرق غير مباشرة، أو أن يؤجره أو يبيعها شيئاً من موالاته أو يتفاوض على إليه. كما لا يجوز له أن يشترك في التزامات تعقدها الدولة أو المؤسسات أو الهيئات، ولا يجمع بين وظيفته وعضوية مجلس إدارة أي شركته أو مؤسسته أو هيئة.

لائحة موظفي ديوان المحاسبة: حظرت (المادة 122) على الموظف توجب أي عمل من شأنه وقوع تضارب في المصالح بين أنشطته الخاصة ومصالح الديوان ومروحته، أو أن يفهم من شأنه أن يؤثر بشكل مباشر أو غير مباشر في مصلحة له أو لأحد أقاربه حتى الدرجة الرابعة.

قانون هيئة قطع الأسواق المالية: حظرت (المادة 19) على الرئيس أو نانبيه أو أي من أعضاء المجلس، أو الرئيس التنفيذي، أو أي من موظفي الهيئة، أن يكون له مصلحة شخصية مباشرة أو غير مباشرة في العقود التي تبرم مع الهيئة أو لحسابها، أو في المشاريع التي تقوم بها، أو في أي مجال آخر من مجالات نشاطها.

قائمة أعضاء المجلس أو الرئيس التنفيذي أو أي من موظفي الهيئة، أثناء توليهم العمل فيها، فمثلاً: أي وظيفة أو مهنة أو أي عمل آخر في القطاع الخاص ويشكلون ذلك يعمل الهيئة، أو تقديم أي خدمات أو استشارات بشكل مباشر أو غير مباشر، أو المشاركة في عضوية مجلس إدارة أي جهة تخضع لرقابة الهيئة، أو أي جهة ذات صلة بها.

ويستثنى من ذلك أعمال المجالس واللجان التي تشكلها الدولة أو تشرف عليها.
قانون السلطة القضائية: ومن الأحكام وثيقة الصلة بالشفافية، ما منص عليه المادة 15 من أن
جلسات المحاكم علنية إلا إذا نص القانون أو رأت المحكمة من تلقاء نفسها أو بناءً على طلب
أحد الخصوم جعلها سرية محافظة على النظام العام أو مراعة للأهلاب أو لحرم الأسرة. وفي
جميع الأحوال يجبون النطق بالأحكام في جلسة علنية.

البوابة القانونية القطرية (البهزان 2): ومنا يعزز من الشفافية في دولة قطر إنشاء وتطوير البوابة
القانونية القطرية باعتبارها موقعًا شاملاً لتفاصيل التشريعات القانونية القطرية السارية
والعدلية والمغلة منذ عام 1961. والأحكام القضائية الصادرة من محكمة التمييز
والاتفاقيات التي تحكم دولة قطر طرفًا فيها، والفتاوى وأعداء الجريمة الرسمية، ومما يميز
البوابة أنها محددة أولًا بأول وتقدم باللغتين العربية والإنجليزية.

تهدف البوابة إلى إثارة البيئة التشريعية للدولة بشفاء قانوني قطري يلبي الاحتياجات القانونية
والتشريعية للمؤسسات الحكومية والقطاع الخاص، حكماً تتيح نافذة للفقه القانوني
القطرى على العالم الخارجي، بما يسهم في دعم وتعزيز المنظومة التشريعية القانونية
القطرية، ثم ضوء ما تتمتع به دولة قطر من خبرة قانونية وعدلية. وفي ظل ما تشهده البلاد
من نهضة تشريعية، أصبحت محاكاة إعجاب وسلوكًا يحتذى، ما جعل جهات عديدة تطلب
الاستفادة من الخبرة القطرية في المجال القانوني. وهذه البوابة ستضع الخبرة القطرية
وامكانياتها القانونية أمام دول العالم أجمع.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY
ROMANIA

ARTICLE 7 UNCAC
PUBLIC SECTOR

ROMANIA (EIGHTH MEETING)

- Establish and strengthen systems to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, including whether specific procedures exist for the recruitment and hiring of senior officials in criminal justice institutions, if they are different from other civil servants;

Developing a culture of transparency is the first general objective of our National Anticorruption Strategy. Each of the institutions took their own measures to ensure public information regarding the vacant job positions and how they can be occupied, the retention, the promotion and the retirement.

One of the most useful measures to ensure transparency is to regulate the steps of the contests and the promotion or retirement possibilities.

For example, judges and prosecutors are part of a single body of so-called magistrates.

The career of magistrates is organised by Law 303/2004 on the Statute of judges and prosecutors. The admission to the position of magistrate can only be the result of an open competition organised by the National Institute of Magistracy (NIM). The candidates are examined in writing on specific legal matters, they undergo a test of logic and are interviewed, they also undergo a psychological examination. To participate in the examination, the following pre-conditions must be met: a) Romanian citizenship, permanent residence in the country and full legal capacity; b) law degree; c) no criminal and fiscal record and enjoying a good reputation; d) mastering the Romanian language; e) medically and psychologically fit to exercise the office (article 14 paragraph 2 of the above law).

Exceptionally, depending on the needs of the system, judges may be selected through an open competition directly for some positions in first level courts opened for competition for judicial practitioners such as specialised judicial personnel, lawyers, notaries, police officers with higher legal education, court clerks with higher legal education etc. They must have served for at least five years within the legal field concerned. The competitions follow the same pattern as the ones organised to enter the NIM, but once the exam passed, the candidates have to follow only a certain period of training and they are appointed by the President of Romania at the proposal of SCM at certain first level courts.

In Romania, there is a unique body of professional judges. In higher courts, once promoted, as a result of their activity, judges become more specialised in certain areas such as criminal, administrative, civil, or intellectual property matters.

After the initial training and graduation at the NIM, magistrates are appointed by
the Superior Council of Magistracy (SCM) as junior magistrates-trainees. After completion of another year of practical work, they must then take the capacity exam. Once the exam is passed, the SCM submits a proposal to the President of Romania to appoint them as magistrates. The President cannot reject a proposal more than once, with a reasoned decision. If the SCM maintains its proposal, it has to support the renewed proposal with explanations.

Any career advancement for a magistrate can only take place after a successful examination or competition organised by the SCM through the NIM, and under the conditions set forth by the law (articles 42 to 56 of Law 303/2004): evaluation of documentation, interview with the plenum of the SCM, written examination. These are organised annually at the national level following a public announcement of vacancies and the competition, or at any moment depending on the needs and the number of vacant posts to be filled. Further conditions include a “very good” mark in the last appraisal, and conditions of length of service in the current position - 5, 6, 8 or 12 years depending on the case. These conditions also apply for promotions to the positions of president and vice-president of the various courts and tribunals, including the court of appeal and the High Court of Cassation and Justice (HCCJ).

Regarding the dismissal of judges and prosecutors, it is governed by art. 65 of Law no. 303/2004 for the following cases: a) resignation; b) retirement law; c) transfer to another according to the law; d) professional incapacity; e) as a disciplinary sanction; f) sentencing and conditional sentence ordered by a final decision; f1) waiver of prosecution and penalty waiver ordered by final decision if it considered that it should be retained in office; g) breach of art. 7 on additional prohibitions express (e.g. the activity of his involvement in the business through an intermediary); h) failing the entrance exam in their careers; i) that the conditions laid down in art. 14 para. (2) a), c) and e) (see above conditions of recruitment).

Termination of service is regulated under article 65 of Law 303/2004, and foreseen in the following cases: a) resignation; b) retirement, according to the law; c) transfer to another office, according to the law; d) professional incapacity; e) as a disciplinary sanction; f) final conviction or the postponement of the application of the penalty of the judge or prosecutor for an offence; f1) dropping of the criminal investigation or of the application of the penalty established by a final decision, when it was decided that remaining in office would not be appropriate; g) violation of the provisions of art. 7 on the additional explicit exclusions (e.g. acting as an arbitrator, getting involved into a business through an intermediary); h) failure to succeed in the examination to enter the career of magistrate; i) failure to meet the requirements provided by art. 14 paragraph (2) letters a), c) and e) (see recruitment requirements above).

The removal of a magistrate from his/her office is decided by the SCM, with the formal endorsement by decree of the President of Romania. The removal from office of junior judges and prosecutors is the sole responsibility of the SCM. A special regime is applicable to military judges and prosecutors.

The above decisions of the SCM must be motivated and can be appealed with the SCM on points of law, and subsequently with the High Court of Cassation and Justice.

The Anti-corruption General Directorate (AGD), structure responsible for preventing corruption within MoIA (Ministry of Internal Affairs), is focused on preventive training of the commission’s members and the HR structures on the occasion of promotion
contests of the police agents, contests for recruitments from external source, for contracted personnel, and admission contests for Police Academy and schools for police agents.

The right to retirement and social security of police officers and gendarmes is regulated by Law no. 223/2015 on state military pensions, published in the Official Journal no. 556 of 27 July 2015 amended and supplemented. The primary legal standard describes the categories of pensions that compose the military retirement state system, respectively: service pension, disability pension and survivor’s pension and the conditions required for the personnel in order to benefit from this right (for example, the standard retirement age, years in service, length of service, etc.).

The transparency principle is also assured though “social medial” outlets. For example, the National Administration of Prisons (NAP) has a Facebook page named “Admission NAP” through which interested parties may post any complaints regarding suspicions that might have resulted from their experience with the examination process. This allows NAP to take immediate action to correct any discrepancies.

With regard to the civil servants within the National School of Clerks, they exercise their duty in accordance with the Law no. 188/1999 regarding the Status of the civil servants, republished, as further amended. The recruitment and evaluation of the civil servants is made in accordance with the Law no. 188/1999.

At the level of the National School of Clerks, operational procedures relating to the recruitment and the evaluation of the individual professional performance of the civil servants are drawn up, in accordance with the legal provisions, thus:

- the procedure relating to the recruitment of civil servants approved by the Decision no. 30/2016 of the Director of the National School of Clerks.
- the procedure on the evaluation of the individual professional performance of the civil servants approved by Decision no. 29/2016 of the Director of the National School of Clerks.
- the promotion of civil servants is carried out in accordance with the provisions laid down in the Government Decision no. 611/2008 for the approval of the rules relating to the organization and career development of civil servants, with subsequent amendments and supplements and the Law no. 188/1999 regarding the Status of civil servants.

With regard to the contractual staff within the School, they carry out their duties under the provisions of the Labour Code.

The recruitment of the contractual staff within the School and the promotion of it is carried out according to the Government Decision no. 286/2011 approving the Framework Regulation of 23.03.2011 laying down the general principles of the employment of a vacant post or temporarily vacant post correspondent to the contractual functions and the criteria for promotion in degrees or in professional steps immediately above of the contractual staff within the budgetary sector paid from public funds.

- Implement adequate procedures for the selection and training of individuals for positions considered vulnerable to corruption and the rotation of such individuals to other positions
Each institution chooses what procedures it considers adequate. For example, in the Ministry of Internal Affairs, the prevention activities are conducted, at the central level, by the Prevention Department within the AGD and at the territorial level by the designated officers within AGD’s anti-corruption territorial structures (in each county and in Bucharest).

Anti-corruption informing activities last at least 30 minutes and are conducted in order to present the latest information regarding the prevention, countering corruption and the legislation in force in this field. AGD permanently conducts informing activities of the personnel on deontology and ethics:

- In 2015, at the national level, AGD officers organized in the ministry of internal affairs structures 1932 informing activities to which attended 40,637 employees, 6314 with leading positions and 34,323 with executive positions.
- In 2016, AGD conducted 1,893 preventive sessions to which 55,018 MoIA employees attended 10,707 with leading positions and 44,311 with executive positions. The objective of these activities was to raise the interest, motivation and the involvement of the participants, having as a main objective the reduction of the corruption deeds committed by MoIA personnel.

Materials regarding the ethics and professional behaviour:

- Following the elaboration of the new Anti-corruption Guide on 9 December 2014, on the occasion of the International Anti-corruption Day, AGD conducted, at national level, anti-corruption campaigns in order to promote this guide. At the central of the MoIA structures/general inspectorates, 55 activities were conducted and attended by 1899 employees. The guide was printed in 5000 copies in Romanian and 500 copies in English.
- Every semester, AGD elaborated and disseminated, to MoIA structures, 500 copies of the Informing Bulletin entitled Integrity, which comprises information on preventing and countering corruption.
- Every 3 months, syntheses are drafted on preventing and countering corruption activities conducted by AGD, documents which are disseminated to MoIA units.
- With support from CENTRAS and with the consultation of MoIA, a publication was elaborated, entitled Informing Guide addressed to the citizens who relate to MoIA personnel. The Guide was printed in 7000 copies and was disseminated to MoIA units and AGD’s territorial units which work with the citizens.
- Within a EU funded project entitled United against Corruption, a Best Practices Guide on preventing and Countering Corruption was elaborated, addressing this topics in Romania, Bulgaria and Latvia.
- 1000 copies of the National Anti-corruption Strategy 2016-2020, printed by the Ministry of Justice, were disseminated in 2017, to the leadership of MoIA and to the main MoIA institutions, as well as to AGD’s territorial units.
- In 2017, 200 banners with preventive messages were placed (by AGD’s prevention officers) on the buildings of MoIA’s structures, at central and territorial level. The objective is to raise the citizens’ awareness on issues afferent to corruption and to promote the green line 0800.806.806 and other means to report on corruption deeds. By the end of this year, all the counties will be covered.

The NAP grants a special importance to training its employees that may be exposed to corruption based vulnerabilities. In this regard, for the upcoming three years, the NAP
has planned a number of courses and activities revolving around anti-corruption for new employees (no matter their positions), personnel that interact directly with the inmates, personnel involved in procurement and in financially managing projects funded through European non-refundable finances.

All NAP employees have access to training through the internal e-learning platform. In the last years, the platform hosted a number of topics of interest on the subject of preventing corruption: the integrity counsellor, the mechanism behind employees signalling corruption acts, conflicts of interest and incompatibilities declarations of assets and interests, the deontological code for public functionaries with special status, corruption crimes and their consequences.

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**Annex to the Romanian Note Verbale no. 1024**

The recruitment of the prosecutors of the Directorate for Investigating Organized Crime and Terrorism (DIICOT) follows the criteria and procedures expressly provided in art. 79 of the Emergency Ordinance of the Romanian Government no. 78/2016 for the organization and functioning of the DIICOT, as well as for the modification and completion of some legislative acts.

According to art. 10 of the same Emergency Ordinance, the function of the prosecutor within the Directorate (DIICOT) is incompatible with any other function, be it public or private, with the exception of the academic/teaching functions in the higher education system.

At the same time, the DIICOT prosecutors have the same incompatibilities and interdictions as for the magistrates, enshrined in the Romanian Constitution, Law no. 303/2004 of the status of judges and magistrates, Law no. 161/2003 on the measures to ensure transparency in the exercise of public functions/dignities, of public functions and in the business environment, the prevention and punishment of corruption, but also Law no. 62/2011 on the social dialogue.
A Government Decision from 2003 improved the system of recruitment of the civil servants, introducing two forms of career advancement: promotion to higher public offices and progress in pay grades. The respective act provided for the evaluation criteria of the individual performances of the civil servants, amongst which their proper conduct while carrying out their duties. This Decision followed a similar normative act that had established, in 2001, the evaluation methodology of the civil servants’ performances.

In addition, in 2004, a new form of promotion in the public office was introduced through the establishment of the position of public manager, which was meant to speed up the process of career advancement for the civil servants who had that position.

Considering the Act on the statute of civil servants itself, it was amended several times since its adoption in 1999. For instance, in 2006 and 2007 the recruiting system for the high civil servants was changed: recruitment would take place on the basis of a national competition and would fall in the responsibility of a permanent independent commission, composed of seven members appointed by the Prime Minister. In the current form (as of 2011), the Act provides for a system of recruiting of civil servants based on competition. The underlying principles are the free competition, transparency, professional merits and competency and the equal access to public office for every citizen who fulfils the legal requirements. As well, the Act contains a system of promotion and evaluation of civil servants’ performances. A civil servant can develop his/her career in three ways: by being promoted to a higher class among the three existing classes of civil servants, by being advanced to a higher professional degree in the same class and by progressing on the pay scale.

The advancement to a higher professional degree is to be done following an annual exam of promotion. In order to advance in a superior category of civil servants, meaning from that of execution to the one of management, the candidate has to fulfill a determined number of conditions. There is also a fourth way of promotion provided for in the Act: the system of rapid promotion in a public office is based on competitive examination and is open to those who previously obtained the status of public manager.

As for the evaluation of civil servants’ performances, this is undertaken on an annual basis and serves for the advancement in pay scale, for the promotion in a superior public office and for removal from office. The retirement of civil servants intervenes when
attaining the standard age of retirement and the minimal stage of contribution to the retirement fund (cumulatively).

In addition to the civil servants, other categories of non-elected public officials are provided under the Romanian legislation.

The rules on the recruitment and promotion of the magistrates (judges and prosecutors) are provided by a Law from 2004, on the statute of the judges and prosecutors, republished, with the subsequent amendments and completions.

The admission and promotion of judges and prosecutors shall take place through examination, with the observance of principles of equality and transparency. The law contains similar rules to the Law on civil servants in what concerns the necessary requirements for admission and the role of the assessment of activity in order to promote and also similar rules regarding disciplinary sanctions, suspension and cessation of office.

Admission of judges and prosecutors to the judicial career shall take place through a competitive examination, based on professional competence, aptitudes and good reputation. The admission to National Institute of Magistracy (NIM) is made exclusively on the basis of a competitive examination.

The admission to NIM is organized on an annual basis, upon the approval of the Superior Council of Magistracy (SCM). The date, the location and manner of holding the admission examination, as well as the number of vacancies shall be published in the Official Journal of Romania, part III, on the web page of SCM and of NIM and on three central daily newspapers, at least 60 days before the date of the examination. The initial professional training within the Institute is both theoretical and practical and lasts 2 years. After another 1 year of practice after graduating, a final exam is taken. The date, the location and the manner of holding the exam shall be published in the Official Journal of Romania, part III, on the website of SCM and NIM and it shall be communicated to the courts and prosecutor’s offices, at least 90 days before the exam.

Judges and prosecutors shall be promoted only by means of a competitive examination held at a national level, within the limits of vacancies existing in tribunals and courts of appeal or, as the case may be, in prosecutor's offices attached to them. The competitive examination for the promotion of judges shall be held annually or any time is necessary, by SCM, through NIM.

The Law no. 360/2002 on the statute of the police stipulates that the police staff is mainly selected from the graduates of the training institutions of the Ministry of Administration and Interior (MAI). The admission to the training institutions shall be made through a contest or exam, if the requirements provided by the law are met, including the ones related to not having a criminal record, not being the subject of an ongoing criminal investigation or of an ongoing procedure before courts for an offence.
The police officers can also be police agents or graduates of educational institutions within MAI or from other higher education institutions with adequate profile for the necessary specializations for the police, established by order of the minister of Administration and Interior.

For some positions, specialists with adequate qualifications for the job description and who fulfill the legal conditions can be employed directly or transferred from defence public institutions. The employment of experts within police forces shall be made by means of a contest or exam.

For acquiring the next professional rank, the police officer has to fulfill certain conditions related to the probation period and to have exceptional or very good on the professional evaluation.
Информация об обеспечении честности и неподкупности в органах прокуратуры Российской Федерации

Меры, относящиеся к выполнению требований статьи 7 (публичный сектор) Конвенции ООН против коррупции.

1) Назначение на должность и освобождение от должности, ротация.

Порядок назначения прокуроров на должности и их освобождения определены Конституцией Российской Федерации и Федеральным законом от 17.01.1992 № 2202-1 «О прокуратуре Российской Федерации» (далее – Закон о прокуратуре).

В Конституции Российской Федерации нормы, посвященные прокуратуре, содержатся в главе 7 «Судебная власть и прокуратура». Частью 1 статьи 129 Конституции Российской Федерации определено, что полномочия, организация и порядок деятельности прокуратуры Российской Федерации определяются федеральным законом.

В соответствии со статьей 129 Конституции Российской Федерации Генеральный прокурор Российской Федерации и заместители Генерального прокурора Российской Федерации назначаются на должность и освобождаются от должности Советом Федерации Федерального Собрания Российской Федерации по представлению Президента Российской Федерации.

Прокуроры субъектов Российской Федерации назначаются на должность Президентом Российской Федерации по представлению
Генерального прокурора Российской Федерации, согласованному с субъектами Российской Федерации. Прокуроры субъектов Российской Федерации освобождаются от должности Президентом Российской Федерации. Иные прокуроры, кроме прокуроров городов, районов и приравненных к ним прокуроров (то есть военные и другие специализированные прокуроры, приравненные к прокурорам субъектов Российской Федерации), назначаются на должность и освобождаются от должности Президентом Российской Федерации. Прокуроры городов, районов и приравненные к ним прокуроры назначаются на должность и освобождаются от должности Генеральным прокурором Российской Федерации.

Срок полномочий Генерального прокурора Российской Федерации составляет пять лет. Одно и то же лицо может быть назначено на должность Генерального прокурора Российской Федерации неоднократно (пункт 5 статьи 12 Закона о прокуратуре).

Срок полномочий прокуроров субъектов Российской Федерации и прокуроров, приравненных к прокурорам субъектов Российской Федерации, – пять лет, за исключением случаев, предусмотренных законом (пункт 5 статьи 15.1 Закона о прокуратуре).

Генеральный прокурор Российской Федерации на основании результатов аттестации прокуроров субъектов Российской Федерации и прокуроров, приравненных к прокурорам субъектов Российской Федерации, вправе обратиться к Президенту Российской Федерации с представлением о продлении их полномочий на срок до пяти лет (пункт 6 статьи 15.1 Закона о прокуратуре).

Прокуроры городов и районов, приравненные к ним военные и другие специализированные прокуроры назначаются на должность и освобождаются от должности Генеральным прокурором Российской Федерации (статья 16.1 Закона о прокуратуре). Срок полномочий прокуроров городов, районов и приравненных к ним прокуроров – пять лет, за исключением случаев,
предусмотренных законодательством. Генеральный прокурор Российской Федерации на основании результатов аттестации прокуроров городов, районов и приравненных к ним прокуроров вправе продлить их полномочия на срок до пяти лет.

Генеральный прокурор Российской Федерации назначает на должность и освобождает от должности: начальников главных управлений, отделов и их заместителей, советников, старших помощников и старших помощников по особым поручениям, помощников и помощников по особым поручениям Генерального прокурора Российской Федерации, помощников по особым поручениям первого заместителя и заместителей Генерального прокурора Российской Федерации, старших прокуроров и прокуроров главных управлений, управлений и отделов и их помощников Генеральной прокуратуры Российской Федерации, заместителей прокуроров субъектов Российской Федерации и приравненных к ним прокуроров; прокуроров городов, районов, приравненных к ним прокуроров; ректоров (директоров), проректоров (заместителей директоров) научных и образовательных организаций прокуратуры, а также директоров филиалов научных и образовательных организаций прокуратуры и их заместителей (статья 40.5 Закона о прокуратуре).

Прокурор субъекта Российской Федерации, приравненные к нему прокуроры назначают на должность и освобождают от должности работников аппарата соответствующей прокуратуры, за исключением своих заместителей; заместителей прокуроров, начальников отделов, старших помощников и помощников прокуроров.

Прокуроры городов, районов, приравненные к ним прокуроры назначают на должность и освобождают от должности работников, не занимающих должности прокуроров.
Ректоры (директора) научных и образовательных организаций прокуратуры, директора их филиалов назначают на должность и освобождают от должности подчиненных им научных и педагогических работников научных и образовательных организаций прокуратуры, их филиалов, иных работников указанных организаций, их филиалов, за исключением лиц, назначаемых на должность и освобождаемых от должности Генеральным прокурором Российской Федерации.

Вопросы, связанные с перемещением прокуроров по службе (повышение, ротация), постановка вопроса об их увольнении (за исключением случаев увольнения по собственному желанию) находятся в компетенции должностных лиц, которыми они назначаются.

В целях повышения эффективности деятельности органов прокуратуры и профилактики коррупционных правонарушений приказом Генерального прокурора Российской Федерации от 20.02.2013 № 80 «Об основных направлениях работы с кадрами в органах и учреждениях прокуратуры Российской Федерации» предписано практиковать ротацию руководителей прокуратур, находящихся в должности более десяти лет, рассматривая в каждом конкретном случае вопрос об их перемещении с учетом профессиональных и деловых качеств, а также личных обстоятельств.

2) Отбор и подготовка кадров.

Согласно статье 40.1 Закона о прокуратуре прокурорами могут быть граждане Российской Федерации, получившие высшее юридическое образование по имеющей государственную аккредитацию образовательной программе и обладающие необходимыми профессиональными и моральными качествами, способные по состоянию здоровья исполнять возлагаемые на них служебные обязанности.
Лицам, впервые принимаемым на службу в органы прокуратуры, за исключением лиц, впервые принимаемых на службу в органы прокуратуры в течение одного года со дня окончания образовательной организации, в целях проверки их соответствия занимаемой должности может устанавливаться испытание на срок до шести месяцев. При неудовлетворительном результате испытания работник может быть уволен из органов прокуратуры или по согласованию с ним переведен на другую должность (статья 40.3 Закона о прокуратуре).

Приказом Генерального прокурора Российской Федерации от 05.05.2015 № 206 «О мерах по повышению эффективности работы, направленной на формирование и воспитание кадрового состава органов прокуратуры, и соблюдению антикоррупционного законодательства в органах прокуратуры Российской Федерации» (далее – приказ № 206) предусмотрено в целях повышения эффективности кадровой работы, усиления персональной ответственности руководителей органов прокуратуры и работников кадровых подразделений за ее результаты, профилактики коррупционных и иных правонарушений обеспечить тщательный подход к подбору кандидатов на службу в органы прокуратуры для исключения возможности принятия лиц, не обладающих необходимыми профессиональными и моральными качествами кандидатов для приема на службу (абзац первый пункта 1.1).

С учетом данного требования при проведении мероприятий по профессиональному психологическому отбору кандидатов на службу в органы прокуратуры обращается особое внимание на возможные факторы риска, обусловленные склонностью к коррупционному поведению (пункт 1.3 приказа № 206).

Приказами Генерального прокурора Российской Федерации утверждены квалификационные характеристики должностей (квалификационные требования к должности) прокурора города, района и
приравненного к ним прокурора (приказ от 12.08.2010 № 316), заместителя прокурора города, района, приравненного к ним прокурора (приказ от 09.01.2013 № 5), помощника прокурора города, района и приравненного к ним прокурора (приказ от 02.11.2011 № 378), а также квалификационные требования к специальной профессиональной подготовке выпускников Академии Генеральной прокуратуры Российской Федерации для прохождения службы в органах прокуратуры (приказ от 28.11.2013 № 519).

При отборе кандидатов на службу в органы прокуратуры и назначении прокурорских работников на вышестоящие должности их знания, навыки и умения соотносятся с указанными квалификационными требованиями. Кроме того, в соответствии с пунктом 1 приказа Генерального прокурора Российской Федерации от 15.09.2014 № 493 «О профессиональном психологическом отборе кандидатов на службу в органы прокуратуры Российской Федерации и обучение в государственные образовательные организации» организован профессиональный психологический отбор при приеме кандидатов на службу в органы прокуратуры Российской Федерации и на обучение в Академию Генеральной прокуратуры Российской Федерации, институты прокуратуры в составе государственных образовательных организаций высшего образования и на целевые места в иных государственных образовательных организациях высшего образования, с которыми Генеральной прокуратурой Российской Федерации заключены соответствующие соглашения.

В приложении к Положению о порядке организации и проведения профессионального психологического отбора кандидатов на службу в органы прокуратуры Российской Федерации и обучение в государственные образовательные организации, утвержденному приказом Генерального прокурора Российской Федерации от 15.09.2014 № 493, перечислены профессиональные требования, предъявляемые к гражданам,
поступающим на службу в органы прокуратуры или обучение в государственные образовательные организации. В их перечень включены высокий уровень правосознания и нравственных убеждений, доминирование социально значимых мотивов, честность, принципиальность, соблюдение норм общественной морали, патриотизм, преданность интересам Российской Федерации.

Приказом Генерального прокурора Российской Федерации от 08.07.2016 № 404 утверждена Инструкция о порядке приема на службу (назначения на должность), увольнения (освобождения от должности) и привлечения к дисциплинарной ответственности прокурорских работников подразделений органов прокуратуры Российской Федерации по надзору за исполнением законодательства о противодействии коррупции. Отбор кандидатов на должности прокурорских работников в указанные подразделения осуществляется комиссиями, образуемыми для этих целей. К назначению на должности рекомендуются наиболее квалифицированные прокурорские работники, имеющие стаж работы в органах прокуратуры Российской Федерации не менее пяти лет.
Информация об обеспечении честности и неподкупности в Верховном Суде Российской Федерации


Деятельность Конкурсной комиссии Верховного Суда обеспечивает прием граждан на гражданскую службу в Верховный Суд по результатам прохождения конкурса и в строгом соответствии с требованиями законодательства о гражданской службе.

Верховным Судом на постоянной основе ведется работа по организации повышения профессиональной квалификации судей и гражданских служащих аппарата Верховного Суда в соответствии с Законом Российской Федерации от 26 июня 1992 г. № 3132-1 «О статусе судей в Российской Федерации» и Федеральным законом от 27 июля 2004 г. № 79-ФЗ «О государственной гражданской службе Российской Федерации» соответственно.

Согласно пункту 3 Указа Президента Российской Федерации от 11 мая 1998 г. № 528 «О Российской академии правосудия» функции по повышению квалификации судей и работников аппаратов судов
возложены на Российский государственный университет правосудия (до 14 ноября 2014 г. носивший название «Российская академия правосудия»). В связи с этим повышение квалификации судей и работников аппарата Верховного Суда осуществляется Российским государственным университетом правосудия, программы которого направлены в том числе формирование нетерпимого отношения к коррупционным правонарушениям.

Российский государственный университет правосудия уделяет особое внимание антикоррупционному образованию по следующим направлениям:

- преодоление правового нигилизма путем изучения права и формирования основ правовой культуры, в частности, и в сфере законодательства о противодействии коррупции;

- формирование четкого представления о целях, субъектах, формах, видах, сфере реализации и содержании коррупции;

- понимание природы коррупции, осознание социальных потерь от ее проявлении;

- распространение идей законности и уважения к закону, формирование осознанного отношения к коррупции как к явлению, неприемлемому ни при каких условиях;

- освоение навыков, необходимых для борьбы с коррупцией, создание антикоррупционного стандарта поведения, носящего не только пассивный характер – не приемлю и не участвую в коррупционных деяниях, но и активный – борюсь с любыми проявлениями коррупции.

Основной целью антикоррупционного образования выступает формирование социальной компетентности, в узком смысле слова – формирование антикоррупционной компетентности, которая достигается путем интегрирования антикоррупционной проблематики в общеобразовательные курсы и освоения во внеучебном процессе посредством проведения семинаров, научных кружков и студенческих конференций по данной тематике.
В целях реализации положений статьи 8 Конвенции и статьи 9 Федерального закона от 25 декабря 2008 г. № 273-ФЗ «О противодействии коррупции» в Верховном Суде действует Порядок уведомления федеральными государственными гражданскими служащими Верховного Суда Российской Федерации о фактах обращения в целях склонения их к совершению коррупционных правонарушений, регистрации таких уведомлений и организации проверки содержащихся в них сведений, утвержденный приказом Председателя Верховного Суда от 12 марта 2010 г. № 158/кд. В соответствии с указанным порядком гражданские служащие Верховного Суда обязаны сообщать о фактах обращения к ним в целях склонения их к совершению коррупционных правонарушений, по факту поступившего сообщения назначается проверка сведений, содержащихся в уведомлении.


В соответствии с указанным положением гражданский служащий, получивший награду, звание либо уведомленный иностранным государством, международной организацией, политической партией, другим общественным объединением, религиозным объединением о
предстоящем их получении, в течение трех рабочих дней представляет Председателю Верховного Суда ходатайство о разрешении принять награду или звание.

Вместе с этим Верховным Судом разработано и утверждено приказом Председателя Верховного Суда от 7 декабря 2015 г. №1043/кд Положение о порядке сообщения судьями и федеральными государственными гражданскими служащими аппарату Верховного Суда Российской Федерации получении подарка в связи с протокольными мероприятиями, служебными командировками и другими официальными мероприятиями, участие в которых связано с исполнением ими служебных (должностных) обязанностей, сдачи оценки подарка, его реализации (выкупа).

Указанное положение регламентировало процедуру принятия, сдачи, оценки и реализации подарка, полученного судьями или гражданским служащим Верховного Суда в рамках официальных мероприятий, участие в которых связано с исполнением служебных (должностных обязанностей). Принятие данного положения сделало процедуру получения, сдачи и выкупа подарка прозрачной и понятной для судей и работников аппарата Верховного Суда.

Гражданские служащие аппарата Верховного Суда вправе с предварительным уведомлением руководства Верховного Суда выполнять иную оплачиваемую работу, если это не повлечет за собой конфликта интересов. В целях регламентации процедуры соответствующего уведомления реагирования на него приказом Председателя Верховного Суда от 4 апреля 2016 г. №198/кд утвержден Порядок представления федеральными государственными гражданскими служащими аппарата Верховного Суда Российской Федерации предварительного уведомления о намерении выполнять иную оплачиваемую работу.

В судебной системе проводятся организационные и практические мероприятия, направленные на обеспечение применения кодексов этики.
В отношении судей действует Кодекс судейской этики, утвержденный 19 декабря 2012 г. VIII Всероссийским съездом судей (далее - кодекс судейской этики). Порядок и основания привлечения судьи к дисциплинарной ответственности определены Законом Российской Федерации от 26 июня 1992 г. № 3132-1 «О статусе судей в Российской Федерации» и Федеральным законом от 14 марта 2002 г. № 30-ФЗ «Об органах судейского сообщества в Российской Федерации».

Согласно статье 121 Закона Российской Федерации от 26 июня 1992 г. № 3132-1 «О статусе судей в Российской Федерации» судья может быть привлечен к дисциплинарной ответственности за совершение дисциплинарного проступка, то есть виновного действия (бездействия) при исполнении служебных обязанностей либо во внеслужебной деятельности, в результате которого были нарушены положения Закона Российской Федерации от 26 июня 1992 г. № 3132-1 «О статусе судей в Российской Федерации» и (или) кодекса судейской этики, что повлекло умаление авторитета судебной власти и причинение ущерба репутации судьи.

В целях обеспечения правильного и единообразного применения законодательства при рассмотрении административных дел об обжаловании решений квалификационных коллегий судей о привлечении судей дисциплинарной ответственности за совершение ими дисциплинарного проступка Пленум Верховного Суда Российской Федерации принял постановление от 14 апреля 2016 г. № 13 «О судебной практике применения законодательства, регулирующего вопросы дисциплинарной ответственности судей».

В отношении гражданских служащих аппарата Верховного Суда действует Кодекс этики и служебного поведения государственных гражданских служащих Верховного Суда, утвержденный приказом Председателя Верховного Суда от 24 марта 2011 г. № 192/кд. За нарушение требований указанного кодекса гражданский служащий может быть привлечен к дисциплинарной ответственности в соответствии
С требованиями Федерального закона от 27 июля 2004 г. № 79-ФЗ «О государственной гражданской службе Российской Федерации».

Среди мер превентивного действия в отношении судей выделяются меры по созданию системы ограничений для занятия судейских должностей.

Введение категории конфликта интересов привело к корректировке механизма конкурсного отбора кандидатов на должности судей, появлению ряда ограничений и запретов, касающихся видов деятельности, которыми судье вправе заниматься, а также имущественных, финансовых обязательств судей. Кроме того, в законодательстве появилось нормативное определение категории конфликта интересов.

Согласно части 2 статьи 3 Закона Российской Федерации от 26 июня 1992 г. № 3132-1 «О статусе судей в Российской Федерации» под конфликтом интересов понимается «ситуация, при которой личная заинтересованность (прямая или косвенная) судьи влияет или может повлиять на надлежащее исполнение им должностных обязанностей и при которой возникает или может возникнуть противоречие между личной заинтересованностью судьи и правами и законными интересами граждан, организаций, общества, муниципального образования, субъекта Российской Федерации или Российской Федерации, способное привести к причинению вреда правам и законным интересам граждан, организаций, общества, муниципального образования, субъекта Российской Федерации или Российской Федерации.

Под личной заинтересованностью судьи, которая влияет или может повлиять на надлежащее исполнение им должностных обязанностей, понимается возможность получения судьей при исполнении должностных обязанностей доходов в виде материальной выгоды либо иного неправомерного преимущества непосредственно для судьи, членов его семьи или иных лиц и организаций, с которыми судья связан финансово или иными обязательствами».

Согласно части 8 статьи 5 Закона Российской Федерации от 26 июня
1992 г. № 3132-1 «О статусе судей в Российской Федерации» «кандидатом на должность судьи не может быть лицо, состоящее в близком родстве или свойстве (супруг (супруга), родители, дети, родные братья и сестры, дедушки, бабушки, внуки, а также родители, дети, родные братья и сестры супругов) с председателем или заместителем председателя того же суда».

Идея отбора кандидатов на должности судей исключительно на основании их заслуг не исключает формирования системы ограничений для занятия судейских должностей, целью которой является устранение возможности возникновения конфликта интересов и укрепление доверия к судебной власти в обществе.

В рамках новых подходов в конкурсном отборе кандидатов личная заинтересованность судьи и возможность конфликта интересов стали усматриваться в случаях:

1) наличии близких родственников в судебной системе и попадающих в процессуальное или организационное соподчинение с судьей;

2) наличии близких родственников, занимающихся адвокатской практикой, а также осуществляющих трудовую деятельность в коммерческих структурах, которые наиболее часто обращаются за судебной защитой;

3) наличие близких родственников за рубежом и имеющих гражданство иностранных государств, что может приводить к конфликту интересов, поскольку в судах рассматриваются дела, касающиеся государственных интересов, национальной и экономической безопасности.

Проверка на отсутствие у кандидата на должность судьи личной заинтересованности и возможности возникновения конфликта интересов проводится в рамках процедуры назначения на должность судьи квалификационными комиссиями судей Комиссией при Президенте Российской Федерации по предварительному рассмотрению кандидатуры на должности судей федеральных судов.
Верховным Судом систематически проводятся мероприятия, направленные на выявление и предотвращение возможных конфликтов интересов.

Во исполнение абзаца второго подпункта «б» пункта 3 Указа Президента Российской Федерации приказом Председателя Верховного Суда от 18 апреля 2014 г. № 239/кд образован отдел по вопросам противодействия коррупции в составе Управления кадров и государственной службы Верховного Суда, который реализует предусмотренные законодательством мероприятия по противодействию коррупционным правонарушениям в Верховном Суде.

Постановлением Президиума Верховного Суда от 18 марта 2015 г. утверждено Положение о порядке проверки достоверности и полноты сведений о доходах, расходах, об имуществе и обязательствах имущественного характера судей Верховного Суда Российской Федерации, их супруга (супруги) и несовершеннолетних детей (далее - сведения о доходах и расходах), которым определены полномочия Комиссии по проверке достоверности и полноты представляемых судьями Верховного Суда сведений о доходах и расходах, регламент ее работы, порядок получения информации и осуществления проверки достоверности и полноты сведений о доходах и расходах, представленных судьями Верховного Суда. Комиссии по проверке достоверности и полноты представляемых судьями Верховного Суда сведений о доходах и расходах образована приказом Председателя Верховного Суда от 20 февраля 2015 г. № 144/кд.

В целях реализации требований статей 20 и 20¹ Федерального закона от 27 июля 2004 г. № 79-ФЗ «О государственной гражданской службе Российской Федерации», статей 8 и 8 Федерального закона от 25 декабря 2008 г. № 273-ФЗ «О противодействии коррупции», Федерального закона от 3 декабря 2012 г. № 230-ФЗ «О контроле за соответствием расходов лиц, замещающих государственные должности, и иных лиц их доходам» в
отношении лиц, замещающих должности гражданской службы в аппарате Верховного Суда, а также граждан, претендующих на замещение указанных должностей приказом Верховного Суда от 22 июля 2015 г. № 614/кд утверждены следующие нормативные акты:

- Положение о порядке представления гражданами, претендующими на замещение в аппарате Верховного Суда Российской Федерации должностей федеральной государственной гражданской службы, и федеральными государственными гражданскими служащими аппарата Верховного Суда Российской Федерации сведений о доходах, расходах, об имуществе и обязательствах имущественного характера, размещения этих сведений на официальном сайте Верховного Суда Российской Федерации предоставления общероссийским средствам массовой информации для опубликования;

- Положение о проверке достоверности и полноты сведений о доходах, об имуществе и обязательствах имущественного характера, представляемых гражданами, претендующими на замещение должностей федеральной государственной гражданской службы в аппарате Верховного Суда Российской Федерации, федеральными государственными гражданскими служащими аппарата Верховного Суда Российской Федерации, и соблюдения последними требований к служебному поведению;

- Положение о порядке осуществления контроля за соответствием расходов федеральных государственных гражданских служащих аппарата Верховного Суда Российской Федерации их доходам.

Реализация требований указанных положений осуществляется отделом по вопросам противодействия коррупции Управления кадров и государственной службы Верховного Суда и Комиссией Верховного Суда по соблюдению требований к служебному поведению федеральных государственных гражданских служащих аппарата Верховного Суда Российской Федерации и урегулированию конфликта интересов, действующей на основании приказа Председателя Верховного Суда.
от 22 июля 2015 г. № 611/кд.

По вопросу реализации статьи 11 Конвенции, в силу части 1 статьи 20¹ Закона Российской Федерации от 26 июня 1992 г. № 3132-1 «О статусе судей в Российской Федерации» судья, впервые назначенный на должность судьи, проходит обучение по программе профессиональной переподготовки.

Судьи, впервые назначенные на должность, проходят программу профессиональной переподготовки, которая является самостоятельным видом дополнительного профессионального образования и проводится Российским государственным университетом правосудия на базе высшего юридического образования по дополнительным профессиональным программам, обеспечивающим углубление и совершенствование знаний судей, выработку практических умений для выполнения нового вида профессиональной деятельности (Положение о профессиональной переподготовке и повышении квалификации судей федеральных судов в Российской государственном университете правосудия, утвержденное постановлением Президиума Верховного Суда Российской Федерации от 4 февраля 2015 г.).

Программа переподготовки состоит из аудиторных занятий в форме лекций-дискуссий и практических занятий (семинары, заседания «круглого стола» и т.п.), стажировки в судах и итоговой аттестации, которая обязательно включает в себя блок занятий, направленный на формирование антикоррупционной компетентности. Данная программа осуществляется за счет средств федерального бюджета.

При Верховном Суде Российской Федерации, профессиональную переподготовку на базе Российского государственного университета правосудия в 2015-2016 гг. прошли практически 100 % из общего числа судей, впервые назначенных на должность судьи. Исключение составляют впервые назначенные на должности федеральных судей лица, прежде занимавшие должности мировых судей, профессиональная переподготовка которых проходила за счет средств субъектов Российской
Федерации в соответствии с требованиями законодательства.

Информационно-справочные материалы по вопросам и темам, предлагаемым УНП ООН для обсуждения в ходе сессии Межправительственной рабочей группы открытого состава по предупреждению коррупции

В отношении мер, касающихся статьи 7 Конвенции

Учитывая специфику правоохранительной службы, выражающуюся в характере выполняемых задач, Федеральным законом от 30 ноября 2011 г. № 342-ФЗ «О службе в органах внутренних дел Российской Федерации и внесении изменений в отдельные законодательные акты Российской Федерации»1, а также ведомственными нормативными правовыми актами МВД России определен особый порядок отбора кандидатов на службу, включающий в себя многоступенчатые проверки, проводимые как в отношении принимаемых на службу граждан, так и их близких родственников.

Указанные проверки осуществляются кадровыми и оперативными службами, подразделениями собственной безопасности. В рамках проверок пристальное внимание обращается не только на возможное противоправное поведение кандидатов и их связь с преступными элементами, но и на соблюдение антикоррупционного законодательства, соответствия установленным ограничениям и запретам.

Кроме того, проводятся психологические и психофизиологические исследования, тестирования, медицинские обследования, в том числе с применением аппаратных психодиагностических комплексов.

В обязательном порядке граждане при поступлении на службу представляют свои сведения о доходах, об имуществе и обязательствах

1 Далее - «Закон о службе».
имущественного характера, а также сведения о доходах, об имуществе и обязательствах имущественного характера своих супруги (супруга) и несовершеннолетних детей.

Сотрудниками кадровых подразделений изучаются мотивы поступления на службу.

При назначении на должности с высокими коррупционными рисками проводятся беседы и доводятся требования и ограничения, установленные в целях противодействия коррупции.

Применение данных мер позволяет повысить защищённость органов внутренних дел от проникновения лиц с коррупционными и криминальными наклонностями, а также имеющих алкогольную или наркотическую зависимость.

Дальнейшее прохождения службы стимулируется предоставлением широкого спектра правовых, трудовых и социальных гарантий, а также применением различных мер и форм поощрения.

Министерством внутренних дел Российской Федерации проводится планомерная работа по формированию у сотрудников полиции антикоррупционных стандартов поведения.

В рамках семинаров, конференций, учебно-методических сборов, а также на занятиях в системе служебной подготовки по месту службы рассматриваются актуальные вопросы выполнения требований антикоррупционного законодательства Российской Федерации.

В образовательных организациях системы МВД России вопросы, связанные с повышением уровня правосознания и антикоррупционной устойчивости, раскрываются в более чем 40 учебных дисциплинах, кроме того, проводятся научные исследования и научно-практические конференции по актуальным вопросам применения антикоррупционного законодательства.

Законом о службе и принятыми в его развитие ведомственными нормативными правовыми актами определены квалификационные требования к
должностям в органах внутренних дел, в числе которых: требования к уровню образования, стажу службы в органах внутренних дел или стажу (опыту) работы по специальности, профессиональным знаниям и навыкам, а также состоянию здоровья, необходимым для выполнения обязанностей по замещаемой должности.
Информация Судебного департамента Верховного Суда Российской Федерации об обеспечении честности и неподкупности судебных органах Российской Федерации

Информация в отношении мер, указанных в статье 7 Конвенции

В соответствии со статьей 4 Закона Российской Федерации от 26.06.1992 г. № 3132-1 «О статусе судей в Российской Федерации» (далее – Закон Российской Федерации от 26.06.1992 № 3132-1) судьей может быть гражданин Российской Федерации, имеющий высшее юридическое образование по специальности «Юриспруденция» или высшее образование по направлению подготовки «Юриспруденция» квалификации (степени) «мастер» при наличии диплома бакалавра по направлению подготовки «Юриспруденция»; не имеющий или не имевший судимости либо уголовное преследование в отношении которого прекращено по реабилитирующим основаниям; не имеющий гражданства иностранного государства либо вида на жительство или иного документа, подтверждающего право на постоянное проживание гражданина Российской Федерации на территории иностранного государства; не признанный судом недееспособным или ограниченно дееспособным; не состоящий на учете в наркологическом или психоневрологическом диспансере в связи с лечением от алкоголизма, наркомании, токсикомании, хронических и затяжных психических расстройств; не имеющий иных заболеваний, препятствующих осуществлению полномочий судьи.

Согласно статье 5 Закона Российской Федерации от 26.06.1992 г. № 3132-1 любой гражданин, достигший установленного законом возраста, имеющий высшее юридическое образование по специальности «Юриспруденция» или высшее образование по направлению подготовки «Юриспруденция» квалификации (степени) «мастер» при наличии диплома бакалавра по направлению подготовки «Юриспруденция»,
требуемый стаж работы по юридической профессии и не имеющий заболеваний, препятствующих назначению на должность судьи, вправе сдать квалификационный экзамен на должность судьи, обратившись для этого в соответствующую экзаменационную комиссию с заявлением о сдаче квалификационного экзамена. Помимо указанного заявления, в экзаменационную комиссию представляются:

- подлинник документа, удостоверяющего личность кандидата как гражданина Российской Федерации, и его копия;
- анкета, содержащая биографические сведения о кандидате; подлинник и копия документа, подтверждающего высшее юридическое образование кандидата по специальности «Юриспруденция» или высшее образование по направлению подготовки «Юриспруденция» квалификации (степени) «магистр» при наличии диплома бакалавра по направлению подготовки «Юриспруденция»;
- копии трудовой книжки или иных документов, подтверждающих трудовую деятельность кандидата, заверенные в установленном порядке;
- документ об отсутствии у кандидата заболеваний, препятствующих назначению на должность судьи.

Федеральным законом от 14.03.2002 № 30-ФЗ «Об органах судейского сообщества в Российской Федерации» (далее - Федеральный закон от 14.03.2002 № 30-ФЗ) определен круг полномочий квалификационных коллегий судей по рассмотрению вопросов, связанных с назначением кандидатов на соответствующие должности судей.

Квалификационные коллегии судей субъектов Российской Федерации рассматривают заявления лиц, претендующих на соответствующую должность судьи, и с учетом результатов квалификационного экзамена дают заключения о рекомендации данных
лиц на должность судьи либо об отказе в такой рекомендации.

В соответствии со статьей 19 Федерального закона от 14.03.2002 г. № 30-ФЗ проверку достоверности биографических и иных сведений, представленных кандидатами на вакантные должности судей, организуют квалификационные коллегии судей субъектов Российской Федерации, которые «при необходимости запрашивают по основаниям и в порядке, которые предусмотрены законодательством Российской Федерации, у органов, осуществляющих оперативно-розыскную деятельность, и других государственных органов данные, необходимые для принятия решения по заявлению о рекомендации на вакантную должность судьи».

В соответствии со статьей 6 Закона Российской Федерации от 26.06.1992 г. № 3132-1 назначение кандидатов на должности судей производится только при наличии положительного заключения соответствующей квалификационной коллегии судей. Судья может быть назначен по его заявлению на должность, аналогичную занимаемой им, в другой суд того же уровня в порядке, установленном вышеназванным Законом Российской Федерации, за исключением наличия заключения соответствующей квалификационной коллегии судей.

В таком же порядке судья федерального суда может быть назначен на должность, аналогичную занимаемой им, в нижестоящий суд.

По вопросу отбора кандидатов на должности судей следует также отметить, что согласно пункту 1 статьи 11 Федерального закона от 14.03.2002 г. № 30-ФЗ при формировании квалификационных коллегий судей в их состав, кроме судей федеральных судов и судей судов субъектов Российской Федерации, включаются также представители общественности и представители Президента Российской Федерации.

Назначение судей федеральных судов общей юрисдикции
и федеральных арбитражных судов производится Президентом Российской Федерации.

В соответствии со статьей 20¹ Закона Российской Федерации от 26.06.1992 г. № 3132-1 судья федерального суда, впервые назначенный на должность судьи, проходит обучение по программе профессиональной переподготовки в образовательных организациях высшего образования и организациях дополнительного профессионального образования, осуществляющих дополнительное профессиональное образование судей, в том числе в форме стажировки в суде, с сохранением на этот период ежемесячного денежного вознаграждения и других выплат, предусмотренных соответствующими федеральными законами и иными нормативными правовыми актами Российской Федерации.

Судья обязан повышать квалификацию. Повышение квалификации судей федеральных судов осуществляется по мере необходимости, но не реже одного раза в три года с сохранением на этот период ежемесячного денежного вознаграждения, ежеквартального денежного поощрения и других выплат, предусмотренных соответствующими федеральными законами и иными нормативными правовыми актами Российской Федерации, в образовательных организациях высшего образования и организациях дополнительного профессионального образования, осуществляющих дополнительное профессиональное образование судей, в том числе в форме стажировки в суде. Порядок, сроки и иные формы прохождения судьей повышения квалификации определяются Верховным Судом Российской Федерации.

Полномочия судьи федерального суда не ограничены определенным сроком. Предельный возраст пребывания в должности судьи федеральных судов общей юрисдикции и федеральных арбитражных судов - 70 лет.

Судья несменяем. Он не подлежит переводу на другую должность или в другой суд без его согласия, его полномочия могут быть
прекращены или приостановлены не иначе как по основаниям, установленными Законом Российской Федерации от 26.06.1992 г. № 3132-1 (статья 12).

Статьей 14 Закона Российской Федерации от 26.06.1992 г. № 3132-1 предусмотрены основания для прекращения полномочий судьи.

Решение вопроса о прекращении полномочий судьи, за исключением прекращения полномочий судей, достигших предельного возраста пребывания в должности судьи, входит в компетенцию соответствующих квалификационных коллегий судей.

При этом указанной статьей закреплена garantия восстановления судьи в прежней должности с выплатой причитающегося ему ежемесячного денежного вознаграждения в случае отмены решения квалификационной коллегии судей о прекращении полномочий судьи или отмены состоявшегося о нем обвинительного приговора суда либо судебного решения.

Статья 12.1 Закона Российской Федерации от 26.06.1992 г. № 3132-1 предусматривает досрочное прекращение полномочий судьи в качестве дисциплинарного взыскания, которое может быть наложено на судью, за исключением судей Конституционного Суда Российской Федерации, за совершение дисциплинарного проступка (нарушение норм Закона Российской Федерации «О статусе судей в Российской Федерации», а также положений Кодекса судейской этики).

Кодекс судейской этики, утвержденный 19 декабря 2012 г. VIII Всероссийским съездом судей, устанавливает обязательные для каждого судьи правила поведения при осуществлении профессиональной деятельности по отправлению правосудия и во внесудебной деятельности, основанные на высоких нравственно-этических требованиях, положениях законодательства Российской Федерации, международных стандартах.
в сфере правосудия и поведения судей.

Действие Кодекса судейской этики распространяется на всех судей Российской Федерации, в том числе на судей, пребывающих в отставке. Правила профессионального поведения, установленные Кодексом судейской этики, применяются также к лицам, привлекаемым в соответствии с федеральным законом к осуществлению правосудия, в период выполнения ими функции по отправлению правосудия. В тех случаях, когда какие-либо вопросы судейской этики не урегулированы Кодексом судейской этики, судья должен следовать общепринятым принципам нравственно-этического поведения в обществе, а также международным стандартам в сфере правосудия и поведения судей. Председатели судов, судьи должны ознакомить с содержанием Кодекса судейской этики помощников судей, секретарей судебного заседания, иных работников аппаратов судов.

Если судья испытывает затруднения в определении того, будет ли его поведение в конкретной ситуации отправления правосудия либо во внесудебной деятельности соответствовать требованиям профессиональной этики и статусу судьи, или если судья не уверен в том, как поступать в сложной этической ситуации, чтобы сохранить независимость и беспристрастность, он вправе обратиться с соответствующим запросом в Комиссию Совета судей Российской Федерации по этике за разъяснением, в котором ему не может быть отказано (статья 2 Кодекса судейской этики).

Решение о наложении на судью дисциплинарного взыскания принимается квалификационной коллегией судей, к компетенции которой относится рассмотрение вопроса о прекращении полномочий этого судьи на момент принятия решения. Решение соответствующей квалификационной коллегии судей о досрочном прекращении полномочий
судьи может быть обжаловано в Дисциплинарную коллегию Верховного Суда Российской Федерации.

Кроме того, в соответствии с Федеральным законом от 14.03.2002 г. № 30-ФЗ в Российской Федерации действуют Высшая квалификационная коллегия судей Российской Федерации и квалификационные коллегии судей субъектов Российской Федерации, которые проводят проверки опубликованных в средствах массовой информации сведений о поведении судьи, не соответствующем требованиям, предъявляемым Кодексом судейской этики, и подрывающем авторитет судебной власти, налагают дисциплинарные взыскания на судей соответствующих судов за совершение ими дисциплинарных проступков, а также приостанавливают, возобновляют либо прекращают полномочия (за исключением прекращения полномочий судей, достигших предельного возраста пребывания в должности судьи).

Также следует отметить принятие Федерального закона № 179-ФЗ от 2 июля 2013 г. «О внесении изменений в Закон Российской Федерации «О статусе судей в Российской Федерации», направленного на обеспечение более полного соблюдения принципа независимости судей, расширение перечня дисциплинарных взысканий, которые могут быть применены к судьям, допустившим дисциплинарные проступки, уточнения составов дисциплинарных проступков, а также оснований привлечения судей к дисциплинарной ответственности.

Данным Федеральным законом повышены гарантии неприкосновенности судей при решении вопроса о привлечении к дисциплинарной ответственности, поскольку в нем детализирована процедура привлечения судьи к дисциплинарной ответственности, установлен период, в течение которого он считается привлеченным
к дисциплинарной ответственности. Закреплено, что при применении к судье дисциплинарного взыскания необходимо учитывать характер проступка, обстоятельства и последствия его совершения, форму вины, личность судьи, совершившего дисциплинарный проступок, и степень нарушения действиями (бездействием) судьи прав и свобод граждан, прав и законных интересов организаций. Значимой новеллой явилось введение срока давности совершения проступка и привлечения к дисциплинарной ответственности.

Введение законодательно определенных оснований применения различных видов дисциплинарных взысканий направлено на ограничение возможности их произвольного применения. Особенно важным представляется то, что впервые законодательно определены объективно устанавливаемые основания наложения дисциплинарного взыскания в виде досрочного прекращения полномочий судьи, являющегося исключительной мерой дисциплинарного воздействия.

Судьи независимы и подчиняются только Конституции Российской Федерации и федеральному закону (статья 120 Конституции Российской Федерации). В своей деятельности по осуществлению правосудия они никому не подотчетны.

Важным фактором реализации принципа независимости судей и объективности при принятии судебных решений стало закрепление в процессуальном законодательстве и законодательстве о статусе судей необходимости признания гласности и доведения до участников судебного разбирательства информации о всех внепроцессуальных обращениях по делам, находящимся в производстве судей. При этом цель раскрытия информации о внепроцессуальном обращении состоит в освобождении судопроизводства от факторов, могущих породить сомнения в
рассмотрении дела независимым и беспристрастным судом, путем доведения такого обращения до сведения широкого круга лиц. Значительным шагом в данном направлении стало принятие Федерального закона от 02.07.2013 г. № 166-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации».

В соответствии с названным Федеральным законом не допускается внепроцессуальное обращение к судье по делу, находящемуся в его производстве, либо к председателю суда, его заместителю, председателю судебного состава или председателю судебной коллегии по делам, находящимся в производстве суда.

Под внепроцессуальным обращением понимается поступившее судье по делу, находящемуся в его производстве, либо председателю суда, его заместителю, председателю судебного состава или председателю судебной коллегии по делам, находящимся в производстве суда, обращение в письменной или устной форме не являющихся участниками судебного разбирательства государственного органа, органа местного самоуправления, иного органа, организации, должностного лица или гражданина в случаях, предусмотренных законодательством Российской Федерации, либо обращение в не предусмотренной процессуальным законодательством форме участников судебного разбирательства.

Информация о внепроцессуальных обращениях, поступивших судье по делам, находящимся в его производстве, либо председателю суда, его заместителю, председателю судебного состава или председателю судебной коллегии по делам, находящимся в производстве суда, подлежит преданию гласности и доведению до сведения участников судебного разбирательства путем размещения данной информации на официальном сайте суда в информационно-телекоммуникационной сети «Интернет»
и не является основанием для проведения процессуальных действий или принятия процессуальных решений по рассматриваемым судом делам.

Наличие информации о внепроцессуальном обращении, поступившем судье по рассматриваемому делу, находящемуся в его производстве, само по себе не может рассматриваться в качестве основания для отвода судьи.

В соответствии с требованиями федерального законодательства в Верховном Суде Российской Федерации установлен единый порядок осуществления деятельности судов по размещению в информационно-телекоммуникационной сети «Интернет» информации о внепроцессуальных обращениях, который регулирует вопросы создания, подготовки и размещения в сети «Интернет» информации о внепроцессуальных обращениях (как письменных, так и устных), обеспечения доступа к этой информации в сети «Интернет» на официальных сайтах федеральных судов общей юрисдикции и федеральных арбитражных судов, а также действия работников аппаратов судов, уполномоченных осуществлять размещение такой информации на официальных сайтах судов.

Единый порядок осуществления деятельности судов по размещению в сети «Интернет» информации о внепроцессуальных обращениях обеспечивает эффективную реализацию следующих задач:

- доведение до общественности объективной и достоверной информации о внепроцессуальных обращениях;
- достижение необходимого уровня общественного контроля за деятельностью федеральных судов общей юрисдикции;
- поддержание и повышение в обществе авторитета судебной власти, уровня доверия граждан к правосудию;
- избежание судьями контактов, которые могут умалить авторитет судебной власти, причинить ущерб репутации судьи и поставить под
сомнение его объективность и независимость при осуществлении правосудия;

повышение гарантий соблюдения принципа независимости и объективности при вынесении судебных решений;

обеспечение доступности правосудия и предотвращения коррупции в органах судебной власти;

обеспечение превенции недобросовестных руководителей органов государственной власти и местного самоуправления, граждан и должностных лиц от вмешательства в судебную деятельность;

существенное сокращение возможности внепроцессуального общения судей с участниками процесса и другими лицами, заинтересованными в разрешении дела, находящегося в производстве суда.

Информация о внепроцессуальных обращениях размещается на официальных сайтах федеральных судов общей юрисдикции, федеральных арбитражных судов и судебных участков мировых судей в срок, не превышающий двух рабочих дней со дня получения данной информации ответственным лицом, при этом дезперсификация в текстах внепроцессуальных обращений не допускается. Информация о внепроцессуальных обращениях является общедоступным информационным банком и предоставляется на бесплатной основе.

Статьей 9 Закона Российской Федерации от 26.06.1992 г. № 3132-1 определены гарантии независимости судьи. Независимость судьи обеспечивается запретом под угрозой ответственности, чьего бы то ни было вмешательства в деятельность по осуществлению правосудия, установленным порядком приостановления и прекращения полномочий судьи, правом судьи на отставку, неприкосновенностью судьи, системой органов судейского сообщества, предоставлением судье за счет государства материального и социального обеспечения,
соответствующего его высокому статусу. Судья, члены его семьи и их имущество находятся под особой защитой государства. Гарантии независимости судьи, включая меры его правовой защиты, материального и социального обеспечения, предусмотренные Законом Российской Федерации от 26.06.1992 г. № 3132-1, распространяются на всех судей в Российской Федерации и не могут быть отменены и снижены иными нормативными актами Российской Федерации и субъектов Российской Федерации.


В соответствии со статьей 21 Федерального закона от 27.07.2004 г. № 79-ФЗ на гражданскую службу вправе поступать граждане Российской
Федерации, достигшие установленного настоящим Федеральным законом возраста, владеющие государственным языком Российской Федерации и соответствующие квалификационным требованиям.

Поступление гражданина на гражданскую службу для замещения должности государственной гражданской службы или замещение гражданским служащим другой должности гражданской службы осуществляется по результатам конкурса, если иное не установлено Федеральным законом. Конкурс заключается в оценке профессионального уровня претендентов на замещение должности гражданской службы, их соответствия установленным квалификационным требованиям для замещения должности гражданской службы (статья 22 Федерального закона от 27.07.2004 г. № 79-ФЗ).

Повышение квалификации государственного гражданского служащего осуществляется по мере необходимости, но не реже одного раза в три года.

Дополнительное профессиональное образование государственного гражданского служащего включает в себя профессиональную переподготовку и повышение квалификации (статья 62 Федеральный закон от 27.07.2004 г. № 79-ФЗ).

Федеральный закон от 27.07.2004 г. № 79-ФЗ предусматривает определённый перечень оснований и последствий прекращения служебного контракта, освобождения от замещаемой должности государственной гражданской службы и увольнения с гражданской службы.
Managerial staff devote particular attention to ensuring that the staff of the public prosecution service and State public officials are rigorous in observing the requirements for the conduct of public officials. A useful instrument in this regard is the code of ethics for employees of the prosecution service of the Russian Federation and the educational workplan in the public prosecution system of the Russian Federation, both of which were approved under Order No. 114, of 17 March 2010, of the Office of the Prosecutor-General of the Russian Federation. Another useful instrument is the code of ethics and the training programme for employees of the public prosecution service of the Russian Federation, approved under Order No. 79 of the Office of the Prosecutor-General of the Russian Federation of 25 March 2011. With a view to ensuring observance of the general principles of public service conduct approved by Presidential Decree No. 885 of 12 August 2002, and providing the conditions for the conscientious performance of their official duties, preventing abuse in the State service and providing a climate that is conducive to combating corruption, any information received concerning misdemeanours committed by prosecutorial staff that dishonours their good name and any breaches of the requirements of professional ethics are checked and the level of discipline is assessed. Priority is given to providing the staff of the prosecution service with training in preventing corruption in order to raise their skill levels.

In accordance with article 43 of the Office of the Prosecutor-General Act and Order No. 373 of the Prosecutor-General of the Russian Federation of 4 October 2010 concerning improvements to the system of training, further training and professional retraining of staff of prosecutor’s offices of the Russian Federation, a system of continuous training and further qualifications has been established with a view to ensuring a high level of professional training for staff, including individual and group instruction on special topics, temporary placements in the top prosecutor’s offices and prosecutorial educational establishments, training at interregional training centres, institutes attached to the General Academy of the Office of the Prosecutor of the Russian Federation and other educational establishments. Interdepartmental seminars are regularly held in the prosecutor’s offices of all states of the Russian Federation and in the special prosecutor’s offices that carry equal status, attended by staff of the law enforcement agencies specializing in combating corruption.

Great importance is attached to the professional development of young specialists and to mentoring. Staff receive methodological instruction and attend seminars and operational
meetings on observance of the law on combating corruption. They also receive information letters.

An important role in training the staff of a prosecutor’s office is played by senior members of staff. In accordance with Order No. 195 of the Prosecutor-General of the Russian Federation of 7 May 2010 on measures to enhance cooperation with voluntary associations of retirees and pensioners of the prosecution service, managers of prosecutor’s offices employ retirees to select, educate and train young professional staff to ensure a smooth succession. Retirees provide practical help to young professional staff in learning the essentials of work in a prosecutor’s office and take part in board meetings, in commissions for the maintenance of requirements for professional conduct and the regulation of conflict of interest and in seminars and practical activities.

Federal Security Service
Under the Federal Anti-corruption Act No. 273-FZ of 25 December 2008 to deal with corruption within the Federal Security Service (FSB), activities have been organized to prevent breaches of the law by corrupt FSB staff.

The basic outcome achieved as a result of these activities from 2009 to 2011 was to develop, and to incorporate in the procedure for managing FSB staff resources, a mechanism to prevent corruption.

The following practical results have been achieved:
(a) A body of departmental law and regulations has been drawn up: altogether, 11 sets of rules have been issued, along with methodological materials and a checklist;
(b) The process of introducing these legal mechanisms into FSB activities has begun. The first indicators of the impact on law enforcement activities are that:
   - There have been 50 cases where staff members have submitted inaccurate or incomplete information on their income (another 15 checks are under way);
   - A total of 37 staff members have been prosecuted for violating the requirements of professional conduct; of them, 17 have been dismissed from FSB;
   - There have been 506 reports by staff members of incitement to commit offences involving corruption;
(c) Measures have been taken to ensure that staff members observe the prohibitions, restrictions and obligations associated with State service: legislative requirements have been systematized and presented to staff members in tabulated form and advisory activities have been organized;
(d) Precise regulations for FSB staff members have been drawn up (the code of ethics and professional conduct for staff of the Federal Security Service was approved on 19 March 2011 by the Director of the Russian FSB);
(e) Action has been taken to identify any evidence of corruption on the part of staff members, including the submission of inaccurate or incomplete information on their income, the violation of requirements on professional conduct or concealment of a conflict of interest;
(f) Performance appraisal boards are organized on a regular basis to act as advisory bodies, providing cooperation and support to managers and heads of the security forces in preventing corruption;
(g) A system has been set up to monitor FSB action against corruption, to analyse practical lessons and disseminate useful experience;

(h) A system has been set up to prevent corruption in a methodical way: in the first half of 2011, every federal area got together orientational groups made up of members of the management and personal safety departments and organized tuition in the Russian Presidential Academy of National Economy and Public Administration. A whole range of further training on preventing corruption in the security services was provided at the Moscow Institute of the Federal Border Security Service, in addition to which law enforcement agencies are provided with essential advisory assistance;

(i) Controls are exercised over the activities of anti-corruption units, taking the form of inspections and thematic checks, and interviews are held by management with FSB chiefs. These measures, as well as an increase in the number of checks on staff, resulted in a lowering of the corruption rate in the security forces by two and a half times; thus, in 2010, 165 offences were committed, as against 64 in 2011.

**Ministry of Internal Affairs**

The Federal Anti-corruption Act No. 273-FZ of 25 December 2008 constitutes the basic regulatory statute in the legislative system to combat corruption in the Russian Federation and its provisions, in accordance with article 29, paragraph 2, of the Federal Police Act No. 3-FZ of 7 February 2011 and article 14 of the Federal Act No. 342-FZ of 30 November 2011 on service in the Ministry of Internal Affairs and amendments to certain legislative acts of the Russian Federation, extend also to staff.

Federal Act No. 342-FZ, article 82, paragraph 4 (1) and (2), states that failure by a staff member of a unit of the Ministry of Internal Affairs to prevent and/or regulate a conflict of interests to which he or she was a party, or the failure by a manager or director who has become aware that a situation has arisen in which a subordinate member of staff has a personal interest that leads or may lead to a conflict of interests to take measures to prevent and/or regulate that conflict of interests, constitutes grounds for dismissal from service with the Ministry of Internal Affairs, inasmuch as it represents a breach of trust. With a view to implementing the provisions of federal legislation on the prevention and regulation of conflicts of interests and also in implementation of Presidential Decree No. 821 of 1 July 2010 on the establishment of commissions for the maintenance by public officials of requirements for official conduct and the regulation of conflicts of interests, Ministry of Internal Affairs Order No. 652 of 8 September 2010 established commissions for the maintenance by public officials attached to Ministry of Internal Affairs Headquarters of requirements for official conduct. Regulations to that end were issued. Following the inclusion, on 1 January 2012, in the regulations of the regional units of the Ministry of Internal Affairs of a description of the obligations of federal public officials, a Ministry order was drafted to adopt the Procedure for the formation and operation of a commission of a local unit of the Ministry of Internal Affairs of the Russian Federation for the maintenance by federal public officials of requirements for official conduct and the regulation of conflicts of interests.
Under existing law, staff of Ministry of Internal Affairs units, officers of Ministry forces and federal Government civil servants within the Ministry system are required to report on any approach made to them with a view to inciting them to commit a corruption offence. The procedure for making such a report is set out in Ministry of Internal Affairs Order No. 293 of 19 April 2010. In 2011, 654 reports were received from staff members of Ministry of Internal Affairs units and 500 case-files were handed over to investigative departments for a decision as to whether to prosecute persons who had made proposals of a corrupt nature.

In accordance with the requirements of Presidential Decree No. 1065 of 21 September 2009 on checking the accuracy and fullness of information supplied by persons aspiring to occupy posts in the federal State service or by federal State public officials and maintenance by federal State public officials of requirements for professional conduct, the Ministry of Internal Affairs has set up a directorate that is responsible for preventing offences involving corruption, among others, within the State service and management department of the Ministry. The directorate is responsible for the observance by staff of Ministry of Internal Affairs unit and federal State public officials of the Ministry of the restrictions and prohibitions and the requirements on preventing or regulating conflicts of interests, as well as compliance with the obligations set out in the Federal Anti-corruption Act. Similar directorates have been set up in the regional bodies of the Ministry of Internal Affairs: the Ministry office in the Republic of North Ossetia-Alania, the Ministry Headquarters for the Krasnodar territory, the Ministry Office for Volgograd province, the Ministry Office for St. Petersburg and Leningrad province and the Ministry Office for Moscow. In other areas, the responsibility for preventing corruption and other offences is borne by individual officers of the managerial staff, amounting to 157 in all.

In 2011 and the first quarter of 2012, the Ministry of Internal Affairs organized and ran educational and methodological meetings with department heads, involving officers of Ministry Headquarters, the regional departmental units, Ministry educational and research establishments and staff from the Central, Southern, North Caucasian, Far Eastern, Ural and Siberian federal areas specializing in ensuring compliance with the anti-corruption legislation of the Russian Federation. Representatives of the Administration of the President of the Russian Federation, the Office of the Prosecutor-General, the Ministry of Health and Social Development, the Federal Service of State Registration, Cadastre and Cartography and the Russian Presidential Academy of National Economy and Public Administration have taken part in these meetings. The curriculum of departmental educational establishments includes educational programmes aimed at providing anti-corruption training for staff.

Persons occupying posts included in the list approved by Presidential Decree No. 560 of 18 May 2009 for State corporations, the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, the Federal Compulsory Medical Insurance Fund or other organizations established by the Russian Federation on the basis of federal legislation, or candidates for such posts, and persons occupying posts included in lists issued by federal State bodies on the basis of labour agreements in organizations
established to perform the functions of federal State bodies, or candidates for such posts, are required to provide information on their income, property or property-related commitments and of the income, property or property-related commitments of their spouse or minor children. In pursuance of Presidential Decree No. 557, paragraph 2 (a), of 18 May 2009, Ministry of Internal Affairs Order No. 680 of 31 August 2009 issued a list of posts in the Ministry of Internal Affairs of the Russian Federation upon appointment or promotion to which staff of the Ministry of Internal Affairs units, members of the internal armed forces and federal civil servants are required to provide information on their income, property or property-related commitments and information on the income, property or property-related commitments of their spouse or minor children. The procedure for submitting and distributing such information is set out in Presidential Decree No. 559 of 18 May 2009 on the submission by federal public officials and candidates for posts in the federal civil service of their income, property or property-related commitments. These provisions are also contained in Presidential Decree No. 561 of 18 May 2009 on the adoption of a procedure for placing on official sites of federal State bodies and State bodies of states of the Russian Federation of information on the income, property or property-related commitments of persons holding official posts in the Russian Federation, federal civil servants or members of their families and providing such information for publication in the national media. Within the Ministry of Internal Affairs itself, the situation is governed by Ministry of Internal Affairs Order No. 205 of 19 March 2010 on the procedure for submitting information on the income, property or property-related commitments of candidates for posts in the Ministry of Internal Affairs system of the Russian Federation and staff of internal affairs departments, members of the internal armed forces and federal civil servants of the Ministry of Internal Affairs system of the Russian Federation.

Under the Federal Act on Service in Departments of the Ministry of Internal Affairs, article 49, paragraph 2 (13), failure to provide information, or the provision of knowingly inaccurate or incomplete information, constitutes a serious breach of service discipline, which, under paragraph 2 (6) of the Act, may result in termination of contract and dismissal from service in an internal affairs unit. In addition, failure to provide information, or the provision of knowingly inaccurate or incomplete information, constitutes grounds for dismissal from the service in an internal affairs unit in connection with a breach of trust, as provided for in the Federal Act on Service in Departments of the Ministry of Internal Affairs, article 82, paragraph 3 (4).

In order to improve work on preventing corruption in Departments of the Ministry of Internal Affairs, the Ministry is currently engaged in a developmental project entitled “Creation of a specialized automated information system for the regional distribution of reporting of information on the staff of departments of the Ministry of Internal Affairs of the Russian Federation, federal public officials and employees of the Ministry of Internal Affairs and the Federal Migration Service and natural or legal persons who have committed or may commit corruption offenses.” Another promising development is the creation of a unified database for carrying out checks on the accuracy of reports on income, property or property-related commitments submitted by staff of departments of the Ministry of Internal Affairs. It is also essential to provide for a compulsory
psychological and physiological examination of persons taking up posts in departments of the Ministry of Internal Affairs to assess their ability to withstand corruption.

It is thus clear that the Russian Federation has implemented in its domestic legislation, including laws relating to the powers of the Ministry of Internal Affairs, the provisions of articles 7 to 9 of the United Nations Convention against Corruption in the form set out for discussion in accordance with the Guidance Note for the provision of information by States parties for the third intersessional meeting of the Working Group on Prevention.
Corruption remains one of the crucial issues, which need to be solved on the government level, business and civil society. Corruption is not a problem of one country; it is a widespread phenomenon with the adverse impact and wrongdoing on prosperity and wellbeing of all society. Prevention programs and strengthening integrity plays substantial role in prohibition this anti-social phenomenon.

A state policy of prevention corruption and strengthening integrity needs to be supported by clear standards, rules, procedures, law and a toolbox of good practices. The integrity system is only effective if country carries out relevant actions given the actual risks of misconduct and corruption, which arise out of the various interactions between the public sector, the private sector and civil society at all stages of the political process.

Activities of the Ministry of the Interior of the Slovak Republic
To support the state policy of prevention corruption and strengthening integrity at the National Crime Agency of the Police Force Presidium was created the project “Anticorruption e – learning program”, which is realized in cooperation with the Public Governance and Territorial Development Directorate, Public Sector Integrity of the Organization for Economic Co-operation and Development (OECD).

Anti-corruption e-learning program is designated to support education and provide the training activities in the area of counter-corruption policy. Proposal of the anti-corruption e-learning program reflects the conception of the national preventive anti-corruption policy, which is based on the policy statement of the government of the Slovak Republic, fulfilment of international obligations arising from the membership of the international organizations.

The aim of the project
Making the public administration more effective, fostering prevention, increase of awareness about the fight against corruption and building culture of integrity by means of providing e-learning education for public administration staff, business and entire civil society in the regime 24/7.

The internet web page, subpages, documents and e-learning questionnaires will be visualized according to selection in both, the Slovak and English language versions. The project Anticorruption e – learning program with designing of all components will be finished by the end of the year 2017.

Activities of the project
Creating a proposal of internet web page design and related program equipment for visualization and interactive assessment of information visualized within 3 educational models targeted at: Design of the web pages are composed with 3 educational models targeted at: “Strengthening prevention of corruption in public administration”, “Fostering the culture of integrity” and “Increasing the awareness about corruption in international business milieu”.
The content focus of educational models will contain the textual part in a form of preventive documents, recommendations of international organizations, instructions, manuals and interactive questionnaire, with the possibility to generate new questions and evaluation the answers. Educational modules of anti-corruption e-learning program will be worked out in a way to provide interactive information about the problematics of prevention and fight against corruption, including corruption of foreign public officials in international business transactions.

The aim of the anti-corruption e-learning program is to make accessible the actual information about prevention and fight against corruption and to increase the awareness in the given field in an acceptable and visually attractive way.

ADDITIONAL INFORMATION

- **New Act No. 55/2017 on Civil Service** introduces new principles of Civil Service and provide its definitions. The act is based on the assumption that the civil service is built on the principles by which the civil servants in the performance of the civil service and the employment offices shall be guided in their decision making and State-related processes. The principles of the state service offer an integrity and transparency framework and the basis for creating specific provisions of the Civil Service Act.

- For the purposes of this law a civil servant is a citizen performing civil service in the Office (e.g. a ministry). The act does not apply inter alia to Police Force, Corps of Prison and Court Guard, prosecutors and judges whose statuses, rights, duties and constitution, changes and termination of service are guided by specific Acts.

- Provisions of the Act are based on principle of political neutrality, principle of legality, employment based on transparency, principle of effective management of Civil Servants, principle of impartiality, principle of professionality, principle of transparent and equal remuneration, principle of equal treatment and principle of stability. The act provides definitions of those principles.

- Essential Requirements for admission to civil service are: a person must reach the age of 18 years, must have legal capacity, must have clean record, must meet all qualification requirements, must have a knowledge of Slovak language, must be selected through recruitment process. Other requirements must be met for specific types of employment.

- The Act provides for greater transparency in the recruitment process, provides for more detailed provisions regarding access to information of recruitment process, it provides for the establishment of selection board and process of appointment of its members.

- It establishes Council which is an impartial authority responsible for coordinating and monitoring protection of the principles.

- The act also foresees the adoption of the Code of Ethics which will contain fundamental rules of conduct for Civil Servants and should further elaborate and support the principles stated in the Act.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY SLOVENIA

ARTICLE 7 UNCAC
PUBLIC SECTOR

SLOVENIA (EIGHTH MEETING)

* Measures that establish and strengthen systems to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, including whether specific procedures exist for the recruitment and hiring of senior officials in criminal justice institutions, if they are different from other civil servants.

Each court in the country, from the magistrates' courts to the Constitutional Court, as well as each Prosecutors' Office and any other criminal justice institution operating as a separate entity, are required by law to draft and implement the Integrity Plan as stipulated by the Slovene Integrity and Prevention of Corruption Act. In this document, they decide on and become bound by various risk prevention measures which, among others, pertain to recruitment, hiring, promotion, workplace ethics, and any other measure suggested by the employees and approved by the head of the institution. The system is vulnerable especially to employee apathy and lack of familiarity with risk assessment and management.

Certain senior official positions in criminal justice institutions are elected or approved by the National Assembly. GRECO has issued a recommendation to amend these procedures to insure greater independence from politics. The recommendation remains unimplemented.

* Measures that implement adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption in criminal justice institutions and the rotation, where appropriate, of other positions.

In recent years, the Commission for the Prevention of Corruption has increased its efforts in training and educating judges and prosecutors, as well as police officers in the fields of corruption prevention, public integrity, and workplace ethics. Each of these groups receives training tailored to their requirements.

In 2016, 20 newly-appointed heads of court received training by a senior public integrity official employed by the Commission for the Prevention of Corruption on the significance of public integrity in courts, and on understanding and identifying typical risks encountered in their line of work. Furthermore, the Judicial Training Centre within the Ministry of Justice includes topics related to ethics and integrity in the judicial field (e.g., integrity and risk factors in courts; personal, ethical and legal presumptions of the independence of judges and state prosecutors; ethical standards and judicial decision-making) in its education programmes. These topics were dealt with in 12 educational periods in 2015, and in 14 educational periods in 2016. A one-day workshop on ethics and integrity was also carried out 4 times in June and September 2016.

In the past two years, there were three training events for police officers - each time, a group of 15-20 officers received training on corruption recognition and prevention, Integrity Plan use, the importance of public integrity and workplace ethics. The trainings were well received and more training sessions are planned for late 2017 and beyond.
well as prison officers in the fields of corruption prevention, public integrity, and workplace ethics. Each of these groups receives training tailored to their requirements.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY SLOVENIA

ARTICLE 7 UNCAC

PUBLIC SECTOR

SLOVENIA (SECOND MEETING)

UNCAC Article 7 – Prevention of corruption in the public sector

The focus of Article 7 (Public sector) is on the human resources management system of the civil service and the underlying principles of efficiency, transparency and integrity. This includes ensuring the prevalence of objective criteria for the recruitment of public officials, as well as continuous learning opportunities and adequate and equitable remuneration and conditions of employment for staff in the civil service.

Good practice reported by Slovenia:
- Integrity plans
- The Commission’s open days and hotline for employees, responsible for drawing up integrity plans within their organizations
- Publishing brochures
- Online submission of report about violation of the Integrity and Prevention of Corruption Act (such are reports about acts of corruption, unethical or other unlawful behaviour, incompatibility of office, conflict of interest etc.)
- Handbook “Guidelines for officials (and high-ranking civil servants)”

According to the Slovenian Integrity and Prevention of Corruption Act (Article 47 to 50) government bodies, local authorities, public agencies, public institutes, commercial public institutions and public funds are obliged to develop and adopt integrity plans. Integrity plan is a tool for establishing and verifying the integrity of the organization. It is a documented process for assessing the level of vulnerability of an organisation, its exposure to unethical and corruption practices. Moreover, is devoted to:
- identifying relevant corruption risks in different working fields of an individual organization;
- assessment, what kind of danger the corruption risks may pose to an individual organization;
- determining measures to reduce or eliminate corruption risks.

The integrity plan consists, in particular, of: assessment of corruption exposure of the institution; personal names and work posts of the persons responsible for the integrity plan; a description of organisational conditions, staff and typical work processes including a corruption risk exposure; assessment and proposed improvements regarding:
- the quality of regulations, management, administration, etc.;
- the integrity of staff and institution;
- transparency and efficiency of processes and
- measures for timely detection, prevention and elimination of corruption risks.

All institutions are obliged by the law to send their integrity plans to the Commission - after analyzing and processing all the integrity plans, the Commission will try to determine (on a national level) an exposure of different institutions, their organizational conditions, processes and employees to corruption and other illegal and unethical behaviour. The main goal is to strengthen integrity and anti-corruption culture in a public sector by identifying risks, planning and implementation of adequate measures. With putting in place an overall integrity plan system, causes of corruption will be eliminated, which will result in strengthening the rule of law and people’s confidence in the institutions.

The Act sets an obligation to all the above mentioned to draw up integrity plans by June 5th, 2012 on the basis of guidelines produced by the Commission and submit them to the Commission. Through the integrity plan it will be possible to identify the level of exposure of an entity to corruption risks and risks of unethical and other unlawful behaviour. By identifying risks and risk factors it will be possible to assess the existing control mechanisms, evaluate their likelihood to occur and the level of damage they may cause and finally propose measures to minimize or suppress risks. The Commission shall check whether entities have drawn up integrity plans and how they plan to implement them. A fine may be imposed on the responsible person of the body or the organization obliged to draw up and adopt the integrity plan it fails to do so.

The Commission provides trainings for persons responsible for drawing up integrity plans within their institutions. This year’s “Open door day” for public sector employees has proved to be very good and effective tool - not only to train but also to exchange information and problems among participants.

Publishing brochures on instruments enacted by the Integrity and Prevention of Corruption Act is also one of raising awareness activities of the Commission. Brochures on general information about lobbying and provisions of the Integrity and Prevention of Corruption Act regulating this activity. The brochures were provided to those who would most likely be approached by the lobbyists in order to familiarize themselves with the activity itself and their obligation under the Act (members of the National Assembly, the National Council and to the Office of the Prime Minister). Brochures on conflict of interest, integrity plans, incompatibility of office, prohibition of acceptance of gifts are being drawn up at the moment.

In order to encourage whistle-blowers to come forward an online application to submit a report about violation of the Integrity and Prevention of Corruption Act (such are reports about acts of corruption, unethical or other unlawful behaviour, incompatibility of office, conflict of interest etc.) has been installed on the Commission’s website. At the same time, as the Commission’s experience based on previous reports received show that often people are not familiar with instruments to fight corruption as set by the Act and with competences of the Commission like supervision of assets of officials, restrictions on business activities due to conflict of interest etc. which may be, if failed to meet these obligations, reported to the Commission, the online application has been designed in a way to give a general information to the person submitting the report on the possible violations for handling of which the Commission is competent for.
Currently the Commission is preparing a handbook »Guidelines for officials« which will provide guidelines to newly appointed officials as which obligations under the Integrity and Prevention of Corruption Act should be met and which values should be promoted by an official in order to strengthen integrity and transparency, to prevent corruption and to avoid and eliminate conflicts of interest.
Conformément à la législation nationale et aux conventions internationales signées par la Suisse, le Confédération effectue des programmes d’éducation et de formation pour les employés de la Confédération en matière d’éthique et de lutte contre la corruption. Par le passé, ces cours ont été destinés en particulier à des employés exposés à un risque de corruption accru. Tel est par exemple le cas pour les employés de la police judiciaire fédérale ainsi que pour le personnel transférables des représentations suisses à l’étranger (ambassades et consulats).

Ayant analysé les différents programmes de formation existant au sein de l’administration fédérale, le groupe interministériel de travail pour la lutte contre la corruption (IDAG Corruption) a pu constater récemment qu’il existait un réel besoin d’harmonisation et de coordination de ces derniers afin de garantir qu’un standard minimum de code de conduite soit enseigné. La Suisse est par conséquent en pleine réadaptation de ses programmes de formation en matière de lutte contre la corruption. L’objectif étant de définir un socle commun d’éducation de base destinés à la majorité des employés de la Confédération, il incombera par la suite aux services spécialisés d’y ajouter les éléments de formation spécifique et complémentaire.

Plus concrètement, la Suisse souhaite assurer que ses employés fédéraux ont pleinement connaissance de leurs droits et devoirs en matière de prévention de la corruption. Dans ce contexte, ils sont informés des changements de législation suisse respectifs à travers des cours mais également par le biais de correspondance régulière. A titre d’exemple, on peut citer la modification de la loi sur le personnel de la Confédération qui apporte avec l’article 22a une amélioration significative de la protection des donneurs d’alerte. En vertu de l’alinéa 5 de cet article, « nul ne doit subir un désavantage sur le plan professionnel pour avoir, de bonne foi, dénoncé une infraction ou annoncé une irrégularité ou pour avoir déposé comme témoin ». L’entrée en vigueur de cette nouvelle disposition aura également permis de réaliser une nouvelle campagne de sensibilisation à
grande échelle. Tous les employés de la Confédération ont reçu l’information par voie postale : ils sont dorénavant tenus de dénoncer les crimes et délits poursuivis d’office dont ils ont eu connaissance ou qui leur ont été signalés dans l’exercice de leur fonction. Ils ont en outre le droit de signaler au Contrôle fédéral des finances (l’organe qui représente le canal officiel pour les personnes souhaitant rendre les autorités attentives à des irrégularités) les autres irrégularités dont ils ont eu connaissance ou qui leur ont été signalées dans l’exercice de leur fonction. La loi permet surtout, conformément à l’article 8, al. 4 de la CNUCC, de mieux informer les employés sur leurs obligations et leurs droits en matière d’annonce, et de protéger efficacement les personnes qui s’engagent pour assurer l’intégrité de l’administration.

De même, suite à une modification de l’ordonnance sur le personnel de la Confédération chaque employé de la Confédération est tenu d’annoncer toutes ses charges publiques et activités accessoires. Le but de la révision était de répertorier toutes les activités accessoires rétribuées et charges publiques exercées par les employés afin de détecter à temps d’éventuels conflits d’intérêts et altérations des prestations et de pouvoir prendre les mesures appropriées. L’ancienne disposition s’était avérée insatisfaisante dans la mesure où l’appréciation de l’obligation d’annoncer ou non une activité était laissée à l’employé. Avec la modification, entrée en vigueur le 1 janvier 2010 l’instance compétente examine la nécessité d’autoriser ou non une activité accessoire rétribuée ou une charge publique. (CNUCC, art. 8, al.5)
The good cause : theoretical perspectives on corruption
Graaf, Gjalt de (Ed.); Maravic, Patrick von (Ed.); Wagenaar, Pieter (Ed.)

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Acknowledgments

The project was initiated after the editors learned of each other’s work on different approaches to the study of corruption during a workshop of the Study Group of Ethics and Integrity of Governance at the annual conference of the European Group of Public Administration in 2005. It finally started in March 2006 when the three editors decided in a brewery in Cologne to invite a number of persons who would have the expertise to cover the different approaches to the study of the causes of corruption. A publication project that lasts more than four years and is finally brought to a good end is not only the function of the motivation and expertise of a number of collaborators and the physical endurance to follow a clear aim but also the academic spirit and good comradeship that accompanied the whole process. Having said this, we would like to express our great appreciation to the authors for their dedication to standards of scholarly excellence evident throughout. Furthermore, we would like to express our gratitude for Michael Johnston’s unselfish and highly appreciated support in organizing the double-blind review process and the two anonymous reviewers who read the whole manuscript and provided constructive advise to the authors and editors. Last but not least it is Gerald Caiden, whom we would like to thank. He did not only write the Foreword but read critically and patiently over our draft versions and made us profit from his deep knowledge of this subject. Furthermore, we are grateful for financial assistance in the preparation of this volume to the Research Fund of Zeppelin University for making possible an author’s meeting in January 2009 and in debt to the Stadt-Friedrichshafen-Chair for Administrative Science in financially supporting the editorial process.

Gjalt de Graaf, Patrick von Maravić, Pieter Wagenaar
Amsterdam & Friedrichshafen, May 2010
If only corruption were confined to occasional lapses in personal integrity, we might be able to come to terms with it. But, alas, it assumes countless forms with multiple causes and unintended consequences, some of which are quite severe and irreversible. Theorizing about it much resembles exploring a complicated maze replete with dead ends and surprising turns enough to frustrate the hardest venturer. The quest, like so many other puzzles in the social sciences, is to better understand ourselves, in this case, to discover why people and organizations act counter to what they profess in public to be their cultural ideals. What they do quite openly too belies what they claim they hold dear in their hearts. This is not necessarily just putting themselves first above everything else or acting purely in their own self-interest. They prize collective survival, stability, and security even higher, and in the pursuit, preservation and protection of these ultimate values, they act pragmatically. They become devoted to good (in their own eyes) causes that justify (to themselves) their use of questionable means. They come to believe in advances and innovations that get around obstructive social norms and resistant institutions. In short, they see themselves as enlightened, not just villains, deceivers, evil-doers, and immoral egoists in the eyes of others.

Theorizing about corruption, like theorizing about most things, is a hazardous venture but probably even more so. It requires speculation and conjecture, conclusive proof based on the evidence, and universal acceptance. Speculation can be wide of the mark. Accumulated facts can be quite deceptive and misleading. Universal acceptance can be impossible to achieve given the variety of belief systems that exist at any one time. This is the case in virtually every field of research, even in such successful disciplines as mathematics, physics, astronomy, and medicine where the human senses have been fortified by wondrous inventions of detection and total objectivity. The social sciences lag so far behind these, and still lack such sophisticated tools as the physical sciences now possess. Furthermore, the more social scientists delve into human behavior, the more complications arise and the more contradictions appear. This complexity just clutters up the picture even more.
The virtue of theorizing is that it strives to reduce the confusion, to simplify the evidence, to discard the obsolete and unverifiable, and to incorporate new thinking. In fast changing times, it is important once in a while to pause and stand back to see what has been achieved and what still needs doing to overcome ignorance.

Of all topics, corruption is one of the most elusive despite being around since the dawn of civilization, and is likely to persist as long as human beings are imperfect. For much of its existence, it has been a taboo topic in polite society because of its uncomplimentary nature. Its content has changed in time and if anything seems to have expanded although what is known still constitutes only a fraction of what exists. It arouses so much emotion that few can remain as objective as they would like, as few can avoid bringing with them their internal beliefs, and hold fast to ideas and notions based on speculations. If this were not enough to confuse and baffle the best experts, the closer researchers get to specific forms of corruption the more they resemble the parable of the blind men and the elephant, that is, by concentrating only on one part (psychological, sociological, economical, political, religious, cultural, legal, administrative), they fail to see the whole and thereby oversimplify. To put things in their proper perspective, they need to step back a little and interact more with specialists in other fields.

Despite their differences, the theorists of corruption acknowledge that they share the unavoidable ambiguity of its essence. Throughout human history, human behavior has been judged as being good or bad, right or wrong, fair or unfair, just or unjust, beneficial or detrimental, ethical or unethical, honest or corrupt. By corrupt, people refer to conduct that is objectionable, conduct that they resent, deplore and disown, and those found guilty of such conduct ought to be ashamed of themselves, ostracized, and punished if only to deter others from indulging in like behavior. In principle, corruption is unacceptable, disgraceful, and a breach of social conventions. The difficulty is that universality is rare. At its core, there has been some agreement over the ages embodied in the Golden Rule of most religions, i.e. treat others as you would want them to treat yourself, or, the opposite and less idealistic, don’t do to others that you would not want them to do to you. In addition, there is specific misconduct or misbehaviors, such as deceit, misrepresentation, misappropriation, misuse of authority, and neglect of commonly accepted duties and obligations. To this list has been added much of what is now considered hateful, and similar unworthy acts that denote flaws of individual integrity and trustworthiness, acts that are considered sinful, unlawful, and criminal, altogether disreputable and offensive, by taking into account not just the act itself but also likely motivation (self-seeking), evident consequences (disastrous), and probable remorse (regret coupled with offer to compensate). So what constitutes corruption can be drawn as narrowly or widely as anyone wishes but all of this is fair game for research. What further unites theorists is the recognition that research into corruption is not exactly welcomed, en-
couraged, or supported, that theorists are held at arm’s length, that their motives are suspected, and there may well be personal risks and repercussions if they delve too deeply and reveal too much about corrupt activities.

What most divides the researchers and theorists is that too often they are rebuffed or ignored not just by the indifferent at large but by their own soul mates. If this were not so, there would be less room for debate and dispute among them. Most people understand that corruption is a fact of life everywhere (and in some places even a way of life). They take it for granted whether or not they indulge in it themselves or want to do anything about it. Revelations come really as no surprise unless the scandals are gross and unsuspected in which case they can be quite titillating and entertaining, but hardly truly shocking. Otherwise, most people just shrug their shoulders and quickly forget until the next revelation of misconduct. To do anything more is like banging one’s head against a wall. But most theorists resent this indifference. They want their findings, propositions, and recommendations to be heeded and acted upon. They want in their heart of hearts to be influential on a par with their counterparts in the physical sciences who no longer face the risks of prying into matters that should not concern them as they once did. The theorists have not given up on their ideals, no matter how strongly held or tepid and abstract these might be. For them, reason remains authoritative. Its purpose is not just to know things but to change them, to improve on what exists, to demand better of human behavior, and to enhance individual integrity. Keep this in mind while reading this contribution on the state of the art.

Gerald E. Caiden, Los Angeles, September, 2009
Chapter 1:
Introduction: Causes of Corruption – The Right Question or the Right Perspective?

Gjalt de Graaf, Patrick von Maravic, and Pieter Wagenaar

1. Introduction

What causes corruption? Although no one would dispute how difficult that is to answer, the question is perfectly clear. Isn’t it? Well… no. The Good Cause is more about the question than an attempt to answer it.

A first difficulty is defining the explanandum. What do we mean by corruption? In our daily language and across the many academic disciplines that study corruption, the definitions are numerous. The norms defining what corruption is (or integrity for that matter) vary across both societies and academic disciplines.

But more than the concept of corruption is troublesome to the question. As stated by Caiden, Dwivedi, and Jabbra (2001: 21), ‘[j]ust as there are many varieties of corrupt behavior, so there are multitudinous factors contributing to corruption (…) So many explanations are offered that it is difficult to classify them in any systematic manner.’ Heywood (1997: 426) adds that ‘[t]he complexity of the phenomenon makes it impossible to provide a comprehensive account of the causes of political corruption’. Caiden, Dwivedi, and Jabbra (2001: 21-26) list sources of corruption as psychological, ideological, external, economic, political, socio-cultural, and technological. But factors that contribute to corruption are, of course, not causes of corruption. ‘In sum, corruption can be attributed to almost anything (…). But while the opportunities exist everywhere, the degree of corruption varies widely among individuals, public agencies, administrative cultures, and geographic regions’ (Caiden/Dwivedi/Jabbra 2001: 26). Fijnaut and Huberts remark: ‘Research shows that a conglomerate of social, economic, political, organizational and individual causal factors are important to explain cases of public corruption’ (2002: 8).

More than corruption’s multiple factors make the question difficult: there is also disagreement on what constitutes cause in scientific theory (see Gerring 2005; Tilly 2000). We can think, for example, of a well-known, clear corruption case and ask, why did it occur? To answer, we would first have to ask what we want to know. Do we mean, why did the case start? If so, we are looking for the immediate causes and circumstances of the corrupt transac-
tions and decisions, the corrupt acts themselves. Or do we want to know why the case continued over a period of time and in connection with other cases? If so, we are more interested in why a specific official had the readiness to become corrupt. Perhaps we want to know why this particular corruption case occurred rather than not. Were there alternatives for the corrupt official(s), or were they in some way forced to do what they did? Was corruption, given the causes and conditions, their only course of action? This raises the debate on determinism versus free will. Maybe we are looking for the causes of the particular case of corruption, the issue that gets most attention in corruption research. In this context, are we interested in the causes external to the corrupt act itself? The first is the most popular in the literature – not surprisingly, since social sciences usually deal with concepts (see for example Geddes 2003; Gerring 2001; Moses/Knutsen 2007) rather than processes and thus ‘freeze’ reality (Schinkel 2004: 8). Corruption is then studied in an abstract sense, looking for the governing laws of corruption at a micro, meso or macro level. Another possible interpretation of the why question is: are you interested in the reasons and motives for the official(s) to become corrupt? This brings us to an issue often raised in philosophy, that is, whether reasons for action can or should be seen as causes of action and, if so, in what sense can they be treated (Schinkel 2004: 8).

2. Causality and corruption

A core subject of social sciences is understanding causal relations and explaining ‘phenomena in the world of our experience’ (Hempel/Oppenheim 1948: 135), which means nothing more than answering one of the now famous ‘why’ question. The concept itself, however, is subject to debate and throughout the history of scientific discovery highly contested (Mackie 1985). Two fundamental positions seem to divide the issue. Positivists argue in the unitary or logical deductivist tradition of Hempel and Oppenheim: all causes need to be understood according to ‘general laws’, be a ‘logical consequence of the explanans’, and the explanans must be empirical in nature insofar as they can be tested or observed (Hempel/Oppenheim 1948: 137). Pluralists, on the other hand, challenge the view of ‘invariant universal[s]’ (Tilly 1995: 1597) laws and argue instead that different types of causes, which are not necessarily commensurable, exist (Gadenne 2001: 1562). For example, Mr. Adams, a senior civil servant, accepts a bribe because he is heavily in debt. But he could have taken the bribe in any case, so that owing a large sum of money was not necessary to acting in a corrupt manner. Multi-causality is normal rather than exceptional. As the least common denominator of a definition of cause, Gerring (2005: 169) suggests defining causes as ‘events or conditions that raise the probability of some outcome occurring’, which implies a ceteris paribus condition.
In the philosophy of causality, an epistemological and an ontological tradition can be distinguished (Schinkel 2004). In the first tradition, a cause is the coinciding of phenomena where, because the cause always precedes the consequence, a belief exists that there is a cause (Hume 1990/1739). This kind of causality cannot be found in any scientific theory on corruption, however, because no cause can be identified that always coincides with the consequence ‘corruption’. This leads all too often to confuse correlation with causation. Causes identified in corruption research are not assumed always to lead to corruption. The so-called necessity criterion, often named as a criterion for causation (if A is the cause of B, B must occur when A occurs) is such a strong one that it is not used in corruption theories, which makes corruption studies not too different from other social analyses.

In the ontological tradition, causality is seen as something that actually happened. In social science this is often hard to identify, so neither is this very helpful in corruption research. For example, in what way does GNP or leadership exist, and how can it cause a particular corruption case? Bourdieu has warned against ascribing intrinsic aspects to social phenomena since it would amount to naturalizing something that is socially constructed (Schinkel 2004: 14). An often-noted and general problem for corruption research is that individual corruption cases are rarely being studied; the identified causes, therefore, are not triggering but most often predisposing. This makes it difficult to explain corruption.

3. Theories of the causes of corruption

Taking these remarks as a departing point, in the following chapters we will seek to identify different theories and schools of thought and analysis (which can but do not necessarily map to disciplines) to understand their way of conceptualizing the causes of corruption. Having mentioned the problem of defining the explanandum in the beginning of this chapter, which is the cause of corruption, the remainder of this chapter focuses on the theories of the causes of corruption. How are causes of corruption theoretically framed? Understanding how different theories define, conceptualize, and eventually deduce policy recommendations will amplify our understanding of the complexity of corruption and illustrate the spectrum of possibilities to deal with it analytically as well as practically.

Corruption is a much-debated subject in both popular and in scientific discourses (see for example Heidenheimer/Johnston/LeVine 1989). Relevant research from a variety of scientific disciplines by a variety of scholars has steadily accelerated in the last decade. The economic approach (e.g. Kaufmann/Kraay/Zoido-Lobatón 2000; Klitgaard 1991; Lambsdorff 2007; Rose-Ackerman 1978, 1999, 2006; Treisman 2000) is arguably the most dominant but certainly not the only scientific discourse on corruption.
A glance at the growing number of different scientific studies on corruption leads to more questions than answers. Confusion exists in the literature even within specific scientific disciplines. Which anti-corruption methods work best under what circumstances? The answer is equivocal. It seems that the theoretical model chosen to research corruption largely determines the direction of the proposed solutions. Different causal chains lead to different discourses on corruption prevention and control. Problems with comparisons of the different perspectives and attempts to come to an accumulated body of knowledge are hampered by the sometimes very different theoretical underpinnings. Confusion starts with the perspectives using different conceptualizations of corruption. Our motivations for this book stem from a need to help clear the confusion and the hope of uncovering less prominent theories of the causes of corruption. ‘Outmoded’ conceptions of the causes of corruption may help amplify the analytical and policy spectra, informing parties in both domains.

The main question of this book is: how are the causes of corruption studied? The more we know about the causes of corruption, the better we can choose the policy instruments to combat it. The more we know about the policy instruments (dominantly) used and recommended the more we need to know about the underlying conceptions of the causes of corruption.

The book presents the state of the art in a comparative study of the causes of corruption. Different authors in the field of corruption analysis from different schools of thought shed light on the issue of corruption from different theoretical perspectives. Corruption is currently studied within different disciplines and from different theoretical perspectives (Alemann 2005). Criminology, sociology, philosophy, public administration, economics, political science, history, and psychology, for example, may have within them a rather narrow set of theories and research methods that do not communicate well with each other. Part of the problem seems to be the different conceptual and theoretical starting points of the disciplines, leading to a ‘dialogue of the deaf’. By making these differences explicit, *The Good Cause* will further the important project of making the different corruption discourses intelligible to each other within academia. Obviously, certain theoretical perspectives enjoy at a certain place and time more prominence than others. This book aims to emphasize that (1) each theory has its strengths and weaknesses, and (2) the most prominent or hegemonic theory in practice and academia (such as the economics of corruption in the last twenty years) is not necessarily the analytically strongest or most useful one. Taking account of the (dis)advantages of different theoretical perspectives, such as structural functionalist theory, new institutional economics of corruption, criminological, postmodern, and systems theories, and others could therefore help analysts as well as practitioners be aware of the blind spots in developing policies to fight corruption and push researchers towards interconceptual analysis. *The Good Cause* takes into perspective what has been done so far in conceptualizing and em-
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4. Academic corruption discourses

The variety of scholarly disciplines within which corruption is studied results in several academic discourses. Hoetjes (1977), a scholar studying development administration, distinguishes four such clusters of corruption theories: Weberian idealypical, structural functionalist, institutional economics, and ecological. Since Hoetjes’s dissertation on corruption in India, however, other academic corruption discourses have come into being. To the four clusters we therefore add system theoretical, institutional design, post-positivist, and criminological perspectives. Let us briefly introduce the eight perspectives.

1. The **Weberian-idealtypical** approach (see Rubinstein/von Maravić, chapter 2) sees corruption as a lack of rationalization of the public service. To its proponents it is a phase on the route from patrimonialism to rational legal authority (Hoetjes 1977: 53-55; Hoetjes 1982: 65-67; see e.g. Rubinstein 1983). Loopholes exist in the not fully developed bureaucratic system for corrupt acts to occur.

2. The **structural functionalist** approach (see de Zwart, chapter 3) looks at society as a collection of coherent systems in which all societal phenomena have a function. Structural functionalist-inspired scholars therefore ask themselves which function corruption fulfills in a certain society (Hoetjes 1977: 55-57; Hoetjes 1982: 67-69). ‘Brokerage’, for example, is such a function when corrupt officials facilitate action between the central and the local levels (Blockmans 1988; Campbell 1989: 334; Huiskamp 1991, 1995). Corruption can serve to tone down unduly harsh laws (McFarlane 1996: 58-59) or provide protection and influence for social groups with material wealth but little or no political power (Waquet 1992: 62). The most elaborate example of a structural functionalist approach to corruption can be found in Fred Rigg’s theory of the prismatic society (Riggs 1964).

3. Adherents of the **institutional economics** approach (see Rose-Ackerman, chapter 4) see corrupt officials as rational utility maximizers who simply take the most profitable course of action (Hoetjes 1977: 57-60; Hoetjes 1982: 69-71; Klitgaard 1991; Lambsdorff 2007; Rose-Ackerman 1978). Rose-Ackerman says of this style of analysis, ‘[i]n a study of corruption, one can make substantial progress with models that take tastes and values as given and perceive individuals as rational beings attempting to further their own self-interest in a world of scarce resources’ (Rose-Ackerman 1978: 4). Rose-Ackerman’s work on the causes of corruption within or-
organizations gives us a first idea for exploring the topic. Her conclusion is that each organizational structure is vulnerable to exploitation by unscrupulous officials but the structures vary with respect to the locus of corruption (1993: 817). Rose-Ackerman argues that the structure of the bureaucracy determines the discretionary power of an actor and the expected costs of accepting a bribe (1993: 803). As new forms of administrative systems emerge, the question of where to identify potential risks of corruption in the systems is relevant to a better understanding of the situation. The institutional economics approach consists of several sub-theories and -streams such as rent-seeking and transaction cost theory (e.g. Lambsdorff 2002a, b).

4. The ecological approach involves combining micro, meso, and macro levels of corruption research. Mackie’s (1985) INUS (Insufficient but Necessary part of an Unnecessary but Sufficient) conditions play an important role in this approach. Huberts introduces a similar concept in the multi-approach (see Huberts, chapter 9).

5. System theory is Niklas Luhmann’s (cf. Brans/Rossbach 1997) approach to corruption (see Hiller, chapter 5). Society is divided into separate, self-referential, autopoietic value systems. Corruption results from overlapping systems, for instance, when values from the economic system penetrate the legal or political system (Luhmann 1995a), resulting in the abuse of another system’s logic (“Sinnlogik”; Hiller 2005: 61).

6. Adherents of the institutional design of political systems (e.g. Gerring/Thacker 2004; Johnston 2005; Kunicova/Rose-Ackerman 2005; Manow 2005) approach believe that institutions shape behavior and that therefore some political systems are more prone to corruption than others (see Peters, chapter 6).1 The study of the link between political institutions and ergo-political governance arrangements and corruption emphasizes the different impact of types of political systems. The core theoretical concept is grounded in the assumption of political competition, which

1 Unlike interest-based theories, neo-institutional theories emphasize the embeddedness of individual preferences and action in collective social settings (DiMaggio/Powell 1991: 11; Goodin 1996: 7). Individual behavior is shaped by rules, symbols, routines, norms, scripts, and templates (Hall/Taylor 1996: 15). Institutions therefore make behavior predictable by mitigating ambiguity and unpredictability in complex and dynamic social settings (March/Olsen 1989: 22-24). Actors follow rules they consider legitimate, i.e., those that have a shared understanding of what is right, true, reasonable, and good. Seeking identity or fulfilling the expectations and obligations “encapsulated in a role” (March/Olsen 2006: 689) is a central element in this theory. Instead of calculating the net benefit of alternative options, conformity or the logic of appropriateness explains decisions. Not consequence, likelihood, or value matter but “criteria of similarity and congruence” (March/Olsen 2006: 690). To act appropriately simply means to act in accordance with institutionalized practices of a collective. Corruption or deviance from accepted norms and standards occurs when institutions do not fulfill this “sense-making” function and therefore create uncertainty and disorder; the “aggregative” institution (March/Olsen 1989: 118, 137) itself starts to propagate to maximize the net benefit of alternative options.
emphasizes the ideal of elections as sufficient means of control and accountability. Such an analytical perspective seeks to explore disparate causal mechanisms such as openness and transparency, party competition, decision-making rules, or collective action problems. It often tries to explain political corruption with deficits of competition. Are parliamentary democracies more prone to corruption than presidential ones, or do unitary systems lead to lower levels of corruption than federal systems?

7. The post-positivist approach focuses on how corruption is socially constructed (De Graaf/Wagenaar/Hoenderboom, chapter 7). The American political scientist Michael Johnston has defined corruption as ‘the abuse, according to the legal or social standards constituting a society’s system of public order, of a public role or resource for private benefit’ (Johnston 1996: 331-334). He invites us to investigate how the content of notions of abuse, public role, and private benefit are contested in specific places and at specific times. Johnston is interested in finding out how clashes over the boundaries between public and private, politics and administration, institutions and sources of power, state and society, private and collective interests, and the allocative limits of the market develop, because it is precisely during such conflicts that concepts such as integrity and corruption acquire their meaning (Johnston 1996). From such a cultural or constructivist perspective, corruption manifests as a specific type of social relationship. Its social meaning must be understood with reference to its social setting (Sissener 2001). Consequently, the meaning of deviancy varies from society to society and throughout history. There is neither a universal understanding of corruption (or nepotism or deviancy) nor are the phenomena grounded in the dark side of humans. Instead they represent social mechanisms to achieve solidarity between and within kinship groups (Tänzler 2007). According to this understanding, focusing on the perceptions of corruption reveals the social construction of reality. Empirical research therefore emphasizes the importance of narratives and arguments in understanding the subjective perspective of reality.

8. Those who take the criminological approach (Huisman/Vande Walle, chapter 8) are interested in individual corrupt officials and apply criminological theories to them. De Graaf and Huberts (2008) studied ten Dutch corruption cases and drew attention to the importance of the psychological make-up of the perpetrators involved. Corrupt officials in the Netherlands, it turns out, are often highly popular with their colleagues because of their openness and flair, and especially their ability to ‘get things done’. They are usually males, whose orientation to problem solving rather than problem creating tends to make them valuable to their organizations. Yet it is precisely their unorthodox, results-oriented mode of operation that makes them cross the thin line between laudable and lamentable behavior.
The Good Cause is structured to allow the variously schooled authors to introduce you to their particular perspectives. They discuss the definition and models used within them, give examples of empirical studies, describe their research methods (for example, quantitative or qualitative), and evaluate their inherent strengths and weaknesses. Last, the authors review the perspectives’ empirical insights to show what they add to the discussion at hand: the question of what causes corruption.
Chapter 2: 
Max Weber, Bureaucracy, and Corruption

*William D. Rubinstein and Patrick von Maravic*

1. Introduction

Max Weber (1864-1920), the great German sociologist, was probably the most formative intellectual progenitor of the theoretical framework in which bureaucracy has been studied and approached during the past century, and has obvious relevance to our knowledge of corruption and corrupt practices.

It does not appear that Max Weber (1864-1920) wrote anything of a lengthy and considered nature about corruption in modern societies; his thoughts on this subject, in so far as they exist, appear to be contained in his views on bureaucracy and ‘modernity’. In so far as Weber had a view of political or bureaucratic corruption, then, it is fair to term it an evolutionary one: corruption was the hallmark of an earlier, more ‘primitive’ stage of society, and would eventually vanish with the triumph of a professionalized bureaucracy. Weber’s implicit views on corruption are chiefly contained in his writings on bureaucracy (Weber 1922) and, to a lesser extent, in his writings on the ‘vocation’ of politicians (Weber 1948).

Although Weber for the most part insinuates the notions of corruption and favouritism, the conceptual and empirical implications arising thereof will most certainly pique the interest of a student of corruption analysis. To trace the distinct Weberian perspective, our first section will characterize the time and *Zeitgeist* of Weber’s writings in terms of nepotism and corruption in Europe and abroad; the second will link the historical evolution of a Weberian bureaucracy in England in the nineteenth century to cases of patronage and nepotism. And what will we learn? First, and as will be argued in the third section, a Weberian thinking about corruption must start with the distinction between three ideal types of domination (traditional, charismatic, and legal-rational) that form the basis for analysing the relationship between rulers and the ruled. Second, the Weberian perspective on corruption offers both (1) a lens for the analysis of systemic forms of corruption that have the character of a ‘web of reciprocities’, where corruption and its causes are located in the wider context of a specific form of domination and personal rulership (see Huberts, this volume); and (2) a concept of legal-rational order that lays the foundation for an explicit understanding of corruption, one which has the misuse of public power for private gain and deviance from legitimate order at its conceptual heart.
2. Weber and his time – The Dreyfus Affair, the Panama Canal Scandal etc.

Although Weber was well-informed on corruption in local American politics, to a certain extent, his silence is somewhat surprising, since there were, in Weber’s lifetime, many corruption scandals in ‘modern’ societies of which he must have been aware. In France, the Panama Canal Scandal of 1889-92 brought the Third Republic to its knees, and is seen as paving the way for the Dreyfus Affair a few years later. In it, 104 deputies in the French Parliament (some sources claim 510 deputies) were accused of taking bribes to keep quiet about the financial difficulties of DeLessup’s Panama Canal Company, which hoped to construct the Panama Canal, eventually built by the Americans. One of those accused of bribe-taking was Georges Clemenceau, France’s wartime Prime Minister (Tombs 1996: 457). Some of those accused of bribe-taking were Jewish financiers, who were singled out for attack by the same sources on the French right as would launch the more celebrated Dreyfus Affair three or four years later. In supposedly incorruptible Britain, there occurred in 1912 the Marconi Scandal, in which four high-ranking Ministers in H.H. Asquith’s Liberal government, among them future Prime Minister David Lloyd George, were accused of what would now be termed ‘insider trading’ in shares in the British Marconi Company, just before it was awarded a lucrative government contract for the construction of wireless installations around the British Empire. This affair became a cause célèbre in Britain at the time; the four men were acquitted of any wrongdoing by a Parliamentary committee which voted along partisan lines. A number of other scandals involving government finance also occurred in Britain at this time (Searle 2004: 434-438). But Europe’s corruption was obviously dwarfed by that which had occurred in the United States since the end of the American Civil War of 1861-65. American urban governments, in particular, became virtually synonymous with political ‘bosses’ and endemic bribery and the misappropriation of public money. Perhaps the most notorious corrupt American urban machine politician was William M. Tweed (1813-78), known as ‘Boss’ Tweed. He was the head of Tammany Hall, the Democratic party’s machine’s headquarters in New York. In 1870-72, just after the Civil War, Tweed and his allies stole a sum estimated at between $40 million and $200 million from New York City. They typically operated by inflating the cost of public works and pocketing most of this inflated sum. Their most notorious theft was that in the construction of the so-called ‘Tweed Courthouse’ in New York, which cost taxpayers $13 million, of which $10 million went into the pockets of Tweed and his friends. Tweed himself was eventually convicted and jailed, but this type of corruption certainly continued into the twentieth century, with cities such as Chicago, Jersey City, St. Louis, and Kansas City (among many others) becoming synonymous with corruption, kickbacks, and bribery. Many of these political ‘machines’ were built on the
votes of new non-English-speaking immigrants, who were provided with jobs and welfare benefits in exchange for political loyalty. The endemic nature of political corruption at the local (but not to the same extent or as blatantly at the national) level was remarked upon by many foreign observers of the American scene, who also noted the virtual abandonment of urban political life by ‘respectable’ old stock elite Anglo-Saxons, and the dominance of most urban machines by ethnic politics (See, for instance, Benson 1978: 17-88).

It is difficult to believe that someone as ubiquitously intelligent and well-informed as Max Weber was not well aware of the extent of political corruption in many ‘modern’ societies – although Germany itself appears to have been relatively free of such political corruption, or at least of notorious scandals emerging from accusations of corruption. Perhaps this is why Weber’s explicit and implicit critiques of corruption were apparently confined to discussions of bureaucracy rather than of the political process and elections in ‘modern’ nations. Weber held a realistic view of ‘machine politics’ in the United States, which he toured in 1904 (Gerth/Wright Mills 1948: 14-18). He visited such cities as Chicago and St. Louis and was fully aware of the centrality of corrupt ‘machines’ to local politics, which he regarded as a necessary evil. He also believed that political ‘spoils’ would necessarily diminish with the professionalization of the civil service and of welfare provisions (Gerth/Wright Mills 1948: 18; Weber 1948: 110-111).

In so far as Weber had a view of political or bureaucratic corruption, then, it is fair to term it an evolutionary one: corruption was the hallmark of an earlier, more ‘primitive’ stage of society, and would eventually vanish with the triumph of a professionalised bureaucracy. America’s apparent exception to this was the result of its anomalous position as a frontier society with extremely large numbers of impoverished immigrants from more ‘primitive’ societies in eastern and southern Europe, Ireland, and elsewhere, and would also eventually vanish.


A number of points ought to be made about Weber’s views on corruption. First, it is consistent with other evolutionary views of the progress of the state and society which appeared either at about the same time as Darwin’s theory of evolution, or were influenced by it. In England, an analogous view to Weber’s, at least by implication, was voiced by the famous English legal historian Sir Henry Sumner Maine (1822-88) in his 1861 book *Ancient Law*. In Maine’s famous phrase, the evolution of laws in the Western world was ‘from status to contract’, whereby law by divine authority evolved into governance by aristocracies and then into formal law codes – a progression not dissimilar to Weber’s celebrated ‘ideal types’ of authority (see below). Maine’s view, as a major legal and academic authority in Victorian England
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(he was Regius Professor of Civil Law at Cambridge University), also reflected the hegemony of laissez-faire capitalism and of free trade, which gained ascendancy in Britain in 1846, when the United Kingdom abolished all, or nearly all, tariffs and the high mark of Victorian England’s prosperity and industrial zenith were reached. It also had something in common with the liberal ideology of Maine’s contemporary John Stuart Mill, who argued that rationality and rational decisions could only grow out of the free and unfettered exchange of ideas and opinions. Weber himself had relatives in Manchester who were engaged in the cotton trade, and his brand of conservative liberalism, seldom associated with German politicians or intellectuals at this time, was probably influenced by his affinity with England and the English-speaking world. His ‘Protestant ethic’ theory also plainly saw an affinity between British, American, and German Protestant capitalists, and would perhaps implicitly deny the negative and sinister ‘special path’ to modernity which so many historians have attributed to twentieth-century Germany, albeit largely because of events which occurred late in Weber’s life or, more emphatically, after he died in 1920. Another champion of a distinctly evolutionary view of human society was Karl Marx. In contrast to Weber and British evolutionary liberals, Marx would surely not have believed that political or bureaucratic corruption would diminish and wither away in time, at least in any capitalist society. While capitalists might well favour a system of laws whose trajectory was from status to contract, the very nature of capitalist society ensured the continuation of massive and even pervasive corruption, and the example of gross corruption in the United States and elsewhere would have come as no surprise to Marxist theorists, any more than would attempts by government contractors to succeed through bribery or any other improper means. A Marxist view of corruption in modern (pre-socialist) societies was distinctly less starry-eyed than a Weberian view.

Yet there is ample evidence that, broadly speaking, Weber was fairly accurate in his assessment of the gradual but steady diminution in bureaucratic corruption. This process is well illustrated in England, where a highly corrupt government infrastructure in the eighteenth century gave way to a governmental structure, and in particular a professional civil service, which were renowned for their impartiality and lack of corruption or corrupt practices. Britain during the eighteenth and early nineteenth centuries was dominated by a network of leading government office-holders and their close relatives who profited enormously and deliberately from government revenue. For instance, James Brydges, first Duke of Chandos (1674-1744), who was Paymaster of the Queen’s Forces from 1705-13, made £600,000 – an astronomical sum – from taking a share of everything spent by the British government on the military during the War of the Spanish Succession. He is regarded as the earliest British millionaire, and was made a duke, the highest rank in the British aristocracy. As his entry in the Oxford Dictionary of National Biography notes, ‘public office was regarded as a legitimate source of profits’ at that
time, far beyond an office-holder’s official salary. As late as the early nine-
teenth century, John Scott, first Earl of Eldon (1751-1838), Lord Chancellor
(i.e., head of the British judiciary and a member of the Cabinet) in 1801-06
and 1807-27, amassed a fortune of at least £700,000 (around £70 million to-
day) by receiving a percentage of all the legal fees coming through England’s
superior courts, far beyond his official salary. The period in British history
down to the ‘Age of Reform’ in c1800-35 was marked by what is often
termed ‘Old Corruption’, with vast perquisites and salaries coming to fortu-
nate office-holders, often closely connected with the British aristocracy, often
for holding positions with no duties and which were often absurd in nature.
For instance, in the 1820s Lord Auckland, an aristocratic landowner, received
a salary of £1400 per annum (about £140,000 today) as ‘Vendue-Master at
Demerara’, in British Guiana, ‘where he had never been,’ as one radical critic
noted, and another £1900 per annum as ‘Auditor to Greenwich Hospital’ for,
in the words of this radical ‘doing nothing.’ (Rubinstein 1987: 275). Hun-
dreds of similar examples existed at the time.

All of the historical evidence suggests that this world of ‘Old Corruption’
was thoroughly reformed by the 1840s, so that virtually nothing was left of it
by the mid-Victorian period. A major landmark along the way was the
Trevelyan-Northcote Report of 1853, named for the politician and senior
civil servant who wrote it, which deliberately attempted to stamp out patron-
age in the British civil service, and recruit future civil servants through ex-
aminations. Its recommendations were enacted in stages between 1855 and
1870. It also became absolutely obligatory by that time that political office-
holders such as Cabinet Ministers not profit in any way from their offices be-
yond their official salaries. By 1860 at the very latest, the kind of gross
profiteering from office made by the Duke of Chandos or Lord Eldon had be-
come illegal. In fact (and notwithstanding the Marconi Scandal and other
such rare events), no British Cabinet minister has ever been known to profit
from corrupt practices: certainly none has ever been prosecuted, or become
notorious for such behaviour. The nearest to an exception was probably
David Lloyd George, Prime Minister 1916-22, who allegedly built up a per-
sonal fortune through the sale of honours (titles of nobility and knighthoods)
just after the First World War. To be sure, many British Cabinet ministers
have profited indirectly from their offices, especially during the past forty
years or so, by gaining lucrative directorships after leaving office, from
writing well-paid memoirs, or (in the case of Prime Ministers) embarking on
lucrative lecture tours, but as a rule these have occurred after retirement from
office. Just as remarkably, British civil servants appear to be unusually hon-
est, and it actually very difficult – perhaps impossible – to point to more than
a handful of occasions when civil servants profited illegally from their posts
beyond their official salaries. This generalisation is also true of British ad-
ministrators throughout the Empire, when it existed. Obviously, it is entirely
possible that some dishonest civil servants ‘got away with it’, and some as-
pects of local politics in Britain, especially in cities where one party is permanently likely to be elected, are known for their corrupt practices, at least in a minor way. Nevertheless, the British governmental and civil service administrative structures do appear to have evolved, from c1800-1900, in a way consistent with the Weberian type bureaucracy (see below). There are a number of reasons for this which may have been peculiar to Britain. Most Cabinet ministers of this period and virtually all civil servants were educated at a British ‘public school’ and at Oxford or Cambridge universities, and absorbed the ‘gentlemanly’ code instilled there. Many Cabinet ministers were very wealthy, and did not need to engage in corrupt practices when these became illegal. The official system of auditing of accounts, Parliamentary oversight, a free press, and an articulate Opposition made corrupt behaviour very difficult, especially on a large scale, with the penalties for being caught very severe, both in terms of long prison sentences and notoriety for the offender and his family in ‘Society’. Administrative civil servants, although generally drawn from the lower part of the middle class, were reasonably well paid to start with and very well paid in senior positions. They enjoyed lifetime tenure and could look forward to an honour such as a knighthood upon retiring, and a generous pension. Few were prepared to sacrifice this for the rewards of petty or even large-scale corrupt practices. It is a fact that no, or virtually no, such scandal ever occurred in Britain.

British political behaviour was also reformed in a way consistent with Weber’s theories. Eighteenth century politics in Britain was marked by widespread corruption and bribery, with only small numbers of adult males having the vote, and thus readily open to various forms of payment in exchange for their votes, elections being held in public rather than being secret. Defenders of this situation justified it as indicative of ‘British liberties’: as the famous historian Sir Lewis Namier put it, ‘No one bribes when he can bully’. These practices, too, gradually disappeared in the nineteenth century with, for instance, the secret ballot being introduced in 1882 and virtually all adult males given the vote by 1884, the open briber of voters then being both illegal and prohibitively expensive.

The Weberian trajectory of Britain, from widespread corruption to the apparent near-complete absence of it, might or might not have occurred elsewhere. The violent revolutions experienced in modern Europe, and the pre-1789 traditions of powerful autocratic royal or noble rule, were quite different from the relatively peaceful evolution of Britain’s institutions. Yet Weber clearly believed that the German bureaucracy of his time exhibited the characteristic of freedom from corruption depicted in his conception of a legal-rational bureaucracy. Broadly speaking, Weber appears to be correct, at least in his depiction of the bureaucracies and, less emphatically, the state structures of advanced, ‘modern’ nations. All international indices of corruption in the contemporary world invariably show that the least corrupt nations and bureaucracies have the most advanced socio-economic statistics and statistical
indicators, in terms of literacy and levels of education, high *per capita* incomes, urbanisation, welfare provisions, a free press and media, and so on. It is, overwhelmingly, Third World nation-states, especially in Africa and the Arab world, which are found to be the most corrupt, and also score lowest on most indices of ‘modernisation’. This may seem self-evident, but, as noted in the British case, Western nations are not necessarily free from even gross corruption at relatively ‘advanced’ stages of their development.

Many observers would, however, claim that Weber was being far too sanguine and optimistic in his assessment of the absence of corruption in ‘modern’ bureaucracies and state structures. Certainly innumerable examples of corruption, in some cases (such as Italy) reaching to the highest officials in the land, have been alleged or proven in recent decades in advanced Western societies, while corruption at all levels is apparently endemic throughout much of the Third World. Many factors have become evident since Weber lived and wrote – he died at the age of only fifty-six in 1920 – which were not apparent then, and particularly during the past thirty or forty years. These include the phenomenal increase in wealth and incomes among the rich in the age of ‘globalisation’; the vast size of state bureaucracies, with their vast contracts for military and civilian works; and universal independence granted to Third World and non-Western societies, often rich in natural resources, whose leader and state bureaucracies either entirely lack the Western traditions of immunity from corruption or, indeed, represent societies where bribery and gift-giving are the norm. Weber also lived before the era of highly ‘professional’ international organised crime rings and money-laundering, or the ability to transfer illegal or semi-legal funds to international and anonymous banking centres and tax havens. In societies such as post-Communist Russia, the very era since the end of the Soviet Union in 1989-91 is often termed that of the ‘republic of oligarchs’, where incredibly vast fortunes have been made almost overnight, often through violent and corrupt means, in a society where total state control of the economy was the invariable rule for nearly seventy-five years. Yet even in Russia, the past few years have apparently seen a more settled, orderly, and legalistic state apparatus than was the case a few years ago. For all of what might be termed its wishful thinking and unreality, Max Weber’s depiction of evolutionary trends and norms, at least in the European and Western world, appears to have considerable merit and accuracy.

Weber’s broader views on bureaucracy and rationality are, however, certainly not unproblematic insofar as he has attempted to link the two as a virtually inevitable evolutionary process. While many Western bureaucracies have seemingly eschewed the grosser forms of corruption, they have also, at least in some political milieus, been complicit in far worse crimes and practices. The ease with which the German bureaucracy and civil service of the Wilhelmine and Weimar periods became vehicles for enacting Nazi atrocities and criminality is notorious, while bureaucracies in other totalitarian regimes,
including the Soviet Union and its satellites, have also similarly acted as rubber stamps for the enormities of their governments. Indeed, there seems to be a general rule that bureaucrats will avoid personal corruption far more readily than they will avoid the crimes against humanity, including mass murder, carried out by their governments. There are a number of reasons for this. Personal corruption can often be readily identified and punished, while cooperation in government-sanctioned programmes of persecution or invasion are rewarded; the very ambiance of totalitarian societies, and especially, perhaps, their bureaucracies, is wholly unsympathetic to personal dissent; even if a bureaucrat is personally opposed to a governmental policy, he has the excuse of the necessity to obey orders and of deferring to higher authority. It may be that (as Namier suggested) personal corruption is tolerated, at least in the West, in societies with some degree of personal liberty and economic freedom, while unquestioning obedience is the invariable rule in totalitarian societies, whether to the state or in the slightest toleration of corrupt practices initiated from below or outside the state apparatus.

4. Analyzing Corruption in a Weberian Style?

The preceding historical perspective on Weber’s work establishes his awareness of nepotism and corruption. Indeed, patronage and favouritism were often regarded as normal. The rise of bureaucracy in England, Prussia, the United States, and France (Silberman 1993) paved separate paths for public versus private life, and within the former arose an understanding of corrupt behaviour in government. The remaining sections will inspect the conceptual side of Weber’s recognition of corruption and illustrate how his ideas are useful to modern societies.

Weber was interested in how legitimate political and economic order is created and maintained. His work illustrated how a society effectively restrains certain forms of behaviour and encourages others (Scott 1972: 16). His main focus was on social relationships between, for example, the ruler and the ruled, how they relate to each other, and how they form an understanding of legitimate order. Stable social relationships are explained by the perception of legitimate order, which guides behaviour and makes it predictable. Legitimate and stable order is therefore based on the existence of formal and informal rules. It is not accounted for by actors’ interests or habits so much as it is by the acceptance of social regulatory systems. Obedience within different systems of domination in Weber’s view is therefore firmly linked to perceptions of legitimacy. For Weber it was clear that societies change and progress by the process of rationalization, which in turn can change the sources of legitimacy as well as create friction. His wide-ranging comparative and historical approach to different types of legitimate political order, and his writings on the operating modes and administrative arrange-
ments by which rulers exert authority (Eisenstadt 1959; Fry/Raadschelders 2008; Schröter 2007; Weber 1972) have been extremely influential on social scientists when thinking about different types of legitimate order.

A Weberian thinking about corruption begins with the distinction between his ideal types of domination: traditional, charismatic, and legal-rational. The three form the basis for the analysis of the relationship between the rulers and the ruled. Briefly said, under traditional rule everything is set in its place; power is inherited within a clan structure that often forms a centuries-long dynasty. All members know their places and what is expected of them. Charismatic societies rely on one great leader or set of cooperative leaders whose (often brilliant) tenure is terminated only by death. Examples are founders of religious movements, military leaders, and popular party politicians. Charismatic authority often goes hand in hand with a mission, a promise of salvation, or an explicit ideology – ends that are not important to the patrimonial type of rule. People obey charismatic leaders because they firmly believe in the leaders’ magical power or are drawn to their exceptional personal attributes (Weber 1972: 221-225), but the dependence on a single person and his or her charisma makes it a fragile type of rule. In contrast, (bureaucratic) power in legal-rational rule is exerted on the basis of clear rules whereby the ends justify the means of execution. The instrument is run by competent, trustworthy experts and is guaranteed by professional self-governance ruled by meritocracy.

Charismatic domination does not seem to offer a discrete perspective on corruption because elements of patronage can be a strategic part of this type of domination as well. The most fruitful distinction for the analysis of corruption derives from the traditional and legal-rational types of domination. The two types offer a conceptual departing point for an analytical distinction between (1) a public-office-based definition of corruption as the misuse of public office for private gain (Gardiner 2005; Nye 1967: 419) under legal-rational rule, and (2) a favouritism-based definition of corruption that forms an inherent part of a patrimonial ‘strategy of rulership’ (Roth 1968: 197) to win personal loyalties by distributing material rewards (commonly known as nepotism (family) or patronage (friends)). In defining the public official’s role within the legal-rational system of a bureaucracy, Weber emphasized the contrasts to common practices in so-called pre-bureaucratic systems, the most important of which is traditional domination. Jacob van Klaaderen, for example, has described the Inca society as patrimonial, in which a ruler ‘legitimately’ engages in a self-centred distribution and acquisition of resources. This type of behaviour must be considered a genuine strategy of personal rulership that no one would challenge as corrupt in the legal-rational sense; it legitimately establishes order in a hierarchical society (van Klaveren 2005: 83). All too often Weber’s work has been associated with the public-office definition of corruption rather than the favouritism-based one, despite the fact that the latter offers a compelling additional perspective for the analysis of
patrimonial types of corruption in modern states. Unfortunately, it has been mostly applied to developing countries, which are generally conceived as traditional societies (e.g. Médard 2005). This undermines the heuristic usefulness of Weber’s ideal types for the analysis of modern societies.

Weber’s types of domination are also too often understood as precise descriptions of reality, which is a misinterpretation. They are ideal, not real; they are neither descriptions of reality nor representations of a normatively desirable state. There are various ways to describe their usefulness: (1) they distinguish and delineate social phenomena by describing their core elements, (2) they serve as an analytical tool of counterfactual thinking to discern the important elements of a phenomena within a vast sea of empirical facts, (3) they are idea constructs that help put the chaos of social reality in order (Rossi 1987), (4) and they can be a measure of empirical deviation from the ideal in comparative studies (Eliaeson 2000). Conceptually they are pure; in reality, they usually occur in mixtures (Weber 1922: 45). The categories of domination should therefore be independent of other distinctions; think, for example, of classical distinctions in political science between democracy, authoritarianism, and totalitarianism. Within each of the latter the legitimacy of a ruler can be based on one or another type of domination. Weber was critical of the notion that bureaucracy and democracy were two sides of the same coin, and showed, for example, that feudal lords used the technique of bureaucracy to govern (see Weber 1922: 36). Without blurring the conceptual difference between democratic and authoritarian regimes, Weber’s ideal types allow us to recognize the common elements within them.

4.1 Favouritism, Personal Rulership, and Web of Reciprocities

The belief in the sanctity of tradition, heritage, and customs forms the basis of patrimonial domination, in which the succession of rulers is determined by birth, clan membership, and personal loyalty. Rather than abstract definitions of merit or certificates of education leaders are recruited on the basis of personal relationships (Weber 1972: 219-221).

Guenther Roth’s work on recently decolonized countries opens a conceptual pathway from Weber’s work to an analysis of corruption in modern states. Roth reconsiders Weber’s concept of patrimonial rulership and observes that in many decolonized states “traditionalist legitimacy has disintegrated” (Roth 1968: 194) and that Weber’s sociology of Herrschaft (dominance) deals not only with “beliefs in legitimacy but also with the actual operating modes and administrative arrangements by which rulers ‘govern’, not just ‘rule’” (Roth 1968: 195). Roth argues against a narrow interpretation of patrimonialism anchored solely in the ideas of tradition and hereditary succession. Instead he suggests using “personal rulership” as a subcategory of patrimonialism. Here, personal loyalty does “not require any belief in the
ruler’s unique personal qualification, but is inextricably linked to material incentives and rewards’ (Roth 1968: 196). Roth’s modernization of Weber’s patrimonial rule offers an opportunity to ‘transcend[s] the dichotomy of tradition and modernity’ (Roth 1968: 197) and the concept can therefore be used for contemporary regimes.

In a Weberian-Rothian perspective, corruption must therefore be more broadly seen as a strategy to exert power and influence people through ‘connections [and] favouritism’, as Roth has shown in ‘Personal Rulership, Patrimonialism, and Empire-Building in the New States’ (Roth 1968: 203). This favouritism-based perspective teaches us that corruption can be viewed not as a singular individual failure but as a coherent strategy to achieve obedience and regime stability with favouritism having ‘a logic and rules of its own’ (Eilbaum 2006: 4).

Because a public-private distinction is non-existent, patrimonial rulers consider ‘the state’ – or everything they have control over – as a means to maximize their personal profit. Weber described the office at the time of the Middles Ages as a source for extracting private rents (‘ausbeutbare Renten- und Sportelquelle’ (Weber 1922: 14, 18-19)). This extends to the officeholder’s staff as they extract rents from the office and consider it their property. It is not, of course, a static situation: a patrimonial ruler is in permanent struggle with his staff over ultimate control, using favouritism as the means to it (Roth 1968: 195). Guenther Roth observed this typical form of personal rulership as an ‘ineradicable component of the public and private bureaucracies of highly industrialized countries’ (Roth 1968: 196), noting especially ‘old urban machines’ such as Chicago or Detroit:

‘The old urban machines are a familiar example. They had, of course, some kind of traditionalist legitimation because of the immigrants’ Old World ties, but they functioned primarily on the basis of personal loyalty – plebeian, not feudal – and material reward; offices were distributed by a noncharismatic and nonbureaucratic ruler, and occupying them amounted to holding a benefice. The boss might have had great power, but his legitimacy was precarious; thus he had little authority and had to envelop his ‘clients’ in an intricate web of reciprocities’ (Roth 1968: 198).

The ruler distributes favours by either selling or giving ‘jobs’, ‘benefices’ or ‘offices’ that may be used partly for personal gain but demand loyalty to the ruler throughout their tenure. This ‘web of reciprocities’, as Roth termed it, obliges the ruler and the ruled to be co-dependent. In the case of ‘machine politics’ political coalitions use their influence to reward supporters with public goods, a well-known reflex phenomenon of political parties after an election victory (Krebs 2005). J.C. Scott argues that this type of political ‘machine’ aims at the ‘political consolidation of the beneficiaries of the patronage and graft system’ (Scott 1969: 63) and points out that it cannot attribute for more the random or sporadic forms of corruption that often occur in administrative systems. Taking this point seriously means that not all forms of corruption fall under personal rulership or machine politics, and that
the Rothian perspective emphasizes a more stable and systemic form of favouritism-based corruption whose practices are not considered illegitimate and ultimately contribute to the stability of the system.

Nicolás Eilbaum seemed to have this in mind when he employed the concept to research corruption in Argentina. He demonstrated that the Menem administration was stable and illegitimate at the same time, despite the lack of charisma and rationality (Eilbaum 2006).

‘Corruption can thus be made sense of as part of the government’s pursuit of stability in a context where no source of legitimacy was available … [It is] inherent to a political regime where rulership is supported by the personalized distribution of resources, insofar as no other bases of domination exist’ (Eilbaum 2006: 6).

4.2 Legal-Rational Rule, Corruption, Deviance from Legitimate Order

An explicit understanding and legally-sanctioned definition of public-office-based corruption comes into existence with the separation of private household and public office, which occurs with the rise of a bureaucratic system. Weber’s feudal system is characterized by the appropriation of benefices to officeholders; the legal-rational system is dominated by an explicit rule system that sanctions the use of public power for private means. As the ideal bureaucracy is necessarily linked to the notion of legal authority, legitimacy is based on the rule of law. This means that abstract rules are applied to particular cases, and the impersonal order is dominated by a legal code that claims obedience from members of the organization. Corruption means therefore deviance from legitimate order.

The legal-rational type of domination (Weber 1972: 217-219) stands in stark contrast to personal rulership types where belief in reason, a constitutionally-regulated legislation, professional training, and efficiency do not hold sway. Weber saw bureaucracy as the most rational instrument of executing legal authority (Weber 1922: 24), the most efficient form of organization yet devised by men.\(^1\) In its most advanced state the bureaucracy would be driven *sine ira ac studio*, ‘without anger or jealousy’ (Weber 1922: 26), a phrase that emphasizes its professional, impersonal, passion-free, rational machinery. Highly trustworthy, professional experts within a system of meritocracy are best to run the instrument. The guiding norm of bureaucratic authority is a strict hierarchy with a clear separation of tasks and functions

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\(^1\) Despite Weber’s admiration for the rationality and efficiency of bureaucracy, he was aware of its flaws, among them: (1) the potential for routinisation to hamper the personal development of the organization’s members; (2) the capacity for a powerful machinery to overstep its defined function, ignoring that bureaucracy is subject to the rule of law and not in charge of it; and (3) an enthronement of bureaucracy such that it could be used for evil as well as good (Weber 1922: 34-35; see also Bauman 2001).
following the principle of division of labour. The office, with its specific duties, forms the cornerstone of each organization. Moreover, the resources of the bureaucracy are distinct from those of its members; owning the means of administration (Weber 1922: 13) would allow the office to be sold, passed on by heredity, or misappropriated. As summarized by Reinhard Bendix’s *précis* of Weber’s views,

‘officials and other administrative employees do not own the resources necessary for the performance of their assigned functions but they are accountable for their use of these resources. Official business and private affairs, official revenue and private income are separated … Officers cannot be appropriated by their incumbents in the sense of private property that can be sold and inherited’ (Bendix 1960: 419).

Corruption from this perspective, although never explicitly stated by Weber, is related in the eyes of many to deviation from formal rules and duties of a public role for personal gain (see Heidenheimer/Johnston 2005: 77-78; Mény/de Sousa 2001: 2824; Mungiu-Pippidi 2006; Nye 1967: 419). Many political scientists and criminologists have stuck to a public-office centred definition that focuses on forms of behaviour that violate legal standards. One prominent example is the often-quoted definition of corruption by Joseph S. Nye:

‘Corruption is behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behavior as bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses)’ (Nye 1967: 419).

The advantage of public-office definitions is that they help to disentangle the complexity of corruption by offering a clear heuristic. They are stable and objective, often resembling the Penal Code (cf. Huisman/Vande Walle, chapter 8). As critics have pointed out, however, legal norms often reflect the ethics of a certain group and are thus socially disputable. Furthermore, they leave room for interpretation because they relate to a tangible value system of a specific group at a certain time (see Mény/de Sousa 2001: 2824).

With regard to the causes of public-office corruption we are not left with an elaborated concept but Weber’s remarks in ‘The Protestant Ethic and the Spirit of Capitalism’, attribute corruption to individual failure, behaviour unworthy of true professionals and aristocrats at the bureaucratic apex (Windolf 2003: 190):

‘The impulse to acquisition, pursuit of gain, of money, of the greatest possible amount of money, has in itself nothing to do with capitalism. This impulse exists and has existed among waiters, physicians, coachmen, artists, prostitutes, dishonest officials, soldiers, nobles, crusaders, gamblers, and beggars. One may say that it has been common to all sorts and conditions of men at all times and in all countries of the earth, wherever the objective possibility of it is or has been given’ (Weber 2001/1904: xxxi (italics added)).
Weber did not, however, hold the opinion that avarice or ‘unlimited greed for gain’ (Weber 2001/1904: xxxi) was identical to capitalism but that ‘capitalism may even be identical with the restraint, or at least rational tempering, of this irrational impulse’ (Weber 2001/1904: xxxi). Irrational greed is transformed by the institutions of capitalism into the rational ‘pursuit of profit, and forever renewed profit, by means of continuous, rational, capitalistic enterprise’ (Weber 2001/1904: xxxii). Quite analogous to Weber’s depiction of capitalism as the rational form of profit-making in which passion, avarice, and greed are tamed by institutions, Weber viewed bureaucracy as the legal-rational form of executing power and repressing ‘irrational behaviour’ in a *stahlhartes Gehäuse* (iron cage). The metaphor of an iron cage refers to increasingly rational societies, which leave little room for personal attributes such as passion, love, or personal feelings but are dominated by clear means-end logics (Silberman 1993). Taken seriously, the metaphor implies that corruption occurs when the system of legal-rational dominance is not yet complete; loopholes remain for the bureaucrat’s private motives. In other words, the distinction between the private and public role is not clearly delineated, offering a gateway for behaviour that deviates from official behaviour. The deviant behaviour might stem from rules that are not explicit enough, suboptimal methods of sanctioning and supervision, an inferior system of recruitment, or an organizational ethos that has not been fully penetrated by the official structure.

It would not do justice to a Weberian reasoning to restrict public office corruption to modern bureaucracies and the ‘web of reciprocities’ to patrimonial societies. As previously stated, logics and types of dominance merge and form hybrids. Modern ‘cages of reason’ can be prone to ‘webs of reciprocity’ as well as a logic of patrimonialism. Government departments in many Western democracies, for example, are staffed with officials that fulfil the criteria of civil servants and are therefore important ingredients of the bureaucratic rationality; they can also be occupied by political appointees who act as transmission belts between administrative and political rationalities. Political scientists have termed this phenomenon ‘ politicization’: public officials pay greater attention to politics and politicians are interested in ensuring that civil servants are compatible with their own partisan and policy preferences (Peters/Pierre 2004: 1). This does not imply that patrimonialism is the immediate consequence of politicization, but it can be a gateway for conflicts of interests and webs of reciprocities if for example staffing is influenced by party considerations rather than merit.

5. Conclusion

The Weberian distinction between a rational-legal and a patrimonial type of domination offers a conceptual departing point to distinguish between (1) a
public-office based definition of corruption as the misuse of public office for private gain under legal-rational rule, and (2) a favouritism-based definition of corruption that forms an inherent part of a patrimonial ‘strategy of rulership’ to win personal loyalties by distributing material rewards, commonly known as nepotism or patronage.

The favouritism-based perspective on corruption offers a lens for the analysis of a systemic form of corruption that has the character of a ‘web of reciprocities’: corruption and its causes are located in the wider context of a specific form of domination and personal rulership. Corruption is thus a strategy to influence and exert power over people through forms of favouritism and patronage. This perspective enlightens us to a corruption that is not a failure of individuals but a coherent strategy with its own rules and logic to achieve obedience and contribute to the stability of a regime. It does not account for the more random or sporadic forms of corruption that often occur in administrative systems. The perspective emphasizes a specific form of a more stable and systemic corruption.

An explicit understanding and legally-sanctioned definition of corruption in the legal-rational sense comes into existence when the private household and the public office become separate entities, a process that occurs with the rise of a bureaucratic system. Corruption takes place when the system of legal-rational dominance is not sufficiently diffused, leaving loopholes that will be exploited by the bureaucrat’s private motives. The distinction between the private and the public role is not clearly delineated and the fuzzy line offers a gateway for behaviour that deviates from a person’s official administrative role.

In modern governmental organizations the clear distinction between these two types of dominance does not always reflect reality, and patrimonial and legal-rational modes merge. Max Weber’s explicit contribution to the understanding of the logic of different systems of domination stands undisputed, however his contribution to an understanding of corruption in modern states – albeit a challenge to a certain extent – has had mainly an implicit impact on many students and their definition of corruption but will hopefully receive more explicit attention in the future.
Chapter 3:
Corruption and Anti-Corruption in Prismatic Societies

Frank de Zwart

1. Introduction

Rereading Fred Riggs’s Theory of Prismatic Society (1964) after many years for the purpose of this essay was an enervating experience. The notes I scribbled in the process contain the same combination of irritation (with esoteric language and flawed theorizing) and admiration (for the many ideas and astute observations) that so many critiques have put into words ever since the book appeared. I shall not repeat these notes here but instead concentrate on one aspect of the book: Riggs strongly doubts the relevance of modern public administration principles and tools for vesting ‘good governance’ in developing countries. His ‘theory of prismatic society’ substantiates these doubts and represents a rare stance: it opposes relativism but it also discourages intervention.

As to the question ‘what causes corruption?’, Riggs’ theory exemplifies the complexities of a comparative approach to this issue. The book can be read as a study in corruption, but Riggs avoids using that word because it invokes a moral category (see Rose-Ackerman, this volume) and Riggs is careful to judge the behavior he studies. Riggs would agree with De Graaf, Maravić, and Wagenaar when they write, in the introduction to this volume, that ‘norms defining what corruption is (...) differ from society to society and from academic discipline to discipline’. But Riggs is no relativist. He is not concerned with the cultural imperialism or discursive hegemony that critical scholars ascribe to international anti-corruption drives (for examples see: De Graaf/Wagenaar/Hoenderboom, this volume). When it comes to key issues such as economic development, equality, and stability, Riggs considers modern Weberian administration superior to other forms, and clearly thinks that the former is prevalent in the West, and pending in the rest.

Riggs’ explanation of that difference (which encompasses his explanation for corruption) is a textbook example of the normative institutionalism that dominated social science when he wrote his main work. Basically the argument is that organizations and institutions can only work as their designers

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1 For critical reviews accounting the rise and decline of the comparative public administration group (of which Fred Riggs was a prominent member), see for instance: Heady (1996), Jones (1976), Savage (1976), Siffin (1976).
intended, if they reflect a society’s normative order. Organizational principles, techniques, and procedures, in other words, are not enough to prevent corruption for if they do not resonate with a society’s normative order, these institutions won’t work as intended. Riggs’ approach to the question ‘what causes corruption’, then, is to inquire why the institutions that prevent it in some places do not seem to work in others.

Riggs set out in the early 1960s to answer the pressing question why models and techniques of modern public administration that worked so well to establish orderly and relatively clean government in the West, did not produce the same results when exported and implemented in Asia, Africa, and Latin America (Riggs 1964: 11-12). His answer is that the principles and techniques of modern public administration reflect the normative structure of Western, industrial societies, and indeed function to maintain that structure. Transplanted into a different normative structure, the same principles and techniques serve different functional requirements, and therefore do not work in the same way. To illustrate, administrative procedures that guarantee recruitment on the basis of merit reflect universalistic norms and function to maintain universalism. In a different normative context, however, the same procedure may also function to maintain particularism.

Riggs’ work contains ample illustration of this basic idea: Things are not what they seem. Administrative institutions may look familiar (to an observer from the West) but that is deceiving because these institutions function according to a different logic.

‘Certainly we shall find in (…) Asia, Africa, and Latin America today formal agencies of administration which resemble those of Europe and the United states. Yet somehow, closer inspection of these institutions convinces us that they do not work in the same way, or that they perform unusual social and political functions’ (1964: 12).

This conclusion has not made Riggs popular with practically minded public administration specialists. He basically tells them that American and European administrative models and institutions can be established in other parts of the world (as they were on a large scale in the 1950s and 60s), but to make them perform as they do at home would require a normative structure that is not there. The message is to either await normative change (but Riggs also stresses throughout the book that there is no reason why this would necessarily occur) or accept a type of public administration that is less efficient and effective, and more prone to corruption than the ideal in the West.

Clearly this leaves people who are involved in administrative practice and reform empty handed. As Garth N. Jones, a former advisor on administrative

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2 In this, Riggs applies an assumption in the work of Talcott Parsons to administrative behavior: Roles – in casu the modern bureaucrat – are only ‘institutionalized when they are fully congruous with the prevailing culture patterns and are organized around expectations of conformity with morally sanctioned patterns of value-orientations shared by members of the collectivity’ (Parsons/Shils 1951, quoted in Powell/DiMaggio 1991: 16).
reform in Pakistan, puts it in a review of Riggs’ and other works in the same tradition: When it comes to practical matters such as trying to reform the Pakistani financial system, ‘I still believe that the *U.N. Handbook* [of Public Administration] in working these kind of situations has more to offer than anything yet produced, and certainly more than anything found in these (...) books under review” (Jones: 1976: 99). But Riggs’ point is exactly that the organizational forms prescribed in administration handbooks serve different functions in different contexts. The value of this idea, I agree, is not that it informs concrete steps to combat corruption. Rather, its value is to caution against the wrong steps. ‘Prescriptions which are valid in one context may be harmful in another’, as Riggs puts it (1964: 11).

**Structural Functionalism and Prismatic Society**

The basic idea in Riggs’s work is that the import of foreign normative and institutional orders in traditional societies gave rise to a new type of society. This ‘new’ society is neither traditional, nor modern, nor necessarily modernizing. Riggs calls it ‘prismatic society’ and argues that its characteristics are generally misunderstood because social theory presumes that societies are either traditional, or modern, or in transition to become modern.

Riggs’ theory is grounded in the classic modernization studies of Durkheim, Tönnies, and Weber, and strongly influenced by Talcott Parsons’s structural functionalism. Riggs characterizes societies with the help of Parsons’s pattern variables, especially the following three: ascription versus achievement, diffuseness versus specificity, and particularism versus universalism. Modernization, taken as a process of ongoing functional differentiation, entails an institutional (organizational) and a normative dimension. In functionalist analysis the two are closely related, however. Social structure is perceived as a system of rules, and rules are ‘materialized’ norms. As Talcott Parsons puts it: ‘the structure of social systems in general consists in institutionalized patterns of normative culture (1964: 86, emphasis in original).

The underlying idea in Parsons’ structural functionalism is that societies are functionally integrated wholes – stable equilibriums – in which ‘endogenous variations are kept within limits compatible with the maintenance of the main structural patterns’ (Ibid: 87). Riggs concentrates especially on this theory as the basis of a typology of societies. He sketches the ideal type of traditional and modern societies, using three of Parsons’ pattern variables as a shortcut. ‘The viewpoint adopted in this book is that a significant tendency exists for action in traditional societies to be predominantly ascriptive, par-

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3 ‘Prismatic’ metaphorically conveys the idea that in the societies Riggs talks about, social structures are functionally fused and functionally differentiated at the same time, like light inside a prism (Riggs 1964: 27-31).
Corruption and Anti-Corruption in Prismatic Societies

3. Public Administration in Prismatic Societies

Interestingly, Riggs started this exercise in social theory formation for very practical reasons: as a public administration specialist he was concerned with the failure of attempts (in the 1950s and 60s) to export administrative technology from the USA and Europe to newly independent countries. According to Riggs, the reason for this failure was the misguided idea – prominent in contemporary political and administrative circles – that administrative systems can be ‘separated, by discernable boundaries, from the surrounding society’ (1964: x). But for public administration to be a separate system, Riggs argues, a level of functional differentiation is required that prismatic societies do not possess.

Prismatic societies characteristically contain a mix of specific and diffuse traits.
`New market and administrative systems have displaced but not replaced the traditional systems (...)’. Indeed, this mixture of old and new practices, of modern ideas superimposed upon traditional ones, may be one of the distinguishing characteristics of ‘transitional societies’ (Riggs 1964: 12).

Such societies enact laws and establish procedures that, for instance, guarantee recruitment to public office on the basis of qualifications – a modern trait, signifying differentiation between ascribed status and job opportunities – but at the same time, families or kinship groups have not ‘lost’ their functions for the allocation of employment. Consequently, Riggs argues, the institutions and organizations that are familiar in modern states function quite differently when they are exported to prismatic societies.

Riggs’ theory of prismatic society can be read as a study in causes of corruption. Riggs himself uses the term ‘corruption’ only sparsely, however, which is consistent with his insistence that administrative concepts and principles that are developed for modern, differentiated societies are misleading when used in a less differentiated context. In a prismatic society, the principle of separating public and private accounts competes with equally valid principles that may discourage such separation. Riggs calls this ‘poly-normativism’, and it strikes at the heart of his thinking.

Sometimes Riggs considers poly-normativism in the standard way of ‘uneven change’ (Eisenstadt 1966) – modern norms are internalized by some while others live on by traditional norms. But he also uses it in a more psychological way, as conflicting incentives for individuals. Conflicting incentives, coming from two normative orders, cause the ‘normlessness’ (old norms are invalidated while new norms cannot be enforced) and compromised solutions that characterize prismatic administration (Riggs 1964: 181-182). ‘Prismatic men’ may endorse the equality of opportunity assumed in a merit system, for instance, while equally valuing obligations to kin and friends. The dilemma this poses is resolved in compromise: ‘In practice, the familialistic and ‘merit’ systems are united in a typically prismatic form of recruitment. (...) Using the pretext of eligibility based on examination [an official] chooses from the certified those whose personal loyalty he trusts’ (Ibid: 230). Similarly Riggs discusses the conflict between ascribed and achieved hierarchy and asks by what ‘prismatic compromise’ both can be honored. The answer is in the concept of rank: ‘Rank is an overriding concern in prismatic societies. It is awarded for achievement (...) but once attained, it creates an artificial static hierarchy resembling an ascribed status system’ (Ibid: 178-179).

Riggs applies the same reasoning in passages on rules versus choices (universalism versus particularism) in administrative practice. Prismatic societies overcome the conflict between these alternatives in the implementation phase: enforcement officers appear to enforce universal rules, but these rules permit a ‘wide variety of personalized choices’ (Ibid: 201).

From the perspective of prismatic administration, corruption, patronage, clientelism, and favoritism are not flaws in the system that can be corrected
by proper procedure and law. Riggs rather sees them as inherent to the system – proper procedure and law serve ‘improper’ functions. Procedures and laws that belong to one normative order can be exported into another normative order, but according to Riggs the effect is that the procedures and laws become functional to their new environment, not that they change that environment.

India’s system of personnel transfers in public administration can illustrate this point. Rules stipulate that public servants have to be relocated every three or five years so as to prevent the growth of particularistic networks inside offices, and between officers and clients. In India networks of personal relationships are commonly associated with (and often equated to) ‘corruption’. Indeed the standard reply officials give to the question why frequent personnel transfers are necessary is that they ‘prevent corruption’.

However, this anti-corruption devise is also well known as a source of corruption. In their implementation, transfer rules leave ample room for decision makers – top bureaucrats and politicians – to exchange favorable transfers for loyalty or a share in the income that officials earn from bribes (Chandra 2004: 129-131; De Zwart 1994; Wade 1985). Media, scholars, and officials in India have considered the transfer-trade corrupt since long, but the system is remarkably persistent. I first studied it in the late 1980s, and recent research (e.g. Iyer/Mani 2007; Kingston 2007; Rodden/Rose-Ackerman 1997; Van Gool 2008) shows that nothing much has changed since then. ‘Corruption can be routine and commonplace without being viewed as acceptable by the population that bears its costs’, Susan Rose-Ackerman writes (1999: 177), and India’s transfer-trade confirms that. The reason is not only that the transfer system serves political interests in collecting money and dispensing patronage (both crucial for political survival in India’s democracy), but also that the ‘routine’ in question is administrative routine. The very rules and procedures devised to promote modern bureaucracy, have been made functional for a different normative order – they ‘perform unusual social or political functions’, as Riggs puts it (1964: 12).

4 The idea is that ‘corruption’ is an inevitable by-product of the personal relationships that civil servants have or build over time. It includes bribe giving and taking as well as favoritism, patronage, and clientelism. Hence ‘the rule of avoidance’ and frequent transfers: the former assures that personnel are not appointed where they have many personal relations; the latter do not allow the time to build such relations (see De Zwart 1994: 62-66).

5 Paul Hutchcroft (1997: 645-46) argues that academic use of the term ‘corruption’ as a container concept for rent seeking, patronage, clientelism, or any combination of these – helps to connect academic discourse with the real world politics and real political discourse. See also Johnston (2005: 20-21) who criticizes popular corruption indexes and studies based on their data, for equating corruption with bribery at the expense of studying patronage and nepotism.

6 See J. P. Olivier de Sardan (1999) for a perceptive account of widespread corruption in Africa, explained in terms of modern administrative procedure that is made functional to traditional African social custom.
4. Relativism and Prismatic Society

Unlike many authors that studied similar issues after him, Riggs’ critique on the export of administrative models and advice does not stem from a relativist stance. He does not argue that interference in administrative systems abroad is cultural imperialism. On the contrary, Riggs has nothing against efforts from Western countries to help developing countries build a modern Weberian bureaucracy. He only doubts that knowledge from the social sciences – and especially from the discipline of public administration – can contribute to make that happen.

Because of its inherent moral load, the study of corruption has often inspired relativist analysis, especially in cross-cultural studies. Most definitions of corruption somehow refer to ‘the conduct of officials who infringe the principle of keeping their public and private concerns and accounts strictly separate’, as W. F. Wertheim puts it (1970: 563). But since this ‘principle’ is a product of modern bureaucracy and therefore bound to time and culture, invoking it to judge behavior in times and places where it is not widely shared, is anachronism or ethnocentrism.

Relativist analysis in the 1960s and 70s was informed by modernization theory with its focus on normative change and disruption of social order. It was a ‘mild’ version of relativism because most authors in this tradition expected that modernity – including the normative order that accompanies it – would soon become dominant around the world. Until that moment, however, they deferred judgment. Many claim that modernization breeds corruption, Samuel Huntington wrote in 1966, but such judgment should be handled with care. Modernization is a gradual process and the usual pattern is that modern norms are first accepted by educated elite who then begin to judge their own society by these norms.

‘Behavior which was acceptable and legitimate according to traditional norms becomes unacceptable and corrupt when viewed through modern eyes. Corruption in a modernizing society, is thus in part not so much the result of the deviance of behavior from accepted norms as it is the deviance of norms from the established patterns of behavior’ (Huntington 2002: 254).

In similar vain, Wertheim writes that

When (...) corruption in many newly independent non-Western countries hits the headlines, sociologists should not be content with the shallow judgment that it is a portent of the imminent collapse of these countries. (...) Rather should we analyze the phenomenon within its own historical setting, taking into account social forces which brand as corruption practices which in the past may not have been experienced as such’ (Wertheim 1970: 562).

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7 e.g. Van Lear (1955: 287): ‘A modern strict officialdom was only created with the Napoleonic state. Criticism of the integrity of eighteenth-century officials is thus ex post facto criticism’.
By ‘social forces’ Wertheim here means the changing normative patterns that determine modernization. About contemporary Indonesia he writes: ‘Traditional particularistic loyalties are now seen to be too narrow; but an extended ‘quasi-universalistic’ loyalty towards the Indonesian Republic is for many still too wide’ (Ibid: 578).

Today relativism as deference of judgment awaiting full modernization seems patronizing and outdated. To the extent that relativism is still important for the study of corruption, it is ‘cultural relativism’ (De Graaf/Wagenaar/Hoenderboom, this volume, discuss various examples). Cultural relativism does not imply deference of judgment but abstention from it. It entails ‘denial of universal morality’, as Rod Aya puts it (2009: 1), and to its adherents this is a matter of principle, not circumstances. ‘Placing morality beyond culture (...) is no longer possible’, Clifford Geertz writes for instance (2000: 45-46). What is virtuous or criminal varies from culture to culture, and to criminalize what others consider virtue is ‘not only gratuitous, it is cultural imperialism’, as Aya sums up the relativist position (2004: 31). Samuel Huntington puts it very short: ‘[w]hat is universalism to the West is imperialism to the rest’ (quoted in Aya 2009: fn.22).

Not surprisingly, cultural relativist perspectives on corruption are strongly criticized by scholars and activists alike (Larmour 2008). The Executive Summary of the Transparency International’s Source Book, for instance, speaks of the ‘myth of culture’ and notes that ‘any understanding of corruption begins by dispelling the myth that corruption is a matter of ‘culture’’ (Pope 2000: xix). According to Pope, relativism does not make sense if it comes to corruption:

‘One could ask why there are laws against corruption in all countries, developed or developing, if in fact it is ‘part of their culture’? Why, too, one might inquire, have the people of the Philippines and Bangladesh mobilized against a well-armed military to bring down corrupt leaders? These events hardly square with a popular acceptance of corruption as ‘a part of culture’’ (Ibid: 8).

Pope has a point here: ‘culture’ is too deterministic a concept to apply to countries (the usual unit of comparison in corruption studies). The normative analysis in old modernization studies is better suited for the purpose. As we saw, an important idea in modernization studies is what S. N. Eisenstadt (1966) calls ‘uneven change’. Modern ideas and norms are accepted and even internalized in some circles, while others, in the same country, live by traditional norms. Moreover, the first to accept modernity are usually educated elites, and they are the people that make laws, which might answer Pope’s first question above.

The Source Book’s radical denial of relativism is not the last word in Transparency International circles, however. On its Website, in answer to the frequently asked question ‘Can corruption be seen as normal or traditional in some societies?’, Transparency International takes a milder stance:
‘The debate over cultural relativism and neo-colonialism is a contested one. Where concepts like public procurement procedures are unknown concepts, bribing public officials to secure public works contracts does not exist. Norms and values are context-bound and vary across cultures. Gift-giving is part of negotiating and relationship building in some parts of the world. But cultural relativism ends where the Swiss bank account enters the scene’. 

Clearly Transparency International also struggles with the basic problem of moral relativism: to deny it is cultural imperialism, but to accept is to ‘tolerate barbarity and atrocity in those cultures. Damned if we do and damned if we don’t – either way the prospects are bleak’ (Aya 2004: 31).

Riggs’ theory of prismatic society predates the influence of relativism in corruption studies. Riggs tried to distance himself from both the liberal expectation that developing countries were necessarily in transition to modernity, and from the cultural relativism that was salient in contemporary American anthropology (Riggs 1964: 62). There is little relativism and no apologetic tone in his expose of administration in prismatic societies. To illustrate, Riggs argues that in prismatic society, old customs lose their appeal while ethical standards borrowed from abroad are not rooted in popular understanding. Consequently,

‘A limbo develops in which men feel free to disregard both the old heavenly commandments and the new earthly ethics – they rely more on cunning, violence, or insolence to satisfy their short-run private interests. To squat, smuggle, bribe, cheat – indeed to take what one can (...) become the prevalent rules. (...) Social norms and sanctions are necessary everywhere if raw human nature is to be socialized. But in the prismatic model this sphere of ‘normlessness’ is enlarged, with far-reaching consequences’ (Ibid: 182).

5. Good Governance as a Side-Effect

In its non-relativist stance, Riggs’ work befits today’s international consensus more than its contemporaries. It is striking, Michael Johnston (2005: 17-18) writes for instance,

‘how quickly past debates over corruption – so often hung up on definitions, divided over the question of effects, and mired in a paralyzing relativism – have given way to extensive agreement (...) that corruption delays and distorts economic growth, rewards inefficiency, and short-circuits open competition’.

In contrast to Riggs’ conclusion about export of administrative models, today’s ‘agreement’ is translated, by scholars and powerful international organizations, into a ‘consensus package’ of anti-corruption reforms that ‘amount to recommendations that developing societies emulate laws and institutions found in advanced societies’ (Ibid: 21).

8  http://www.transparency.org/news_room/faq/corruption_faq
The rejection of relativism thus makes the issue of export and emulation of administrative institutions pertinent again. Like Riggs in the early 1960s, Johnston doubts the worth of this strategy – albeit for different reasons. Riggs argues that you cannot transplant administrative models and practices that were designed to produce ‘good governance’ in the West, into a different normative order and expect them to function in similar ways. Johnston notes that recommended countermeasures such as managerial control, greater transparency, an independent judiciary, a stronger civil society, and free media – indeed check corruption in many societies. But in those societies these institutions were the results of political contention

‘and were devised by groups seeking to protect themselves rather than as plans for good governance in society at large. (...) Historically, many societies reduced corruption in the course of contending over other, more basic issues of power and justice’ (Ibid: 21-22).

This perspective – good governance as an unintended consequence of group-interest and political contention – is a way out of the stalemate in which Riggs’ approach leaves anti-corruption efforts. The problem in Riggs’ theory is twofold: Riggs treats normative orders as given, and suggests that norms determine behavior. The institutions of modern administration, he argues, can only function according to the purpose in their design if this purpose reflects the normative order. Individual behavior is reduced, in this view, to enacting normative scripts while the formation of such scripts is neglected.

Riggs might have it backward, though. More recent research shows that the same pragmatic and interest-driven behavior that Riggs calls ‘normless’, produces the institutions that shape a normative order – be it often as an unintended consequence. Democracy and modern bureaucracy in Europe, for instance, were never designed for the purpose of ‘good governance’ or any other common good. We may say that people constructed democracy, Charles Tilly writes, but it can only mean that people

‘create a set of political arrangements the effects of which are democratic. [The term] construct has the misleading connotation of blueprints and carpenters, when over the last few hundred years, the actual formation and deformation of democratic regimes has more often resembled the erratic evolution of a whole city than the purposeful building of a single mansion’ (1997: 196).

Today’s outcome of this process may seem to reflect a European or Western normative order, but it emerged out of a long-term contentious process of bargaining (over a range of conflicting interests such as taxes, rights, and

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9 Especially since privatization and smaller government – obviously the simplest way to reduce administrative corruption, and much in vogue in the 1990s – can only go so far and have not taken away the need for administrative reform and ‘good governance’ (see Hutchcroft 1997: 640-643).
10 Cf. Charles Tilly (1990; 1997) on the formation of modern states (and modern public administration) as side-effect of war-making efforts.
conscription) between contenders to central power, ‘workers, peasants, and other ordinary people’ (Ibid: 197).

Johnston formulates a similar thought with respect to the merit of international ‘consensus packages’ of anti corruption measures and reform:

‘In the end both reform and systemic adaptation require vigorous political contention among groups strong enough to demand that others respect their interests, rights, and property – not just stability or administrative improvements. Too often we think of reform as a process of asking people to back off from their own interest and ‘be good’. (...) But in fact reform will be most sustainable and effective when driven by self interest (...) and defended by actively contending groups’ (2005: 217).

Like Riggs, then, Johnston doubts the merit of attempts to fight corruption by exporting institutions and ‘teaching people to behave well’. Unlike Riggs, however, who left it at that, Johnston offers a perspective. From his work it follows that articulating group interests, stimulating politics, state formation, and bottom-up organizations can help the ‘good government cause’. 
Chapter 4:
The Institutional Economics of Corruption

Susan Rose-Ackerman

Contemporary research on the institutional economics of corruption began with theoretical work that built on industrial organization, public finance, and price theory to isolate the incentives for paying and receiving bribes and to recommend policy responses based on that theory. My own 1978 book, Corruption: A Study in Political Economy, is an early example with its relatively straightforward application of economic concepts to the study of corruption. It used economic theory to understand what programs were especially susceptible to corruption and to recommend ways to reduce these incentives. That book largely relied on journalism to supply the facts because there were no statistical efforts to measure the harm caused by corruption. The closest empirical work by Anne Krueger (1974) and Jagdish Bhagwati (1974) measured the volume of rent seeking and illegal transactions in international trade by using the two sets of books available internationally – in exporting and in importing countries. Fortunately, in recent years it has become possible to move beyond journalism. Although empirical work on a topic that involves illegal activity remains difficult, empirical work employs a range of clever devices to generate quantitative estimates.

This chapter summarizes the institutional economics framework that continues to yield important insights into the causes and consequences of corruption. After introducing the conceptual framework, it discusses empirical research derived from this theoretical perspective and includes some thoughts on fruitful directions for future research.

1. The institutional economics framework

Corruption occurs where private wealth and public power overlap. It represents the illicit use of willingness-to-pay as a decision-making criterion. A private individual or firm makes a payment to a public official in return for a benefit or to avoid a cost. Bribes increase the private wealth of officials and may induce them to take actions that are against the interest of their principals, who may be bureaucratic superiors, politically appointed ministers, or
multiple principals, such as the general public. Illicit payments may also flow in the reverse direction. Those holding or competing for public office may make cash payments to private individuals, firms, or other officials to get benefits for themselves or their political parties. In both cases, pathologies in the agency/principal relation are at the heart of the corrupt transaction.

Whether the principal is a single, named superior or a diffuse body like the public at large, the essential point in that corruption represents the violation of an obligation or a duty in return for a private benefit. Officials or politicians who accept bribes violate the trust placed in them. Politicians who pay bribes to obtain political support undermine the legitimacy of democratic politics. Deterrence either can focus on changing the economic incentives to pay or receive bribes, or can increase the trustworthiness of agents by other means, such as seeking to instill a sense of loyalty and commitment to particular public institutions or to the general public interest. Bo Rothstein (2010) criticizes the principal/agent approach by arguing that thoroughly corrupt systems lack a benevolent principal. Even when the principal is the general public, Rothstein (2010) points out that voters frequently reelect corrupt politicians, perhaps because politicians pay for voters’ support in the form of outright monetary payoffs of pork barrel projects. This critique, it seems to me, proves too much. First, individual identifiable principals who are harmed by the corruption of their subordinates are quite common, and they can be expected to support efforts to limit lower level corruption. Second, voters in some political system do punish corrupt politicians at the polls so long as a more honest alternative exists. Furthermore, if corrupt candidates are reelected, one cannot conclude that voters necessarily approve of corruption but only that they have not been offered a credible, honest alternative. In the worst case that Rothstein (2010) posits, where the entire government hierarchy is on the take and voters prefer politicians who buy their votes, I agree that it does not make sense to consider piecemeal reforms. In such a system, with no separation between personal enrichment and public service, the agency/principal model is not a useful explanatory tool or guide to policy. However, it does not follow from the possible existence of such pathological cases that the principal/agency model is not a useful framework for the general run of cases.

Rothstein (2010) stresses the problem of vicious spirals where the corruption of some breeds the corruption of others until almost all are corrupt. This phenomenon is well-recognized in the economic analysis of corruption and can arise both from limited law enforcement resources and from reinforcing attitudes in which those who observe others’ corruption begin to view such behavior as acceptable simply because it is common (Andvig/Moene 1990; Bardhan 1997: 1330-1334; Rose-Ackerman 1999: 107-109, 124-125). Rothstein (2010) argues that in such cases corruption cannot be limited through piecemeal, incremental reforms, and I agree. However, that conclusion is not a refutation of the principal/agency approach. The two approaches
are complements, not substitutes. Multiple equilibria models with vicious and virtuous cycles can arise under any of the principal/agent situations outlined in the institutional economics literature. Thus an entire police force or customs service can become corrupt over time with the level of corruption in one period leading to a higher level the next period. True, such corruption could move up the hierarchy over time, but that is not a necessary result of such spirals at one level.

Rothstein (2010) provides an interesting analysis of one set of conditions favorable to vicious spirals – programs that target a portion of the population and require officials to make individualized judgments in allocating benefits or imposing costs. This can, as Rothstein argues, undermine a norm of impartiality and produce corruption. However, Rothstein (2010) wants to define corruption as equivalent to this norm violation. He follows Oscar Kurer’s definition of corruption as occurring when ‘a holder of public office violat[es] … the impartiality principle in order to achieve a private gain’ (Kurer 2005: 230). To me, this definition confuses a normative issue – one type of harm caused by corruption – with the phenomenon under study. It excessively narrows the field of study to one particular, if important, type of harm. Although I agree that defining corruption as the misuse of public power for private gain leaves the key terms underspecified, it opens up a broad field of debate over the meaning of ‘misuse’ which may indeed vary across societies. Some of the most interesting issues in corruption research involve just such debates over the relative costs of different types of corruption in different settings. Rothstein (2010) would simply short circuit that debate by privileging one of the many costs of systemic corruption.

For me, a more fruitful approach is to describe the range of phenomena under study and to assess the relative costs of each relative to the costs of prevention. This may involve difficult tradeoffs between competing values that cannot easily be measured using a common metric, but that approach promises a richer and more nuanced set of research questions. Thus, I do not see the principal/agent approach as a restrictive one. It may fail to take account of dynamic factors and social forces, but it provides a valuable place to start and places the burden of proof on those wishing either to add additional complementary factors, such as vicious cycles, or to substitute an entirely different approach.

What then is the essence of that approach? Principals and agents operate within an institutional context. The insights of institutional economics are closely related to the economic analysis of corruption. Institutional economists and their political science fellow travelers stress the way the institutional context affects the behavior of individuals. They respond to the incentives, both carrots and sticks, created by institutions, broadly defined. The next step in the analysis is to study the incentives that face those with political and economic power to change the institutional structure in their favor. For a good introduction to the ambition and scope of the approach one should
consult the seminal work of Douglas North and his collaborators spanning thirty years (e.g. North 1981; North 1990; North/Weingast 1989; North/Wallis/Weingast 2009. See also Greif 2006). A top public official or private firm executive might reorganize an organization to create a more centralized structure or, conversely, to decentralize decision making to give more authority to those lower in the hierarchy or even to eliminate the hierarchy entirely (Williamson 1975). Political economists with an institutional focus study such questions as the impact of bureaucratic reorganization on public performance, the effect of privatizing formerly public services, the relative merits of presidential and parliamentary democracies, and the role of independent courts, central banks, and regulatory agencies. They study both how people and firms respond to existing institutions as well as the political and economic incentives to change institutional forms (for overviews see, e.g., Mueller 2003; Weingast 2002; Weingast/Wittman 2006).

Some of this analysis, both theoretical and empirical, discusses corruption along with other incentives to shirk through laziness or a desire for leisure or views it as part of the general tendency toward rent seeking in public life (North/Weingast 1989; North/Wallis/Weingast 2009). It asks how political incentives change with changes in government organization and studies how incentives and opportunities can lead to institutional change. However, corruption is seldom the subject of detailed analysis. Recent work on corruption from a wider range of scholars is helping to remedy that lack, but it needs to be more closely integrated into the general fields of political economy and institutional analysis (for one example of such an effort see Glaeser/Goldin 2006).

The economic analysis of corruption models private individuals and firms outside government as active players. They do not passively vote for politicians, apply for public benefits, or bid for contracts. Rather they strategically interact with officials and politicians to further their own interests. Corrupt officials may pressure them for payoffs by, but they may also actively seek to subvert public programs to favor themselves. They may accept payoffs from politicians in return for their votes or pay politicians to get private benefits. The basic framework follows research on rent seeking in institutional economics but is more nuanced and complex. The problem for principals is not just to incentivize agents but also to confront the three-sided nature of transactions between principals, public agents, and the outsiders with whom they must deal. Some of the insights generated by the analysis of corruption in the public sector apply to any hierarchy, public or private. Although mechanisms of control may differ between public and private entities, many of the same incentives for corruption arise (Rose-Ackerman 1978: 189-209).

The institutional economics of corruption highlights the way bribery affects both the efficiency and the fairness of public sector actions. Agency/principal relations pervade government, and most agents either deal directly with the public or have access to public resources that could be appropriated
for their own benefit. Hence, it is important both to find loci of corrupt incentives and to ask how corruption might affect the effectiveness of government action. In other words, there is both a positive and a normative aspect to the analysis. Some institutional economic analysis claims to be purely positive. It does not make judgments but simply reports how the incentives created by different institutions can be expected to affect behavior. This neutral stance is not possible in the analysis of corruption, a loaded term that comes with its own normative baggage. Rather one needs to combine institutional economics with welfare economics to assess the impact of corruption on government functioning in terms of both efficiency and fairness.

Begin with a simple corrupt situation. Bribes paid to agents may distort their choices away from the aims of their principals. If those aims further the efficient allocation of resources, bribery is inefficient. The analysis, however, extends beyond efficiency. If, for example, the goal of a public program is to benefit the poor or to select the most qualified, substituting willingness-to-pay for these criteria undermines the program’s goals. In general, bribes are not just transfers from one pocket to another. They affect the behavior of those who pay and those who receive payoffs. In this they are similar to prices or to contractual terms. They provide incentives that work against the aims of a public program or, at least, increase its cost to the beneficiaries (Rose-Ackerman 1978: 137-166; 1999: 7-26).

To proceed, I differentiate between low-level opportunistic payoffs, on the one hand, and systemic corruption, on the other, that implicates an entire bureaucratic hierarchy, electoral system, or overall governmental structure from top to bottom.

Low-level corruption occurs within a given institutional framework where basic laws and regulations are in place, and implementing officials seize upon opportunities to benefit personally. Here is where the principal/agent model is most obviously applicable. There are several generic situations.

First, a public benefit may be scarce, and officials may have discretion to assign it to applicants. Suppose that superiors cannot observe payoffs but can easily check if any unqualified applicants receive the benefit. Then the qualified applicants with the highest willingness to pay and the fewest scruples will get the benefit in a corrupt system. This would seem the least problematic case from an economic efficiency perspective. The payoff is a transfer, and the benefit goes to those who value it the most in dollar terms. The main problems are the transaction costs of corrupt deals and the elimination of qualified beneficiaries with high scruples. The obvious policy response is to sell the benefit legally. It is a good test of this strategy to ask if any significant public policy goal would be violated by charging fees as a rationing device. For example, if a country has a limited supply of import licenses to allocate, selling them to the high bidder will usually be the efficient strategy. Most economists would recommend doing away with import quotas entirely, but if that is not an option, an auction is second best. Related cases are trans-
parent auctions for privatized firms and broadcast licenses, and competitive bidding for contracts.

Second, consider the ways in which the first example is idealized. In particular, suppose that low-level officials are required to select only qualified applicants and that their exercise of discretion cannot be perfectly monitored. The overall supply may be scarce, as in the above example (for example, university places or government-subsidized apartments), or open-ended (for example, driver’s licenses, business firm registration, certificates of occupancy for new construction). In either case, the officials’ discretion permits them to collect bribes from both the qualified and the unqualified. The level of corruption will depend upon the options for the qualified. For example, can they approach another, potentially honest, official? If they can, no individual corrupt official has much bargaining power and so cannot extract high payoffs. In some cases, inter-official competition might push bribes so low that they are no longer worth accepting given the risks of disclosure (Rose-Ackerman 1978: 137-150, Shleifer/Vishny 1993). Incentives for payoffs will also depend upon the ability of superiors to monitor allocations. For example, a firm that builds a shoddy building may be able to hide the flaws, at least until it is tested in a fire or an earthquake. Government contracting and the sale of state assets by lower level officials also often fit this case. Superiors cannot perfectly monitor official behavior so lower level bureaucrats can collect bribes that permit contracts to be given to poorly qualified firms and that allow asset sales to bidders who do not provide the state with the highest return.

Third, the bureaucratic process itself may be a source of delay and other costs. In that case incentives for corruption arise as applicants try to get to the head of the queue or otherwise get better service. To further exploit their corrupt opportunities, officials may create or threaten to create red tape as a means of extracting bribes. This strategy is plausible in many real world applications because even honest officials need to take some time and trouble to process applications.

Turn next to cases in which officials impose costs rather than benefits – for example, they seek to collect taxes or threaten citizens with arrest. They can then extract payoffs in return for overlooking the illegal underpayment of taxes or for tolerating illegal gambling and drug operations. More pathologically, they can demand payoffs in exchange for refraining from arresting people on trumped up charges.

Each of these potentially corrupt situations raises the question of how bribery occurs. What explains difference across individuals and societies in the incidence and level of payoffs? Part of the answer lies in the institutional framework that determines the nature and extent of the opportunities outlined above. However, within a given institutional environment, economic theory is poorly equipped to explain variation across individuals who face the same structural incentives. Some people clearly have more moral scruples or fear of exposure and punishment than others. Long-term, stable trusting relation-
ship further corruption in some cases and substitute for bribery in others. Both individual attitudes toward illegal activities and interpersonal relations affect the extent of corruption and the choices of individuals. However, given some background level of individual scruples and inter-personal solidarity, economics predicts that institutional changes that increase financial benefits and reduce costs will increase the incidence of corruption. The level of bribes paid is a function of the benefit at stake, the relative bargaining power of bribe payers and recipients, the risk of exposure, and expected punishments. Both cultural factors and objective measures of deterrence are important. Consider, for example, Fisman and Miguel’s (2007) study of violations of traffic laws in New York City by United Nations diplomats. During a period when the law was not enforced against them, the level of violations was roughly correlated with Transparency International’s Corruption Perceptions Index. However, the overall level of violations fell dramatically after a change in policy that gave the embassies an incentive to pay. Both financial penalties and ‘culture’ mattered.

In general, low-level corruption can lead to the inefficient and unfair distribution of scarce benefits, undermine the purposes of public programs, encourage officials to create red tape, increase the cost of doing business and limit entry, and lower state legitimacy. Notice, however, that corruption may have political benefits for incumbent politicians. The bribes may be paid at the lowest level in the hierarchy, but they may be part of an organized system that is used to favor political allies and to build campaign war chests, and not only to obtain individual cash benefits. At that point low-level corruption merges with high-level corruption.

‘Grand’ corruption shares some features with low-level payoffs, but it can be more deeply destructive of state functioning – bringing the state to the edge of outright failure and undermining the economy. The analysis of grand corruption must account for the possibility that top officials and politicians will create institutional environments that facilitate their illicit enrichment. Unlike low-level corruption, the institutional structure can be modified to increase the value of corrupt deals. To capture the reality of some cases we need to take account of the role of powerful non-governmental actors, be they large firms, criminal mafias, or other powerful bodies. Here, I assume that the general public is the principal and is harmed by grand corruption. However, this harm can occur even if ordinary citizens know nothing about corruption and the harm it causes. In that case, they are not in a position to correct the problem. Efforts at reform initiated by outsiders need to begin by convincing the populace that their interests are being undermined by corruption. In some cases, however, even if the damage done by corruption can be documented, no one may have the power or the political will to make systemic changes. I distinguish three variants.

First, a branch of the public sector may be organized as a rent extraction machine. For example, top police officials may organize large scale corrupt
systems in collaboration with organized crime groups, who are given a de facto monopoly on illicit activities. In practice, it may be difficult to know whether the police or the criminals have the upper hand. In the extreme, police may even arrest members of competing groups so as to maintain the dominant group’s monopoly. Policing is probably the most dramatic example here, but tax collection agencies and regulatory inspectorates, to name just two, can also degenerate into corrupt systems where high-level officials manage and share in the gains of their inferiors (Das-Gupta/Mookerjee 1998; Rose-Ackerman 1978: 109-136; 1999: 27-38). These cases provide particularly strong examples of the vicious spirals discussed above. The principal/agent model still applies, but the proximate principal inside the bureaucracy becomes a pure rent-extracting body. Reform cannot occur without a thoroughgoing restructuring of the corrupt body that will require replacing personnel, changing its tasks, and introducing outside oversight, perhaps from civil society (Bardhan 1997: 1330-1334; Rose-Ackerman 1999: 107-109; Rothstein 2010).

Second, a nominal democracy may have a corrupt electoral system, with money determining the outcome. Here, there are many slippery slopes and difficult lines to draw. Political campaigns require funds from either public or private sources. Voters need to be persuaded to support particular candidates in one way or another, and corruption can enter in four ways. It can undermine limits on spending, get around limits on the types of spending permitted (that is, no direct quid pro quos), and subvert controls on the sources of funds. Finally, politicians may make payoffs to voters to get their support. There is no agreement about what should count as ‘corrupt’ in this context. The extremes are clear – vote buying and outright quid pro quo purchases of public benefits, but the more subtle distinctions are hotly contested (Rose-Ackerman 1978: 15-85; 1999: 127-174). Here as well, the analysis of corruption supplements work that studies the tradeoffs between the search for campaign funds and appeals to ordinary voters but ignores illegal behavior.

Third, governments engage in large projects can transfer assets in ways that have a significant effect on the wealth of domestic and foreign businesses. For example, they regularly contract for major construction projects such as highways and port improvements, allocate natural resource concessions, and privatize state-owned firms. High-level politicians may organize state institutions so that they can use their influence to collect kickbacks from private firms in all of these areas. The relative power of government officials and private interests may, in practice, be difficult to sort out. The extremes are kleptocracy, on the one hand, and state capture by powerful private interests, on the other. In some cases, concentrated power exists on both sides, and the institutional structure is a bargaining situation similar to a bilateral monopoly in the private market (Andreski 1968; Johnston 2005; Kahn/Jomo 2000).

Grand corruption can undermine state legitimacy and economic functioning. Most problematic is bilateral monopoly, where a narrow set of pow-
Some scholars dispute this claim. Using a market analogy, they observe that a monopolist seeks productive efficiency, and, in the presence of external effects and free riding, it is better to centralize power over resources. In Mancur Olson’s term (1993), a ‘stationary bandit’ is better than a large number of ‘roving bandits’. The evidence suggests, however, that most kleptocrats do not act like efficient monopolists. They are not that powerful. Far from choosing efficient projects that maximize monopoly profits, they need to buy off supporters. Given the risk of losing power, they often transfer their profits outside the country for safekeeping. The analogy to a private monopolist misses these aspects of kleptocratic government (Rose-Ackerman 1999: 114-124; Rose-Ackerman 2003).

Some claim that deep historical factors are the fundamental determinants of corruption and also can explain the impact of corruption on economic growth and other variables. If true, then one might conclude that countries cannot escape their history – some countries’ pasts inexorably generate corruption. But that policy conclusion is overly pessimistic. Some statistical work uses historical factors for identifying purposes because they are clearly independent of present-day institutions. Thus, they solve the problem of simultaneous causation. Statistical work variously finds that settler mortality, colonial heritage, religion, and distance from the equator are good proxies for today’s institutional structures (e.g., Acemoglu/Johnson/Robinson 2001). But these results do not imply that a country with background conditions associated with corruption and low growth cannot change, although it does suggest that change may need to be more radical and far reaching than in other countries. The massive transformations that have occurred in Central Europe, the former Soviet Union, China, and Vietnam demonstrate that change is possible and can occur quite rapidly. The transitions to democracy in Latin America and Asia, however unfinished and rough-edged, demonstrate the same point. Furthermore, in countries where widespread corruption has gone along with a strong growth performance, one can seek to understand both why corruption did not hold back growth and whether corruption had a disparate impact on particular sectors and social groups who bear the brunt of the corrupt gains earned by others. Such research could provide a more nuanced approach to policy-oriented studies that aim to understand how government and private sector institutions affect economic outcomes and the legitimacy of the state.

Research in anthropology and sociology stresses that cultural and social factors determine the level of corruption and explain why behavior is seen as corrupt in some societies but not in others (see de Zwart, this volume). Here too, the important issue from a policy perspective is whether these factors are exogenous or whether people react to others’ behavior. For example, trust and trustworthiness can be a function of the behavior of others (Hardin 2002). A rational person will trust only those he or she believes are trust-
worthy. A person may be trustworthy not only as a result of moral scruples but also as a way of benefiting from the trust of others over time. In addition, people’s view of the legitimacy of government may also depend up the fairness and even-handedness with which it operates. If some obtain benefits through corruption, others may view the state as illegitimate and become corrupt as well. As Rothstein (2010) argues, one advantage of universal benefits is that the state avoids having to decide who qualifies.

2. Empirical studies of the institutional economics of corruption

Empirical research on the economic determinants of corruption takes several forms. I describe research based on cross-country indices, studies that concentrate on institutional structures, results from surveys and experiments, and individual sector studies (see Rose-Ackerman 2004; 2006 for more details and references).

2.1 Cross-country studies

Cross-country research is mostly based on two similar indices of corruption developed by Transparency International (TI) and by the World Bank Institute. Both data sets are derived from perceptions of corruption as reported by the international business community and by experts in particular countries and regions. Thus, the indices do not represent hard measures of corruption, but both appear to capture, in a general way, its level as perceived by knowledgeable observers.

These indices have spawned a large number of studies demonstrating that corruption is associated with harmful outcomes and that institutions matter for growth. High levels of corruption are associated with lower levels of investment and growth, and corruption discourages both capital inflows and foreign direct investment (Lambsdorff 2003a; Mauro 1995; Wei 2000). Acemoglu, Johnson, and Robinson (2001) find that when the risk of expropriation is high, growth rates tend to be low. Most measures of institutional quality are correlated, and in this case, expropriation risk and corruption go hand in hand so that the same association holds for corruption. Corruption lowers productivity, reduces the effectiveness of industrial policies, and encourages business to operate in the unofficial sector in violation of tax and regulatory laws (Ades/Di Tella 1997; Lambsdorff 2003b; Kaufmann 1997).

Highly corrupt countries tend to under-invest in human capital by spending less on education, to over-invest in public infrastructure relative to private investment, and to have lower levels of environmental quality (Mauro 1997; Esty/Porter 2002; Tanzi/Davoodi 2002). High levels of corruption produce a
more unequal distribution of income under some conditions, but the mechanism may be complex – operating through lower investments in education and lower per capita incomes (Gupta/Davoodi/Alonso-Terme 2002; Gupta/Davoodi/Tiongson 2001). Corruption can undermine programs explicitly designed to help the poor. For example, Olken (2006) shows how corruption and theft undermined a rice distribution program in Indonesia. Corruption and theft apparently turned a welfare-improving program to one that was welfare-reducing.

Corrupt governments lack political legitimacy (Anderson/Tverdova 2003) although the political supporters of corrupt incumbent governments, not surprisingly, express more positive views. Surveys carried out in four Latin American countries in 1998 and 1999 showed that those exposed to corruption had both lower levels of belief in the political system and lower interpersonal trust (Seligman 2002). Surveys of firms in countries making a transition from socialism provide complementary findings. Firms with close connections with the government did better than other firms, but countries where such connections were seen as important for business success did worse overall than those where political influence was less closely tied to economic success (Fries/Lysenko/Polanec 2003).

In circumstances of low government legitimacy, citizens try to avoid paying taxes, and firms go underground to hide from the burden of bureaucracy, including attempts to solicit bribes. Using data from the World Values Survey and Transparency International, Uslaner (2010) shows that high levels of perceived corruption are associated with high levels of tax evasion. Similarly, Torgler’s (2006) study of attitudes toward tax evasion in Central and Eastern Europe show that when individuals perceived that corruption was high, they were less likely to say that people have an obligation to pay taxes. Thus, one indirect impact of corruption is to persuade people that it is acceptable not to pay taxes because government has been captured by corrupt officials and those who support them. As a consequence, corrupt governments tend to be smaller than more honest governments, everything else equal (Friedman/Johnson/Kaufmann/Zoido-Lobaton 2000; Johnson/Kaufmann/McMillan/Woodruff 2000). Thus in corrupt governments, the individual projects are excessively expensive and unproductive, but the overall size of the government is relatively small.

Unfortunately, the consequences of corruption are difficult to distinguish from the causes; the causal arrow appears to go both ways. Most of the results reported above could be flipped so that causes become consequences. An iterative process may operate where corrupt institutions limit growth and low growth encourages the development of corrupt institutions. Kaufmann, Kraay, and Mastruzzi (2006) examine the issue of causation econometrically and claim that the dominant direction of causation is from weak governance, including high corruption, to low growth. Under this view, the prescriptions of economists who urge countries to get their macro-economic incentives
right will not work unless the state has institutions capable of putting such policies into effect. Even if there is a feedback mechanism from low growth to high corruption and from high growth to low corruption, the growth process cannot begin without reasonably well-functioning institutions.

However, there are distinct limits to cross-country research. It assumes enough regularity in the phenomenon so that a single statistical model can cover the world. The relation between macro variables and corruption will indeed distinguish between very corrupt and very clean states. In the former, state failure is so pronounced that pro-growth policies cannot be carried out by the government. In the latter, the state is competent, and citizens support high taxes because their funds are used effectively to provide public services. But most countries fall in the middle range, and here the connection is less clear. Countries with similar rankings have very different institutional environments so that corruption is concentrated in different sectors. Furthermore, indices based on the perceptions of business investors may miss corruption experienced by ordinary people. This diversity in the middle counsels an emphasis on research at the sector and country level.

2.2 Corruption and government structure

Cross-country research does not test the actual mechanism that connects institutional measures to economic outcomes. Some research, however, has begun to explore these connections. These studies ask whether the specific nature of corrupt deals can help explain their impact and whether a country’s constitutional structure is a determinant of the levels and types of corruption.

Kunicová and Rose-Ackerman (2005) study the links between constitutional structures and voting rules, on the one hand, and perceptions of corruption on the other. They distinguish between corruption that enriches elected officials and legal public spending programs with regionally concentrated benefits – ‘pork barrel’ politics. Only the former falls under their definition of corruption. They show that presidential systems are more corrupt, on balance, than parliamentary democracies and that proportional representation systems are more corrupt than first-past-the-post systems. The worst systems combine strong presidents with proportional representation under which a powerful executive can negotiate with a few powerful party leaders to share the spoils of office. Their results confirm Persson and Tabellini’s (2003) finding that proportional representation system are more corrupt than first-past-the-post systems but contradict their more favorable results for presidential systems (see also Peters, this volume).

Federalism and decentralization add another dimension. One simple view derives from work in the political economy of institutions. Drawing on Barry Weingast’s notion of market-preserving federalism, this view holds that decentralization will limit corruption both by making it easier for ordinary peo-
ple to monitor government officials and by giving them an exit option if officials are overtly corrupt (Weingast 1995). However, some work finds that federal states are more corrupt than unitary ones (Treisman 2000). Moreover, there are conceptual reasons to doubt a strong connection between decentralized government and integrity. Smaller polities may contain more uniform groups of people so that politics may be less competitive, leading to increased corruption. Local elites may seize control of a town or village government, but they may face greater collective action problems in larger government units (see Peters, this volume). A local kleptocracy may be especially difficult to control in rural areas in poor countries where wealthy landlords exercise political power and ordinary people have no realistic exit options (Bardhan and Mookherjee 2006).

2.3 Surveys and Experiments

Much recent research uses surveys and experiments to understand how business people and ordinary citizens experience and evaluate corruption. Surveys help to capture the way corruption affects different parts of society, and they highlight the connections between corruption and government legitimacy. Experiments permit a more controlled assessment of human behavior, but they may miss the nuance of real world situations where subtle interpersonal cues may operate to encourage or discourage payoffs.

The best survey work is based on households’ experience with public officials, not just individual attitudes. Jennifer Hunt (2006), for example, uses detailed data from Peru to calculate the ratio of bribes paid to usage rates. She finds that the judiciary is the most corrupt institution, followed by the police. Surveys of business firms provide another window on the phenomenon of corruption. For example, World Bank surveys in Central and Eastern Europe document the specific ways that corrupt officials and intrusive rules affect businesses and show how corrupt environments impose costs (Hellman/Jones/Kaufmann 2003; Hellman/Kaufmann 2004; Johnson/Kaufmann/McMillan/Woodruff 2000).

Surveys demonstrate how firms manage to cope when legal institutions are weak. Informal relationships built on trust and private sanctions exist but cannot easily bear the entire burden of maintaining business deals. Weak states produce widespread corruption, private protection rackets, and the flouting of regulatory and tax laws. As I noted above, the system may be caught in a trap in which corruption breeds even more corruption in the future until it is all pervasive.

One institution that is particularly important is the security of property rights. In Eastern and Central Europe countries with more secure property rights have higher levels of new investment by established firms (Johnson/McMillan/Woodruff 2000; 2002). Property rights are less secure if brib-
ery and protection payments are common and if the courts do not enforce contracts. Thus, corruption is not a route to a secure relationship with the state but opens up possibilities for extortion. Furthermore, if firms pay for protection, either to private mafias or to the police, this reduces the security of rights as well (Johnson/McMillan/Woodruff 2002). Trust in the state as a reliable actor seems important. Firms appear willing to substitute legal and impartially administered taxes for the uncertainties of bribe payments and the dangers of relying on private protection services (Friedman/Johnson/Kaufmann/Zoido-Lobaton 2000). Thus, when corruption becomes part of the institutionalized business environment, it has serious feedback effects on the operation of private markets.

One way to study the impact of institutional arrangements on behavior is to construct experiments where the institutional environment can be manipulated to study behavioral responses. In the study of corruption, a few experiments exist, and this appears to be a fruitful area for future research. The experiments provide an interesting twist on the large body of research on trust games (Abbink 2006). Under a common laboratory scenario, payoffs in trust games are highest if players completely trust each other, but strict rationality predicts that players will maximize short-term gains by acting in untrustworthy ways. Experimental results are usually somewhere in the middle. The twist is that, in conventional games, trust is a desirable trait, but in corrupt situations trust permits illegal corrupt deals that are harmful for society. In the experiments the players exhibit some trust, meaning that they are willing to make payoffs that are destructive of other goals. Players do not take into account the social losses of their actions and are most strongly deterred by the possibility of punishment.

Researchers are beginning to carry out field experiments to see how corruption affects the delivery of public services or the allocation of licenses. Much of this work is still in progress, but a study of corruption in obtaining drivers’ license illustrates their potential (Bertrand/Djankov/Hanna/Mullainathan 2006). That study documented how corruption raised the price of obtaining a license and permitted many unqualified drivers to be certified.

2.4 Sector Specific Anti-corruption Policies

Corruption is sometimes discussed as if it were a broad generic concept. In practice, however, it operates at the sector level. Thus, it is important to study how the institutional environment creates incentives for corruption in the delivery of particular public services, such as education, health, highways, or national defense. A World Bank publication provides an excellent introduction to this approach and draws on related work based on analyses of government service delivery, public works, tax collection, and customs (Campos/Pradhan 2007). This research highlights the importance of melding technol-
Reinikka and Svensson (2004) carried out a detailed study of the connection between accountability and corruption in the delivery of public services based on primary school financing in Uganda. They documented the severe leakage of central government funds as it was passed down to the grass roots – one dollar of central government funds only produced $0.13 in budget for local schools. This finding galvanized public opinion, and central government officials took action. They introduced a simple, information-based strategy combined with better monitoring from the center. After the reform’s introduction, one dollar expended by the center produced $0.80 of local school funds, and school enrollment rose. Much of the improvement can be explained by a newspaper campaign that allowed parents to know how much money their children’s school was supposed to obtain.

This example shows how institutions interact to produce or to stymie reform. An information strategy cannot be effective on its own. In Uganda, already existing parent-teacher groups used the information to monitor school spending. In other countries, more costly and complex interventions might be necessary. Education may be a special case because it is a service used by children on a daily basis, unlike, say healthcare, where demand is more episodic, and sick and injured users are vulnerable to exploitation.

Public works are a common locus of corruption. Golden and Picci (2005) have studied public works in Italy. They combine measures of the physical public capital stock with measures of historical costs to estimate the relative efficiency of public spending throughout Italy. Building on research that finds that corruption and waste go together, they assume that corrupt officials encourage wasteful projects as a way of generating rents. Overall, the physical index favors the northern part of the country, and the financial index favors the south. The ratio of the two provides a rough measure of the relative levels of corruption and inefficiency. Golden and Picci go on to show that regions with unproductive public spending tend to have more than their share of deputies accused of corruption. Political corruption is associated with waste and kickbacks in public contracts.

Tax and customs collection are a frequent locus of payoffs, and international financial institutions have many times attempted to reform these activities through institutional innovations. Research in Africa and Latin America has studied the impact of semi-autonomous revenue agencies (Taliercio, Jr. 2004) and of customs reform (De Wulf/Sokol 2004). The aim is to limit political interference and to get away from the constraints of the civil service system. In most cases reforms initially produced gains in revenue collection and falls in corruption. But as with many initiatives, the gains often were not sustained over time. For example, Fjeldstad (2006) studied the Uganda Revenue Authority (URA). After marked initial success, revenue be-
gan to fall, and corruption reemerged. He argues that the relatively high financial rewards given to the staff were ineffective in deterring corruption. Employment in the relatively well-paying URA escalated workers’ obligations to provide financial support for their extended families creating incentives to take bribes. Political interference and patronage also undermined reform goals. The tax law was complex and unclear and left room for widespread discretion. This encouraged people to use connections to get special treatment.

To avoid these political and social dynamics, it is sometimes possible to turn over an aspect of government operation to an organization located entirely outside the country. Yang (2006) has examined the most prominent real-world example – private pre-shipment inspection (PSI). PSI firms value imported goods before they leave their port of origin and then earn a fraction of the value of the imports. More than 50 developing countries have hired PSIs over the last two decades. At the aggregate level, these programs appear successful and cost effective. Reductions in corruption are a prominent cause of these increases. But success is not guaranteed, and the failures shed light on the conditions under which such programs are likely to succeed. Yang focuses on two countries: the Philippines and Colombia. He finds that if PSI only covers a subset of potential methods of avoiding import duties, then there can be substantial displacement to alternative methods. Furthermore, PSI firms and their employees must not be corruptible themselves.

3. Conclusion

The study of corruption is well suited to the institutional economics framework. An understanding of the incidence and effect of corrupt payoffs and private networks requires one to understand how institutions work – both formal structures and informal networks. Further, corruption benefits the recipients of bribes and may also benefit those who pay if they can obtain undeserved or expedited benefits in return. Hence, on the one hand, corrupt officials and politicians may seek to reorganize the state to increase the opportunities for enrichment. On the other hand, satisfied bribe payers have no incentive to blow the whistle on the practice. As I recognized in my first 1978 book, corruption is an archetypal topic for political economic analysis. Even if one evokes cultural and social factors, one cannot deny that self-interest plays a prominent role. Reform may seek to change the norms of officials and private individuals, but it must also deal with the underlying incentives for payoffs by rearranging the rewards and costs of corrupt and honest behavior. Institutional reform is a necessity and must take into account the insights of institutional economic analysis.

To see how corrupt incentives operate in practice, this chapter has selectively summarized empirical research on corruption that emphasizes the role
of institutions. Common patterns recur throughout the world and across sectors, so that the lessons learned in one area have relevance elsewhere. But it is also essential to examine the institutional structure of particular systems or sectors. The underlying economic incentives for corruption in public works, the police, the judiciary, tax and customs collection, and procurement are common throughout the world. Yet the incidence and severity of the problem vary widely. Effective policy cannot just concentrate on catching and punishing ‘rotten apples’. Policy must address the underlying conditions that create corrupt incentives, or it will have no long-lasting effects. The sorts of structural and incentive-based policy responses that are outlined here – both the successes and the failures – can guide governments that are genuinely committed to reform.

Yet, I end on a note of caution. Clever technical solutions, based on economic incentives, may not be enough. If corruption is one of the pillars supporting a political system, it cannot be substantially reduced unless an alternative source of revenue replaces it. Powerful groups that lose one source of patronage will search for another vulnerable sector. Strong moral leadership is necessary but not sufficient. Tough political and policy choices need to be faced squarely. It is little wonder that effective and long-lasting corruption control is a rare and precious achievement. But it is not beyond the power of determined and intelligent political reformers.
Chapter 5: Understanding corruption: How systems theory can help

Petra Hiller

1. Introduction

Network relations have been a principal focus of empirical policy and administration research at least since the 1980s. Examples that immediately spring to mind are the debate on neo-corporatism and the ‘cooperative state’, not to mention the abundance of literature that has analysed policy networks. Viewed from the perspective of political and administrative science, networks of this kind react to difficulties in the administration of national policy. Networking is an attempt to control environmental uncertainty. Less often discussed in this context, however, is the perception that under conditions of this kind, the opportunities for corruption also increase.

More recent studies have shown that corruption primarily takes place inside a network of structures interlinking politics and business (Bannenberg 2002; Höffling 2002). The economisation of the public sector proceeding under the banner of ‘New Public Management’ seems to be giving further impetus to this trend (Maravić 2007). If this is true, then we must ask (a) why corrupt networks are mainly found in politics and (b) how sociologists can best explain this.

I develop a proposal in this article that seeks to answer these two questions by considering the issue of ‘corruption and networks’ within the context of social theory. The adoption of a social theory perspective entails that the terminology and standpoints habitually applied in corruption research may require some adjustment. The following deliberations thus begin with the conviction that a sociological analysis must break free of the concepts of corruption developed by political science research (2). The alternative I propose is to explore corruption from an organisational and social perspective. This will allow us to conceive of corruption as a linkage of different horizons of meaning in social communication and therefore to identify a structural affinity with the constitutive conditions of networks (3). In a further step (4), I will investigate why the political domain appears to be particularly susceptible to corruption. The an-

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swear lies in the nature of moral observation, which personalises political communication and in this way fosters scandalisation of behaviour. Section 5 portrays network formation as a linkage technique that (in exactly the same way as corruption) represents a breakdown in functional differentiation. The concluding remarks on corruption and networks sum up this notion (6).

2. Corruption research

Corruption research is still guided by Joseph S. Nye’s definition of corruption as ‘behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence’ (1967: 419). Thus, research on political corruption understands it to mean abuse of political power, where abuse implies a breach of regulations involving the exchange of political power for other resources. And so political corruption denotes a manner of exerting influence on political decisions in order to serve particular interests at the expense of the general public. The classical definition thus depicts corruption as a kind of antonym to the ‘common good’ (Gebhardt 2003: 16). This conception of corruption has been refined in a variety of ways (cf. Gardiner 2005; Kurer 2003; Philip 2002). Approaches inspired by democratic theory now suggest that the distinction between private and public – which is a crucial element of the traditional definition of corruption – should be replaced by a distinction between inclusion and exclusion (Warren 2004). Generally, however, research on this topic situates political corruption at the level of individual behaviour and motive attribution (e.g., Graeff 2005; Jain 2001), and so crucial queries regarding the conceptualisation of its subject matter can only be resolved in definitional terms and not with the means offered by a social science theory. Some criticism has been voiced about this very issue. It has been asked, for instance, why corruption research should be restricted to examining economic advantages gained by individuals, why the acceptance of advantages on behalf of third parties (beyond family or private clique structures) should be excluded, why corruption should refer only to abuse of public resources, when legitimate exercise of influence turns into corruption and how this definition applies to the phenomenon of corruption networks. Problems of this kind, which are inevitable given a conception of corruption built on case studies and patterns of deviance, are discussed by Gardiner (2002). I argue that this type of approach fails to make use of the full potential of corruption research. It remains limited to describing types of behaviour and to characterising individual cases. Thus, corruption research does not arrive at a theoretically solid grasp of its subject.

My thesis is that this failure has the following cause: While it is true that corruption occurs through the exercise of influence and the assertion of inter-
ests at the level of organisations and networks, it is also true that corruption cannot be explained theoretically at this level. Sociological considerations must therefore approach the question at a more fundamental level and ask in which social structural conditions corruption arises. Consequently, a sociological exploration will not allow its viewpoint to be narrowed by political science considerations. The first task is to describe what happens in terms of the formation of social structures when corruption is observed in organisational contexts.

To this end, we must first examine the relationship between organisation and society and then strictly abide by the resulting distinction between system levels. The main theoretical and conceptual underpinnings used in this perspective have their basis in differentiation theory, which is the approach I will maintain in the following. I proceed on the assumption that only a conception of corruption which is grounded in social theory and which deviates from the popular conceptualisation found in the literature permits an adequate understanding of the problem. It will become clear following my proposed definition that the phenomenon of corruption does indeed have a special affinity with network formation, but that this association can also only be reconstructed within an analysis guided by social theory. Moreover, the analysis of organisation and society from the perspective of differentiation theory confirms the notion that structural formations such as corruption and networks should be described as effects of functional differentiation and not, as sometimes assumed, as a ‘de-differentiation’ phenomenon taking place in modern society.

In this theoretical perspective, the concept of corruption is used in a non-ontological manner. Niklas Luhmann’s systems theory with its differentiation theory perspective, which I will use in the following, is a constructivist observation theory. The epistemological background implies that systems theory does not consider the ontological characteristics of an object, rather asks how and by whom something is observed. In other words, within the framework of this epistemology, there are no definitions that are independent of the observer. Theory formation takes place at the level of second-order observations. A corresponding constructivist theory of corruption, which distinguishes itself from action theories, will thus not ask what corruption ‘is’ and what the causes of corruption ‘are’. Instead, the central question asked by such a theory will be how and by whom corruption is observed. Systems theory thus differs substantially from causal scientific theories of knowledge. Its method is functional analysis – a prerequisite of theory formation by abstraction. The advantage of this approach for the acquisition of knowledge is that one can use it to evidence general structure formations in society, which can then be compared in respect of functional equivalents (Luhmann 1970: 9-30).
3. Differentiation

These considerations lead us to the question as to what we would see if, instead of treating the phenomenon of corruption at the level of organisations and networks, we were to look at it from the point of view of functional contexts in society. Smelser (1971) has already presented a proposal of this kind based on differentiation theory. Drawing on Parsons’ theory of generalised interchange media, Smelser describes very precisely how social differentiation is a prerequisite for corruption.

Under Niklas Luhmann’s project of systems theory, social communication is structured in accordance with specific functions (politics, law, business, etc.). Here, Luhmann’s theory departs radically from Parsons’ ideas in that it switches from ‘action’ to ‘communication’ as the basic unit of operation of social systems. Moreover, Luhmann holds that functional systems in society are autopoietically closed systems. When functional codes are reproduced, only communications that are specific to the respective meaning system are recognised. This means, in turn, that at the level of functional systems, political decisions can only be justified politically and economic decisions can only be justified economically. Linkage between the codes of different meaning systems is therefore excluded. The legal system deals with each communication by distinguishing between legal and illegal, because this is the only kind of operation that has meaning for the legal system and is therefore suited to reproducing it (Luhmann 1981). All other types of communication, in other words communications that cannot be identified as being either legal or illegal but that may nonetheless arise in organisations of the legal system (political, economic, aesthetic, or religious decisions, for example), are not attributed to the functional system of law but to its social environment. Thus, in the functional differentiation is a mechanism that avoids confusion among functionally differentiated systems.2

But everyday experience tells us a very different story. Take the neoliberal ‘reforms’ of the European welfare state over the last twenty years, for instance. In areas of this kind, policy decisions are not only motivated politically, but increasingly also economically. And this does not only apply to politics. If we shift our focus to the legal system, we see that juristic decisions are not motivated purely legally, but that economic, pedagogical and sociological considerations are just some of other factors also brought into the equation. These examples demonstrate that the functional differentiation of society is by no means maintained at the organisational level. Functional systems quite evidently follow their own logic and, as a type of social system, this also goes for organisations. Thus, we must make a distinction be-

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2 I borrow the term ‘confusion’ from a formulation used by Luhmann (2000a: 92) to deal with the differentiation between role and person.
between functional logic and organisational logic. This insight gives us important pointers for an understanding of corruption based on social theory.

In everyday communication, the label of ‘corruption’ is primarily applied in cases where money has changed hands. The allegation of corruption implies that politicians and political organisations can be bought. From a systems theory perspective, the allegation of corruption simply means that the political system has been infiltrated by the logic of an extraneous system. In this particular case, power is exchanged for money and political decisions are no longer determined only by political concerns. More specifically, if corruption is the abuse of political power, then it is abuse in favour of a different logic – in this case an economic one. And this brings us to the proposed definition of corruption already found in Smelser (1971): What is observed as corruption is actually the linkage of different horizons of meaning in social communication. But how do these linkages of meaning that we call corruption come about? The answer to this question is not found in the functional contexts of society but at the level of their organisations.

In order to develop this argument, we must take Smelser’s considerations an important step further. Smelser’s conceptualisation does no more than observe an overlap in particular situations of different media of interchange between the public and the private sector. If we want to carry out a more thorough analysis, however, we must take the relationship between organisation and social differentiation into account (Luhmann 1975: 9-20). And so we arrive at a question which is given too little consideration in corruption research. As far as I can see, corruption research makes no systematic distinction between the political system and political organisations. And yet an analysis guided by differentiation theory of the relationship between organisation and society can yield much more telling insights. Some observers suggest that organisations can be allocated one-on-one to particular functional systems, or that they should be viewed as subsystems of functional systems. But we cannot resort to shortcuts here, such as linking organisations back to functional systems and seeing the latter as the determinants of organisations’ decision-making. The system type ‘organisation’ is not structured in accordance with the coding of functional systems (Nassehi 2002). For this would mean abandoning the distinction between organisation and society or, more precisely, abandoning the differentiation between system levels and system types in the framework provided by the theory of functional differentiation. A differentiation theory perspective will thus proceed on the assumption that there are complementary processes of system formation and will describe the reproductive link between organisational and functional systems in terms of a relationship of reciprocal conditioning (Lieckweg/Wehrsig 2001). If we consider that organisation has differentiated itself as a separate category of system that cannot be derived from functional systems, then we can achieve a more precise understanding of the problem by distinguishing between organisation and society. We can then acknowledge that organisations participate in
several different functional systems and that their decisions are not governed by just one logic of meaning. In order to survive in society, organisations frequently have to give weight to different criteria when making decisions. At the same time, it is clear that most organisations have a basic orientation towards a certain functional logic to which they are then assigned. It is only when we see a preeminent orientation and corresponding attributions to functional systems that we speak of economic, scientific, political, etc organisations.

The distinction between organisation and society is also important in another respect in any exploration of corruption. We had already established that functional systems are meaning systems: they are responsible for coding communication. As functional subsystems, they cannot make decisions and they cannot communicate. This is not the case for organisations, however, which are social systems that reproduce themselves by means of decisions and that communicate through decisions. This is very significant when it comes to the issue of corruption, for when corruption is observed, then it is in the form of decisions. Thus, corruption arises when organisations (networks, groups or individuals) that are assigned to particular functional contexts fail to uphold the appropriate functional logics in their decisions. Corruption is an example of organisations 'using the codes of functional systems in accordance with their own logic' (Lieckweg/Wehrsig 2001: 40). Alfons Bora has shown that these processes must on no account be considered as phenomena of de-differentiation of modern society. What is interesting is that such processes show that functional differentiation is maintained at the level of functional systems. Moreover, it is the very differentiation of specific horizons of meaning in communication (truth, money, power) that allows the linkage of different logics of meaning. If society were not functionally differentiated, then corruption could not be observed (cf. Smelser 1971). Using the example of the politicisation of legal decisions, Alfons Bora demonstrates empirically that functional differentiation is a prerequisite for the confusion of horizons of meaning, for these can only occur within this framework (Bora 1999). Social trends such as politicisation, juridification, scientification and economisation are thus consequences of decisions taken at the organisational level whose genesis cannot, however, be adequately described by organisational sociology. Each of these trends exemplifies the observation that the dominant orientation of an organisation’s decision premises has allowed itself to be corrupted by another logic of meaning. Now we may ask whether certain types of organisation are more susceptible to corruption than others, although it will not be possible to develop this question within the framework of systems theory. Systems theory’s strength lies in the elaboration of a general theory of formal organisation. But a general theory cannot achieve a re-specification with respect to particular types of organisation. While systems theory does differentiate organisations in terms of functional systems by asserting – as pointed out above – that organisations have a basic orientation
towards a certain functional logic, it does not provide a theoretical explanation for this (implicit) typologisation of formal organisations (cf. Tacke 2001).

To sum up, infiltration by an extraneous logic does not take place in the functional systems of society, rather at the level where decision-making is determined. This insight, which is owed to systems theory, takes us a decisive step further than Smelser’s analyses. The decision premises of organisations adopt extraneous criteria, and so it is at the level where decision-making is programmed that logics of meaning can become confused. Thus, it is not politics that is corrupt, nor even the political system, but the organisations, networks and individuals who belong to the political system (cf. Baecker 2000).

If we generalise this observation and view corruption in differentiation theory terms as a linkage between different system logics, then there are important consequences for a sociological perspective on the topic of corruption. On the one hand, it becomes clear that corruption emerges as society is differentiated. On the other hand, it likewise becomes clear that the phenomenon of corruption cannot be restricted to linkages between politics and business. This can be demonstrated by an example from the German health system known as the ‘heart-valve scandal’, which took place in the mid-1990s and involved a total of 1,860 doctors and technicians working in 418 hospitals. This group of people cheated the German health insurance funds, and thus their contributory members, by overcharging for heart valves and technical appliances. The intersection of different horizons of meaning, in this case medicine and business, is also evident in this example. And it is only because there is this intertwining of functional systems that we call corruption. When norms are breached within the confines of the context of medicine, then this is considered malpractice or a violation of the Hippocratic Oath. In the context of business, such deviations from the norm are said to constitute fraud, bribery, or white-collar crime in general. But corruption is only observed when different horizons of meaning intersect. And there is no need either for money to change hands or for the law to be broken in order for corruption to be observed. The conceptualisation of corruption I have proposed here as the linkage of different horizons of meaning in social communication allows us to compare very different forms of corruption from the same perspective.

An example of corruption without money changing hands can be found in the practice of linking science with politics. In other words, scientists are corrupt when their work is guided by political rather than truth criteria. Such work is then recognised as being ‘partisan’, for example as being too friendly

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3 The numbers involved are provided simply to give an idea of the empirical dimensions of a corruption network. For additional data and a description of this case, cf. Scheuch (2002).

4 The example does not refer to a kind of science that can be bought, rather to science that proceeds on the basis of a particular ideological standpoint.
to trade unions, and is filtered out of scientific communication. The same kind of corruption can be found in the art world, especially in the case of commissioned work. An artist can be rapidly judged to have succumbed to corruption when expectations that are external to art (e.g., political correctness) become relevant.

Another example of a system being infiltrated by an extraneous logic is when political decisions are based on religious arguments – for example, in the case of political decisions regarding the application of reproductive medicine, or when the question of tolerance of religious symbols in schools is on the political agenda. There are many other examples, and in every single case what we are clearly dealing with is a breakdown in functional differentiation at the level of organisations and networks.

This conception of corruption, which is grounded in social theory and defines itself in terms of differences in meaning and the linkage of different meanings, reframes the questions at the heart of corruption research. It does not distinguish between conformist and deviant behaviour, nor does it deal with any of the particularities of the abuse of public goods. The shortcomings of the latter kind of conceptualisation are all too familiar. Even the question as to what exactly constitutes ‘abuse’ can bog the debate down in definitional disputes. And so we arrive at a conception of corruption that may irritate some readers because it diverges so significantly from the customary definitions. This is not only because a theory-driven vision of corruption must ignore the boundaries of the public sphere in order to be able to show in a social theory analysis that such structural intersections occur in all sectors of society, not just in politics. Unlike everyday communication, in which corruption is always considered to be reprehensible, a theoretical reconstruction dispenses with normative preconceptions. This allows us to describe the constitutive conditions of such structural formations and also to examine cases of positively assessed corrupt behaviour. The evaluation of corruption does not

5 In the simplest scenario, a change in the law would suffice to render corrupt behaviour acceptable. Possibilities that spring to mind are funding for political parties and the ‘second’ jobs of parliamentary deputies. Indeed there have been many cases (not only in Italy!) of these and other kinds of corruption being legalised (Kurer 2003: 46).

6 In their reflections on the concept of corruption in everyday language, Fleck and Kuzmics point out that ‘what is considered morally reprehensible and whether certain behaviour is considered in this way varies from time to time (and from place to place), but the fact that attributing the label is equivalent to an evaluation is as good as unaffected by social change’ (1985: 7, original emphasis). This observation is also confirmed by the word’s etymology. Corrumpere: ‘spoil’, ‘debauch’, ‘damage’, ‘demolish’. Incidentally, the same connotation has also penetrated political and social science analyses. Cf., for example, C. J. Friedrich’s influential work ‘The Pathology of Politics’ (1972).

7 We are in good sociological company here, as shown by a glance at Max Weber’s work: ‘Weber consistently makes ‘technical’ use of the corruption and bribery vocabulary of Western culture, but he never adopts the values with which these labels are charged and sensationalised. Corruption and bribery are placed in a relational context and in most citations
take place at the level of its constitution, but at the level of its observation by society. And this brings us to the topic of ‘morality’.

4. Morality

It is easy to see that the social observation of corruption is a matter of moral communication. In the perception of third parties, the intermingling in politics of different logics of meaning is considered morally reprehensible. Observers can invoke the expectation that particular horizons of meaning (power, truth, etc.) should be upheld. When this does not happen, then we are faced not only with a violation of norms, but in a very moral sense with political or scientific or some other kind of abuse. Interestingly enough, such moralisations can be highly selective. If an entrepreneur against his or her own economic wisdom does not shut down a business outlet that is operating at a loss and motivates this decision politically in terms of a sense of responsibility for local employment and for the development of the region (thus linking the meaning horizons of politics and economics), then this entrepreneur would never be considered a corrupt businessman. Likewise, the decision to keep operations afloat would never be considered morally reprehensible. On the contrary, an entrepreneur of this kind would become the object of an unusual degree of moral esteem. Thus, morals do exist in business, and they also make a difference. A good example here is the Brent Spar case. Brent Spar was the name of an oil-storage platform located in the North Sea that the Shell company decided to sink on site in 1995 because this was likely to be cheaper than disposing of the structure on land. In a campaign that attracted huge media attention, the environmental protection organisation Greenpeace succeeded in persuading the company to dispose of Brent Spar on land after all for ecological reasons. In this case, too, then, there is an evident fusion of system logics that was by no means considered morally reprehensible. The same applies to the example mentioned above of religious arguments infiltrating politics. This type of linkage of different logics of meaning is usually not called into question for moral reasons. At least in Germany, one rarely hears the allegation that politics has allowed itself to be abused or corrupted by religion. So how do such differences come about? We will clarify this question in the following, for otherwise the proposed conception of corruption would appear substantially less plausible.

The observational framework of morality, that is, approval versus disapproval of behaviour (Luhmann 1978), is clearly applied selectively, for the linkage of different system logics is not always subject to disapproval. In fact, once again ‘at the end of the day it is the communicative purpose that they are identified clearly as ‘structural’ social realities, not as motivational phenomena or universal moral standards’ (Schmidt 2003: 72).
gives a moral quality to a meaning or a sign’ (Luhmann 1978: 52). The fact that the presence or absence of corruption depends on observation becomes very evident within the context of morality. And this becomes even clearer when an additional distinction is introduced, that is, the distinction between self-serving and selfless corruption.8

It can be assumed that politics is particularly exposed to moral judgement and that bribery in politics is considered especially reprehensible. One of the likely reasons is that political power is bestowed by third parties and also constitutes a relationship of subordination, so that the exercise of political power comes attached to moral expectations. This bond is further strengthened by the fact that moral communication has a strong personalising effect, which increases the likelihood of conflict. Thus, moral communication finds a particularly welcoming ground in politics, for in the political system, too, decisions are attributed to a substantial extent to individuals (Luhmann 2000b: 380). The strong tendency of moral communication towards personalisation and its associated tendency to engender conflict together facilitate the scandalisation of events in the political system (e.g., the exposure of corruption) – something which is much less easy in other subsystems of society.

But one can also find examples where there is no moral condemnation of political corruption. Morality is not always dosed out in the same way. Evidently, the moral observation of corruption depends on whether or not a special advantage has been obtained. The impetus to moralise wanes when the particular gain that arises as a result of corrupt behaviour is not received by an individual but actually benefits a collective interest (however ‘particular’ that interest may be). We are familiar with the moral evaluation of deviant behaviour when it takes place in a ‘selfless’ way. For instance, there is something altruistic about the destitute mother who steals to feed her children, and even criminal law takes her circumstances into account. Self-enrichment for reasons of greed, by contrast, is reprehensible. So we see that the judgement varies depending on whether exclusive advantage has been obtained or whether third parties have benefited. This is an example of the ‘double standard’ of moral communication (Luhmann 1978). It makes a significant difference to moral judgement if evidence of altruistic motivation can be found behind deviant behaviour. This is why moral judgement tolerates advantages obtained on behalf of third parties. As an example of the ‘double standard’ of morality, we note that until 1999 in Germany, bribes that were paid to attract foreign contracts were tax deductible as business expenses. The reason given for this practice was that it did not damage the German taxpayer in any way; on the contrary, when the bribes paid off, the taxpayer would be rewarded through the overall increase in tax revenue.9 In the moral

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8 This leads to an interesting departure from current definitions of corruption, which are based on the distinction between damage to the common good and no damage to the common good. Morality is interested in whether or not personal advantage has been ‘earned’.

9 This and the following example are taken from Scheuch (2002).
observation of corruption, therefore, it makes a difference whether the latter is seen as personal enrichment (self-serving behaviour) or as selfless corruption (Scheuch 2003). The party-funding scandal under the Kohl government demonstrates this distinction again quite clearly. When the then Federal Chancellor was accused of illicitly receiving two million Deutschmarks, he defended himself by saying that he had violated the German Political Parties Act only for the good of his party and that he had in no way personally enriched himself. In other words, he had engaged in corruption for the benefit of the corporation, as Scheuch dubs this pre-modern practice. And again morality (the moralising of society) makes a distinction here.

There are therefore thresholds of tolerance in the moral observation of corruption and these thresholds are based on just one convention: corruption carried out in the interests of the collective tends to be tolerated. This observation entails a whole package of other explanatory factors that cannot be detailed here. But it is now clear why international organisations are believed to be particularly corrupt. There are many familiar examples: member states of the European Union that exploit the EU budget for the good of their own countries (Warner 2000); the United Nations, which is believed to be so corrupt that the USA managed to refuse to pay its U.N. dues for years on the basis of this argument; the World Bank, which was pilloried by its own directors when corruption there got completely out of hand (Eigen 2003). Network relations in international and global organisational contexts offer the perfect structural conditions for the practice of selfless corruption.

Taken together, these considerations suggest an answer to the questions posed above as to why there is an absence of disapproving moral judgement when religious provinces of meaning infiltrate politics or when economic organisations act politically. The reason is that no self-interest is observed in these cases. Thresholds for moralisation vary depending on attribution. This is why politics can be corrupted by religion, science, law, etc. without this causing moral indignation. Likewise it explains the many examples of corruption for the benefit of the corporation (company, political party, school, etc.) that are not considered to be instances of corruption in everyday communication. And it also explains why politicians are often forced to resign as a consequence of relatively harmless cases of illicit gain: this is more likely to happen when their behaviour is considered to have been directed towards personal enrichment. These preliminary considerations indicate that the moral observation of corruption is one of the most exciting areas of corruption research. Thus, both for theoretical and empirical research, the most important question in the field becomes the problem of the second, moral observation of linkages of meaning – this is the challenge against which a definition of corruption based on differentiation theory must prove itself.

What still remains unclear, however, is the relationship between corruption and networks. This question will be dealt with in the following section.
5. Networks

If we think about networks in politics, then the spoils system comes to mind. Political organisations appear to specialise in controlling official posts and power advantages by means of networks of relations (Luhmann 2000a: 110). In the political domain, vacancies are usually not filled on the basis of external recruitment but as a consequence of internal promotion (Bosetzky 1974; Luhmann 2000a: 104). Networks of contacts are activated in order to push through exclusionary decisions (Luhmann 1995a: 237-264). While, on the one hand, careers are owed to the selection procedures practised by organisations (Luhmann 2000a: 101), on the other, selections (decisions) are always under-determined by formal criteria. Even supposedly ‘rational’ personnel decisions are influenced by particular interests. And yet patronage is not always met with disapproval. There are examples observed in political and economic organisations that demonstrate that the acquisition of loyalty through selective recruitment is socially acceptable. This applies, for example, to enterprises that favour the children of their employees when recruiting apprentices. There are strong indications that such family network structures also come into play in the allocation of apprenticeship places in the public administration and in connection with careers in party organisations.

We see patronage as the forecourt of corruption. In other words, we deviate from the familiar understanding of the concept, which includes patronage under the label of corruption as a form of ‘abuse of political power’. But if our point of departure is that corruption corresponds to the linkage of different horizons of meaning, then it becomes clear that patronage is a different type of use of political power. Contact networks of this kind do not seek to link different functional logics. Their brand of particularism organises recruitment within the confines of system contexts (political, economic, scientific, etc.). At the same time, however, this can constitute a kind of preparation for corruption, for in this way expectations can be established. Just as it is generally accepted in the case of gift exchange (Mauss 1990), it is not the good that is given that creates an advantage for the patron, rather the obligations that are created through the giving (and receiving!), however indeterminate these obligations may be. Patronage establishes expectations of reciprocity (Stegbauer 2002).

When what is at stake are not apprenticeship places or patronage, rather leadership roles for which external candidates are sought, networks become important in another sense. In this case, it is the contacts enjoyed by individuals that seem to legitimise a style of personnel recruitment that draws on personal relationships. In a sense, what is recruited is the candidate’s network, which is counted as a gain for the organisation. When it comes to filling leadership positions, professional personnel recruiters are actually expected to adopt this kind of approach. Thus, when it seemed that Deutsche Bank would soon need a new chief executive, it was felt that it might be a
good idea to offer the position to a well-known politician because he or she would be certain to have good contacts in Brussels. In this case, an individual’s network is explicitly identified as an outstanding characteristic and as a reason to consider a politician for the job and not, for instance, a candidate from the financial sector.10 This is a patent example of linkage between the meaning horizons of politics and business being viewed positively. Indeed, when it comes to positions on supervisory boards or advisory committees, this is one of their very functions. The same applies to the advisory committees of other organisations, such as in science, sports, or art. Their purpose is to act as a conduit for the infiltration of foreign rationalities into their own organisational context. Networks of this kind serve as a means of coordination with the organisation’s environment (Luhmann 1995a: 237-264). Such links are suspected in everyday communication as being corrupt when no visible ‘payment’ is made for the indulgences that are disbursed. For even if there is no proof of direct influence on the decision behaviour of individuals, everything we know about reciprocity tells us that ‘some kind’ of payment will be made.11 Reciprocity as a universal norm tells us that one-sided payments must always be seen as advance payments that imply the expectation of subsequent settlement: ‘Because reciprocity is a general guide to action with which everyone is familiar, it is almost unthinkable that a person could receive a gift without giving something else in return, especially when the names of the givers have remained a secret’ (Stegbauer 2002: 71). What immediately spring to mind here are anonymous donations to political parties. But the same also applies to white corruption, such as including politicians on the payroll of enterprises.

Both network research and corruption research identify particularism as the driving force behind the establishment of such arrangements. Differentiation theory takes a different perspective in that it examines the relationship between functional systems and organisations or networks. It thus becomes evident that different logics of meaning cross paths at the organisational and network level. The particularism of such structural formations can then be described as a secondary effect that only emerges as a result of the confusion of different meaning horizons. And the question as to which structural pre-conditions render networks susceptible to corruption can now be clarified. When organisations establish networks between politics and economics, they also create linkages between functional areas of society. In other words, network formation is a linkage technique.

This conception of network formation as a linkage technique draws on a proposal developed by Veronika Tacke (2000) in the context of network theory. She believes that networks are constructed by means of a reflexive com-

11 Let us recall at this point the ‘do ut des’ principle of Roman contractual law: ‘I give so that you may give’.
bination of *addresses* that are embedded in different contexts of meaning. Addresses are thus said to be ‘polycontextural’. The construct of addresses indicates that organisational networks – just like personal networks – do not link individuals, but the *characteristics* of individuals (or positions or official functions). This means that networks link specific – not arbitrary – addresses. These considerations evince the structural similarity existing between corruption and networks. It is therefore no surprise that the increased significance of personal and organisational networks discussed in the literature since the mid-1980s has also been seen in relation to ‘de-differentiation’. As Veronika Tacke shows, however, networks, in order to develop, require a functionally differentiated social structure. For it is only in such conditions that polycontextural addresses can emerge at all and then be re-combined in response to the new opportunities created by the linkage. We can also apply this reasoning to the level of organisational and contractual relationships and ascertain that the purpose of hybrid organisational networks is not to dissolve organisational boundaries; on the contrary, the parasitic nature of networks is evidenced by the fact that they latch onto existing structures: ‘Networks of this kind lack an independent existence from the outset, as many traditional interpersonal networks have. They only develop where exploitable institutions already exist’ (Teubner 2001: 561).

The structure of networks of personal contacts teaches us that successful relationship networks really do establish a link between addresses from different context meanings. Their particular characteristic is to constitute a bridge across ‘structural holes’ (Burt 1992). Ronald Burt has examined this quality in the organisational context, using the example of personal networks that transcend departmental, functional and group boundaries. Burt believes that the success of these structural formations lies in the intersection between ‘social worlds’ and that this is evidenced by the ‘heterogeneity of the contacts’ (Burt 2004). In the language of differentiation theory, address networks of this kind create a link between different horizons of meaning in communication. In this context, Burt emphasises the technique of *brokerage* underlying the linkage of addresses. And he also discusses the corrosive effects that may accompany brokerage, such as fraud, organised crime and corporate misgovernance (Burt 2004: 354).

If we want to look at networks of contacts between politics and business that are found beyond organisational boundaries, then we can examine this linkage technique in an area of the service sector that specialises in the creation of networks of addresses. I am referring to lobbyists who act as commission brokers or ‘PR advisors’ and who play a vital role in the realm of corruption. The particular service provided by these *address brokers* is to connect people from different functional contexts. Here, too, it is not the individuals themselves but the specific characteristics they possess – such as capacity to exert influence – as a consequence of their position in a particular organisation that make specific addresses interesting for networks. Both the
recruitment of specific addresses and the motivation to participate in a network are guided by the following consideration: What possibilities that I currently do not have can become available to me through the possibilities of others? The possibilities in question can range from access to intentions regarding future investments to decisions regarding the provision of intensive-care facilities in a particular federal state. Addresses are thus created depending on the particular opportunity of the moment. At the local level, and especially in the building trade, it is engineers’ offices and ‘project consultants’ who act as address brokers between business, politics and the public administration (Rügemer 1996). In every case the goal is to improve the available options, and this requires links that extend beyond system boundaries. Contact networks within and between organisations are activated when people begin seeking access to something that otherwise would be precluded to them.

The heterogeneity of contacts also becomes significant for another reason, and this requires a brief explanation in the context of corruption and networks. The fact is that the heterogeneity of the constituent contacts of networks significantly enhances their stability. This is because ‘there is a lack of instruments for returning favours and repaying assistance, provision of access and brokerage across the boundaries of meaning; as a result, the question of social compensation for services rendered must be shifted into the time dimension as a kind of credit against as yet unspecified return services’ (Tacke 2000: 305).

However, the possibility provided by polycontextural addresses to postpone and leave indeterminate the recompense not only extends to the temporal dimension. Gouldner (1960) speaks of heteromorphic reciprocity when who exactly is going to repay the debt remains unspecified. Thus, we can imagine that instead of the recipient of the original favour, a third party might step in who ‘some day’ will extend an as yet unspecified courtesy. Recalling how Tacke describes generalised reciprocity as a mechanism that stabilises network relations, this explains both how corruption arises through the establishment of relationships of dependency within networks and how such structures manage to survive over the long term. Höffling (2002) accurately reconstructs corruption as a social relationship. The significance of this in empirical terms can perhaps be illustrated by the case of a former German Bundestag deputy who was sentenced in 2003 to three years in custody for fraud involving bid rigging, among other offences. When it came to the repatriation of the monies involved and the public prosecutor offered the enterprises that had suffered the damage the funds seized from the guilty party, the former declined to enforce a claim. In this way, the six-figure sum was restored to the corrupt ex-politician.12 Thus, another stabilisation mechanism can also take effect in the context of corruption: The ‘resource of illegality’ (Luhmann 1995a: 256) is used by networks to protect themselves against dis-

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appointed expectations. Participation in an illegal network renders one susceptible to blackmail and it is especially because of this that a network of relationships can achieve a high degree of stability. Illegality can thus be used as a resource to protect the structure of such arrangements against deviance. And this is all the more true when the exit option can only be contemplated in association with the acceptance of one’s own downfall (Luhmann 1995b).

6. Corruption and networks

The above considerations have shown that both public opinion and research on the subject assume that there is a certain affinity between corruption and networks, despite the lack of a theoretical contribution that explains this constellation. The question that arises, then, is what form a sociological approach to the phenomenon might take. This text develops the theory that established definitions of corruption, which describe corruption in terms of exercise of influence and defence of interests, cannot provide satisfactory answers to this question. I argue that the structural conditions of modern society behind the emergence of corruption and networks cannot be reconstructed within the terms of this kind of definition. Thus, I propose the adoption of an approach based on differentiation theory. The latter theory provides an analysis of the social structural conditions of corruption and can reveal the way in which the macrostructure of modern society is circumvented at the organisational level. The comparative strengths of systems theory lie in analysis guided by social theory. If we look at corruption from the perspective of the functional contexts of society, then we come up against structural ‘confusions’ that are not provided for within functional differentiation. We find linkages between horizons of meaning that appear to deviate from social differentiation. Such observations generate irritation and society responds with an increase in moral communication.

But how is it possible that system logics can be ruptured and the structural and ideological premises of functional systems not be maintained? I argue that the explanation can be found in the distinction between organisation and functional system. System differentiation seen in terms of meaning differentiation organises social communication in accordance with its codes. But the social operation of communication does not take place at the level of functional systems, rather at the level of organisations, networks, groups and people. And so it is only by distinguishing between system level and system type that we can gain insight into how confusions in the scheme of meaning can come about. Once a distinction has been made between organisation and society, it becomes evident that organisations make use of the codes of functional systems according to their own needs (Lieckweg/Wehrsig 2001). Organisations operate as multi-referents and this means that their decision-making is not necessarily guided by a single logic. Seen from the perspective
of functional differentiation, therefore, corruption appears to correspond to a feeding in of foreign meaning logics at the programming level of organisations. And so it is the organisations of the functionally differentiated society that allow the primacy of functional differentiation to collapse and that deliver it to deviance.

What can we learn from all of this for coping with corruption? We cannot derive direct recommendations as to how to combat corruption from systems theory analyses. At the same time, this much becomes clear: The situation of politics is paradoxical. As Burt’s work (1992; 2004) and research inspired by it have shown, heterogeneous networks are seen as social innovations. Cross-linkages that transcend boundaries of meaning lead to an incrementation of options and, in favourable cases, result in socially desired outcomes. This is why politics promotes network formation between research institutes and enterprises, for example. Moreover, the catchword ‘public governance’ characterises heterogeneous organisational networks as efficient structures of political management. This means, on the one hand, that cross-linkages between public and private organisations may manifest performance advantages that are not perceived as corruption. On the other, political arrangements of this kind suffer from a legitimacy deficit which is currently the subject of intense discussion in governance research (cf. Pierre 2000; Rhodes 2008). The structural affinity of the constitutional conditions of networking and corruption are not highlighted as a problem in governance research carried out in the context of political science, and the question begs itself: Why ever not? But even regardless of the answer to this question, the dilemma of politics is evident to the empirical observer: If politics wanted to prevent the infiltration of foreign provinces of meaning into the decision-making premises of political organisations, then it would have to fall back on the Weberian model of bureaucracy, which – ideal typically – guarantees the differentiation of functional contexts at the level of formal organisations. Nobody would ever seriously want to recommend this solution. Modern society uses the term ‘public governance’ to describe the phenomenon whereby inter-organisational networks have become a paradigm of political management across functional boundaries. This development is also accompanied by the second observation from the moral perspective. The debate in governance research on the legitimacy deficit is registered in social communication as a loss of confidence in the organisations of representative democracy.

The observance of a linkage between meaning horizons draws attention to structural affinities between corruption and networks. Network formation can be reconstructed as a linkage technique aiming at a reflexive combination of addresses (Tacke 2000). It has been established that successful networks derive their performance advantages through the linkage of different meaning contexts (Burt 2004). Unlike action theory approaches, which see the particularism of defending one’s own interests as the structural characteristic shared by both corruption and networks, the argument presented here con-
includes with an outcome supported by social theory. On this view, it is not particularism that renders networks susceptible to corruption, for not every network is corrupt. There are supplier networks in the car industry, research networks in sociology, networks of artists in the visual arts, etc., that cannot be associated \textit{per se} with corruption. In fact, we only observe corruption when the meaning horizons of communication from different functional contexts are linked \textit{and} when these linkages are judged to be morally reprehensible.

Thus, the proposal developed here can be extrapolated in three steps: (1) It is based on the observation of a functionally differentiated society. Functional differentiation means that at the level of the \textit{functional systems} of society, communication is structured in accordance with specific codes (law, power, knowledge). Functional systems are meaning systems (i.e. horizons of meaning). Their codes operate exclusively. The differentiation of diverse functional contexts is the prerequisite for the observation of corruption. (2) The level of functional systems must be distinguished from the level of \textit{organisations}. The differentiation of meaning horizons that takes place at the level of functional systems is not always maintained at the organisational level. Unlike functional systems, organisations (just like people, groups and networks) are systems that are capable of decision-making. Their decisions \textit{can} (but do not have to) link different meaning contexts. When such linkages of different meaning structures occur, then the logic of functional differentiation founders at the level of organisations. In the observational framework of functional differentiation, it thus becomes evident that the logic of the functional system to which an organisation is ascribed is being corrupted at the organisational level by another value. This ‘first observation’ of the linkage of meaning is none other than the observation of a structural question in the scheme of functional differentiation. It is connoted neither positively nor negatively. (3) Only in a third step, that of the ‘second observation’ within the moral scheme, are such structural linkages evaluated in social communication and labelled as acceptable or reprehensible.

We thus make a distinction between conditions of constitution and their observation (1) and (2), and the evaluation by society of social phenomena (3). When it comes to the second observation of social communication, which of the structural linkages described are labelled as reprehensible and denominated colloquially as corruption depends on current morals and is thus contingent on history. What are not contingent, however, are the structural conditions that must be observed in order that a phenomenon can become the subject of a moral discourse and in order that corruption can potentially be labelled as reprehensible.

An examination of morality provides possible preliminary answers to the question as to why politicians are particularly vulnerable to allegations of corruption. Moral communication has a personalising effect and thus shows a strong tendency to generate conflict. Just like morality, politics is based on the personalisation of decisions and on playing out conflicts. The attribution
of decisions to individuals and the moral evaluation of these individuals are more common within the context of competition between political parties than in contexts where society observes business or science. This opens up new questions that this text can do no more than mention, for example regarding the ‘double standard’ of a morality that tolerates unselfish corruption. How society reacts to corruption is decided within the observation scheme of morality, which adheres its own rules of attribution. This is where the main research questions of this area of study are to be found.

The strength of systems theory is that it can render evident these different observational conditions. As a constructivist theory of observation, its epistemological interest is to reconstruct, with the help of social theory differentiations, how and by whom something is observed. It considers the attribution of causes and the packaging of ontological characteristics into definitions as observer-dependent constructions. This text has demonstrated this process in relation to the observation of corruption.
Much of the discussion of ‘good governance’ has defined that term as virtually synonymous with the fight against corruption. For example, the indices created by the World Bank and other international organizations focus on the capacity of governments to suppress corruption or other forms of irregular governing (Kaufmann/Kraay/Mastruzzi 2007; Transparency International 2008). Associated with that approach to limiting corruption, there has been a great deal of emphasis on accountability and transparency in the public sector. These measures also indirectly assess the capacity of these political systems to control corruption and to enforce proper standards of behavior within the public sector.

The task for this paper is to relate the institutional design of political systems to the quality of governance provided by a government, or perhaps more precisely the quality of governance that is provided by the overall system of governing. That is, we need to extend questions of institutional design beyond the formal limits of governments also to consider how to design the interaction between state and society in ways that facilitate the quality of governance, defined broadly, as well as to minimize the probability of corrupt practices. Indeed, somewhat paradoxically, some attempts to enhance efficiency and democracy have had the unintended consequence of creating more opportunities for corruption.

We also need to bring institutional theory to bear on questions of corruption and good governance. Institutional theory is itself rather diverse, but several of the strands within the theory have direct relevance for understanding corruption. Most clearly, the normative version of institutionalism associated with March and Olsen (1989) stresses the central role of ‘appropriateness’ within organizations and institutions and assumes that individual behaviors, including eschewing corruption, can be shaped by institutional values, symbols, myths and routines. Those values will, of course, have to be positive if they are to have a positive impact on behavior. In this approach,
therefore, corruption is understood as rejecting the values of public organizations in pursuit of personal gain – the consequentialist approach to political life that is rejected by normative institutionalists.

The rational choice approach to institutions is an alternative that can help understand the observed behavior of individuals who are presented with the opportunity for corruption. In particular, institutions contain a set of rules that can be used to control individuals. Those rules may be in the form of incentives or in terms of prohibitions. Further, the rules may be the result of constructivist processes in which interactions between formal and informal structures, e.g. cultures, shape the expectations about the behavior of individuals within the society (see Collier 2002). Those rules may be confined to the particular institutional arena or it may be framed more broadly for a range of structures.

1. Institutional Design and Political Choices

This task that I have been set also raises interesting theoretical questions about the extent to which institutions can constrain individual behavior. That ability of institutions to constrain individual action is always an assumption of institutional theorists (Ostrom 1990) but it often remains just an assumption and rarely has it been thoroughly tested. It is clear from the available evidence that an institutional structure can shape the strategic behavior of legislators and voters, but it is perhaps less clear that institutions can effectively shape the moral behavior of individual politicians or administrators. The differences among regimes being discussed in this paper represent different sets of institutions that may or may not be able to constrain behavior.

To some extent the capacity we assign to institutions is a function of the conception that we have of institutions. For example, if we begin with the normative model of March and Olsen (1986), and a number of sociologists, then controlling moral choices may be considered central to the definition of the institution. If, however, we adopt a more structuralist conception of an institution, e.g. one based on veto points, then making the link to behavior is more difficult. In such a view preferences are largely exogenous, so the potentially corrupt politician or administrator will simply have to work his or her way through more or less complex structures in order to achieve their goals – whether corrupt or noble. In this perspective the solution for corruption may be to construct more veto points, with stricter enforcement, but that will not be a guarantee.2

We could also adopt a more common sense, descriptive approach to institutions and examine the impact of some empirical structures on the ability of political regimes to govern effectively and to govern in an open and trans-

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2 The logic becomes that of qui custodient ipso s custodes, with a potentially infinite number of layers of control over behaviors.
Institutional Design and Good Governance

parent manner. Weaver and Rockman and their colleagues (1996), for example, provided an extensive analysis of the differences in performance between presidential and parliamentary political systems (see also the discussion of Schmidt (2002) below). These analyses have been concerned more with the capacity of these systems to make and deliver policy rather than with their capacity to do so in a non-corrupt manner. As will be discussed in more detail below there may be some theoretical linkage between political structures and the level of corruption in the system. In particular, the greater the complexity involved in making decisions the more functional corrupt practice may be for any political system.

2. Corruption and Irregular Politics

The term corruption is used rather broadly to capture a range of behaviors that are beyond the pale of what is now commonly accepted behavior in the industrialized democracies. Corruption is, however, often like Justice Potter Stewart’s idea of pornography – he could not define it but knew it when he saw it. Some behaviors, e.g. bribery, ‘kickbacks’, nepotism, and the like are clearly corrupt (see Philip 2002). These behaviors undermine fairness and probity in governing and make it apparent to the public that appropriate standards of integrity are not being followed by their public officials. These behaviors have been the targets of numerous efforts at reform from international organizations and national governments.

Other practices, however, represent informal styles of political behavior that may not be as overtly illegal but which still may undermine any sense of equality and fairness in the political system, and therefore tend to foster public cynicism about the political system. For example, clientelism has been a familiar description of political life in Southern Europe (Piatoni 2001), Latin America (Blake/Morris 2009) and other parts of the world (Kawata 2008). The basic idea of clientelism is that a politically powerful patron provides favors to his/her clients in exchange for political support. Those favors may be of a variety of sorts but generally include some form of divisible goods created by the public sector, especially public jobs. It should be observed here, however, that these patterns of behavior are institutionalized, so that governing institutions may themselves be corrupt and require other remedies to create more circumspect behaviors.

But where does clientelism end and proper government begin? For example, in the United States members of Congress tend to base a significant part of their appeals to their constituents on their ability to ‘bring home the bacon’. Fiorina (1992) has argued that whenever Congressmen in the United States take stances on policy they tend to alienate at least a portion of their voters, but if they merely ensure that there is spending in the district and good constituency service then they alienate no one (except perhaps voters
especially interested in fiscal responsibility). The increased use of ‘earmarked’ expenditures has meant that those Congressmen interested in fiscal probity often do not have an opportunity even to become aware of the ‘pork’ until it has been enacted into law.

This pork-barrel component of public expenditure is a form of ‘collective clientelism’. The patron in the national capital provides benefits for constituents in exchange for their votes. The deal involved in this relationship is never expressed quite so directly, but that is the deal nonetheless. The clientelistic character of pork-barrel spending in the United States has been reinforced by the use of Congressional earmarks that tend to produce very particular benefits for localities or for organizations, and make the linkage between the patron and the numerous members of the clientele all the more obvious. Although more explicit in the US than in most other places, this territorial form of patronage is certainly found elsewhere (Tavits 2009).

It appears that in some ways scholars and practitioners tend to be more concerned with corruption on the retail than the wholesale level. That is, a large proportion of the efforts directed at reducing corruption have been addressed at relatively minor administrative corruption, while large-scale use of the power of the public sector for partisan and individual gain seems to be more accepted. This emphasis may be a function of the relative power positions of the actors, or there may still be some sense that certain types of irregular behavior are actually functional for governing. Some economists have argued that some level of corruption is indeed functional by facilitating transactions, and certainly not worth the resources needed to stamp it out.

More generally, students of informal institutions have argued that particularly in less developed political systems, informal institutions can contribute significantly to governance capacity. Helmke and Levitsky (2004), for example, have developed a model of how informal institutions interact with formal institutions in governance. They adopt an extremely broad conception of informal politics, ranging from the overtly corrupt to understandings about appropriate behavior in legislatures. These all depend upon shared rules and values that are not codified but which still have a strong impact on behaviors. Further, they argue that the informality is crucial to the success of many political systems, including many systems that may appear to be perfectly capable of governing on their own. The analytic question that this raises in the context of this paper is to what extent these informal aspects of governing are functional, and how irregular they can be and still reside within the bounds of ‘good governance’.

In this paper I will be concerned with a wide range of actions that deviate from what might be considered an idealized model of governing. In that model governance would be controlled by values such as universalism, achievement, and affective neutrality. These terms are usually discussed as components of political culture, and indeed much of the discussion of politi-

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3 These are, of course, the familiar Parsonian pattern variables.
cal corruption has a strong culturalist element. These same values have been used to describe patterns of political and social development. The question I will be posing is whether the structure of political regimes affects the level of irregular political activity, and therefore also can we design institutions that will minimize unwanted forms of irregular politics.

Most of this paper will be concerned with political institutions and their role in corruption. Much of the discussion of corruption in the public sector has been concerned with public administration, and with petty officials taking bribes for moving a file along, or ignoring violations of building codes, or a host of other relatively minor indiscretions. This type of corruption has been both more manifest as corruption and easier to control. For example, both Singapore and Hong Kong once had famously corrupt administrative systems but have been able to clean them up largely through stringent enforcement. Political corruption may be more difficult to cope with simply because it is at times less clearly defined and also because those involved have substantially greater power within the political system.

3. Institutional Design and Informal Politics

The purpose of this paper is to examine whether formal institutional arrangements have an impact on the level of corruption, and if so what sort of a theoretical story can we tell that would explain the linkage. A priori, we might not expect any such linkage, a fact made apparent by recent events in the United States. The rather blatant corruption of Governor Rod Bogonovich of Illinois has made us aware first that there is a good deal of corruption at the level of state governments in the United States, and second that the level of corruption is substantially different across the states (see Table 1).

The marked variations in the level of corruption appear even though the institutional structures of the state governments are very similar. Indeed, Illinois identified as one of the more corrupt states is adjacent to Iowa and Wisconsin which appear to be two of the less corrupt states. The constitutions of all of these states are similar, but the behavior of individuals in office appears markedly different. Why? Further, if I examine the levels of corruption in the state governments using some of structural variables that might have an influence, e.g. the number of elected officials and size of state legislatures, there appears to be little relationship. Further, to the extent that there is one there are relationships they appear to be inverse to what might have been expected. For example, the states in the upper Midwest have a relatively large number of elected state officials\(^4\), but have some of the lowest rates of corruption.

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\(^4\) South Dakota, for example, elects (in addition to the usual officers of governor and lieutenant governor) offices such as Insurance Commissioner, Agriculture Commissioner, and several education officials.
These observations create some doubt about the relevance of macro-level political structures for explaining corruption, clientelism or other deviations from ‘good governance’. That said, however, some aspects of more micro and meso-level structures may be relevant for the explanation than are the macro-level characteristics of governance arrangements. To examine these potential relationships more thoroughly I will examine two macro-institutional characteristics of political systems – presidentialism and federalism (and their opposites), attempting to provide a logic theoretical explanation for a linkage and then determining whether there is any support for that logic. I will also examine the role of electoral systems and parties as meso-level institutional features that may influence decisions to engage in irregular political behavior.

4. Presidential and Parliamentary Systems

The most familiar dichotomy in institutional design of political systems is the difference between presidential and parliamentary government. This distinction has been used to explain a number of aspects of the performance of political systems, notably the stability of systems (Linz/Valenzuela 1994), and their general governance capacity. Manfred Schmidt (2002), for example, has examined the impact of different types of democratic regimes on the general performance of those regimes. He has used the contrast between ‘majoritarian’ and consensual systems as described by Lijphart (1999) and further uses the logic of negotiated democracy (Scharpf 1993) to describe the consensual forms of governing. Although the evidence used is rather weak, Schmidt appears convinced that consensual systems do perform better than do majoritarian systems.

Although the simple dichotomy has substantial utility, it is also a rather simplistic distinction. There is perhaps less variation among presidential systems, but there is still some important variation. For example, presidents differ in their ability to veto legislation, control public spending, and issue their own decrees without approval of the legislature. Further, the semi-presidential system (Roper 2002) that attempts to balance the virtues (and vices) of presidential and parliamentary system are themselves rather diverse, with a principal difference being the relative powers of presidents and parliaments with respect to the prime minister.

The variations among parliamentary systems are substantially greater. One of the most important of these differences is between those few systems that have a single-party government, as opposed to the more common multi-party systems. Even among the multi-party systems there are marked differ-

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5 This corresponds closely to Lijphart’s (1999) familiar distinction between majoritarian and consensual governments.
ences between those systems that have small coalitions versus those such as Denmark or Belgium that have five or more parties involved. Further, some coalitions, e.g. those in Sweden, are predictable in advance while others have to be created after elections and increasingly span the political landscape from right to left.

Even given the clear structural and procedural differences among these types of political systems, why should we expect there to be any impact on the level of informal politics and government? Simply by observation we can see that presidential regimes tend to have somewhat higher levels of corruption and clientelism, and indeed of other types of informal governance arrangements. For example, Table II shows the rankings of countries on the World Bank corruption index related to their type of regime. If we examine the aggregate figures then there is a relationship, albeit weak. When we introduce levels of economic development, however, the relationships largely disappear.

Indeed, one might not, a priori, think that presidential systems would be more subject to corrupt practices. A dominant logic of presidential systems is a separation of powers (Peters 1997). If the formal arrangements among the institutions are effective, then the legislature should function as a check on the powers of the executive to use its powers for corruption or clientelism. For those formal relationships to function, however, legislatures need to have the resources (staff, etc.) and the commitment to perform their oversight function. A (extremely) well-staffed and organized legislature such as the Congress of the United States may be able to perform that task effectively, although as will be noted they appear to be engaged in clientelism and corruption of their own.

Unfortunately, relative few legislatures in presidential regimes appear to have those resources and are largely ineffective in exercising oversight (Cox/Morgenstern 2002). Indeed, most legislative bodies in these settings appear more concerned about using their powers, especially their budgetary powers, to provide benefits for their constituents and promoting their own careers. This choice of career strategies may make good sense given that there may be little to be gained (politically) from exercising oversight while there may be a great deal to be gained from using the pork barrel.6

There are at least three reasons to expect presidential systems to be more associated with irregular forms of governing than are parliamentary systems. The first is that this is actually a spurious relationship, resulting from the greater number of presidential regimes in Latin American and African countries with lower levels of economic development and with less institutionalized political systems in general. The same argument has, of course, been made with respect to the apparent instability of presidential regimes (Linz/6

6 At times oversight appears to be opposition to policies, and if the president is popular politically questioning his or her policies may have negative political consequences.
Valenzuela 1994), and the seeming fragility of presidential regimes may be a function merely of lower levels of economic development (see van der Walle 2003).

The first of the more genuine relationships between presidential regimes and levels of irregular government is that presidential regimes are, almost by definition, more personalized with a focus on the leadership of the one individual in the center of the system. As well as leadership capacity, being the president also offers opportunities to distribute numerous benefits to followers. For example, in the United States the president has approximately 4,500 positions that are legally open for appointment when he takes office. Other presidential systems permit proportionately as many or more legal appointments, and may also assume that de facto the president can appoint a number of other officials. For example, even after its attempts to create a functioning civil service system, the president of Mexico can still appoint numerous public employees, even to positions nominally covered by the civil service system.

There are two additional points to be made about the apparent levels of clientelism in presidential systems as related to the personal power of the president. The first is that there are a number of official appointments available to a president, but there are also more informal appointments and patronage powers in these systems. In part the focus of politics in these systems on the top executive positions also means that the personal factions within parties, and within government, emphasizes the ability of would-be leaders to provide benefits. They may do so by holding other positions in government, e.g. positions in sub-national governments controlled by the centre. The factionalism of politics in presidentialist systems such as Uruguay, for example, leads to a variety of patronage appointment systems associated with different institutions, e.g. Social Security, within the country.

The second point is that although presidentialist systems tend to have higher levels of patronage appointments, this seems to be more a matter of degree than of type. Perhaps because of the increased emphasis on the role of prime ministers in parliamentary systems, these top officials also have been increasing their appointment powers. Some of the appointment powers are a function of changes in the structures of government more generally, with the creation of more devolved organizations providing more appointment opportunities (Skelcher 1998). Especially in multi-party systems the need to

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7 This is, of course, many fewer than at the height of the spoils system in the Jacksonian era (White 1954), but the number of appointments has been increasing markedly over the past several decades as presidents have sought to enhance their control over programs (Light 1995; 2004). Congress must consent to approximately 400 of the more important of these positions, but most are in the gift of the President.

8 Further, there is some evidence that President Calderon has returned to appointing more officials than had President Fox (see Mendez 2008).
provide positions for the adherents of the coalition members may lead to more appointments.

The second major reason that one can expect greater levels of patronage and clientelism in presidential party systems has little to do with the regime type *per se*, and has more to do with the nature of the political party systems within those regimes (see also Kunicova/Rose-Ackerman 2005). The basic argument is that presidential systems tend to have political parties that are focused toward gaining that one major position. At the extreme there are two party systems with single member districts for the legislature. In these cases the candidates tend to be more individual entrepreneurs with highly personalized styles of governing, and they therefore require some forms of patronage to be able to maintain that personal power base.

Proportional representation electoral systems, that tend to be characteristic of parliamentary systems, also tend to produce strong political parties that can control the actions of their members in office. Further, those individual members in the parliament have relatively few resources at their disposal – most are held by the party. Further, the parties themselves may be less focused on what they can gain during a short period, in contrast to those seeking control of a central political office. This organizational control of scarce resources may minimize the personal clientelism, although the parties themselves do not tend to be shy in distributing positions to their members, including the opportunities to run for public office.

Again, however, the evidence linking electoral systems to clientelism is not unequivocal. The Irish system is parliamentary and has an STV (single transferable vote) electoral system, but the common characterization is of a political system with strong clientelistic ties between members of the lower house of parliament (Teachta Dála, TDs) and their constituents. For example, Chubb’s (1963) characterizations of the clientelistic relationships have been amended, but certainly not refuted. More recent studies (Gallagher/Komito 2005) have pointed to the continued role of the TDs in constituency service.

Again, however, the electoral system may play a major role in the promoting clientelism. The STV system creates more of a direct linkage between voters and their representatives, despite being a form of proportional representation. The ability of the voters to choose not only parties but individuals means that candidates must appeal as individuals, and there are few better ways of doing that than by providing ‘pork’ for the constituencies. Likewise, the open list PR (proportional representation) systems used in much of Latin America, and in some European states, also can contribute to a closer linkage between constituents and their representatives than does closed list PR systems which are dominated by the political parties.

The other variable in party systems that may be crucial for explaining levels of corruption is the type of party finance. At the extreme political parties and more importantly individual candidates in the United States depend
almost entirely on private funding. As a result, these politicians must constantly scramble for funds and in the process they must make political promises and deliver policy goods that might easily be argued to be clientelistic or corrupt. This style of irregular politics tends to be much more acceptable than even petty administrative corruption, in part indicating the importance of elaborating the values that are accepted and those which are not when making statements about corruption.

Although we as external observers tend to classify patronage appointments and territorial spending as being at least at the margin of corruption, if not actually corrupt, the discourse in the political systems which use these instruments extensively tends not to be cast in that direction. For example, in the United States the discussion of presidential appointment powers more often has been about the efficiency of the system, and the administrative capacities of the individuals appointed than about their being corrupt. Even in the more egregious appointments of the Bush years, the discussion was about policy failure.

Geering and Thacker (2004) attribute the lower level of observed corruption in parliamentary and unitary systems to the degree of centralization in these systems and the availability of more unified controls over behavior. This argument contradicts the usual notion that more checks and balances within a government will maximize controls. Their findings, and our own observations above, point toward the need for more overt control structures and the need to eliminate many of the opportunities for corrupt behavior, that are presented in more complex institutional structures.

5. Administrative Structures and Corruption

As noted above, a good deal of the corruption that occurs in the public sector occurs in the administrative system. While to some extent administrative systems are similar, there are also important differences among those systems (Peters 2009) that may affect their openness to corruption. At the extreme systems with few if any rules over personnel recruitment, or procurement or budgeting are obviously more open to corruption and other irregularities than are systems with stronger internal regulations.

To some extent the role of bureaucracy in explaining corruption is contradictory and paradoxical. On the one hand, formalized bureaucratic rules and procedures have been designed in part to prevent corruption and to ensure that members of the public sector act *sine irae ac studio* when dealing with the public. On the other hand, the rigidities usually associated with bureaucracies (see Rubinstein/von Maravić, this volume) may make corruption and clientelism more desirable as means of circumventing those rigidities. If normal procedures are not able to respond to social needs sufficiently quickly then bribery and other means of accelerating decisions will become more valuable for the participants in the administrative process.
As was argued above, formal structures in bureaucracies may be less important in explaining the occurrence of corrupt practices than are values and understandings about appropriate conduct in office. The use of formal institutions appears capable of helping to create such values, as for example the anti-corruption office in Hong Kong, but in the end the creation of values may be more important than building structures. That said, some administrative reforms during the past several decades have tended to enhance the opportunity for corruption, and the breakup of the traditional civil service in many systems has eliminated even more constraints on irregular behavior in public administration.

6. Federalism and Corrupt Practices

Federal versus unitary states is another standard dichotomy in institutional analysis in comparative politics. To a great extent this dichotomy is clearer than that between presidential and parliamentary systems. That said there are both marked differences in both these types of political system. These discussions have been analyzed substantially more for federal systems (see Hueglin/Fenna 2006) than for unitary regimes, although there are certainly marked differences between the latitude given local communes in the Scandinavian countries with the relatively strong controls exercised in most Napoleonic regimes (Ongaro 2008).

While the federal/unitary distinction is well known in comparative politics (Hueglin/Fenna 2006), should it have any influence on the levels of corruption and clientelism in a political system? One simple hypothesis would be that if there are more autonomous governments in a political system then there is simply more opportunity for corruption than in more unified systems. Further, having multiple levels of government also creates different opportunity structures for politicians so that the ability to deliver pork barrel goods to a lower level of government may enable a legislator to move into more desirable political positions at that lower level, e.g. become a governor (Samuels 2002).

We can also hypothesize that at the sub-national level there is less distance (geographical and social) between the potential patron and the potential client. In settings in which patrons and potential clients know each other and interact more frequently, maintaining any social distance is difficult, and therefore corruption may be more probable than in systems with greater social distance. That said, however, the politics in an American state such as California or in a German Land such as Nordrhein-Westfalen may be as re-

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9 As in the famous Friedrich-Finner debate, the creation of formalized structures for control may lead into an infinite regress of control – ipso custodient…
mote, or more remote, such as that in a smaller country like Estonia or Malta.\footnote{I am not arguing that corruption is rife in these countries, only that their small size creates the great proximity between the potential patron and the potential client.}

Finally, sub-national governments tend to have more physical projects – roads, construction of other type, etc – that may be more subject to corruption than are less tangible public programs such as pensions or regulatory programs.\footnote{One major exception to that generalization is defense programs that are located in central government and which are also subject to substantial corruption.} The procurement process is a major locus for corrupt activity, and if there are a number of potential bidders – creating a construction company to build a road does not require a very large investment of capital – with local contacts then it is perhaps natural that patrimonial practices become common. In fairness, national level governments also have a good deal of corruption in areas such as defense contracting, although perhaps for different reasons.

The alternative hypothesis is that having a single government does not provide any alternative locus for good governance to develop, whereas multiple governments can do so. For example, Myerson (2006) argues that competition is crucial for democratic accountability and that competition can be enhanced in multi-level governance systems (see also Bardhan 2002). The argument is further that having multiple loci providing governance gives opportunities for less corrupt governance to develop whereas unitary regimes tend to enforce uniformity and centralized control, with less chance of evolution and effective learning.

7. Paradox of Contemporary Governance

One of the paradoxes of contemporary institutional design is that the demands for more effective and non-corrupt service delivery appear to be occurring in opposition to much of what has become the conventional wisdom on governing. Much of what has become that conventional wisdom for improving governance is to create more autonomous and more informal structures for making and delivering public policy (see Christensen/Laegreid 2007). One of the several standard recommendations of the New Public Management (NPM) has been that more autonomous public organizations (agencies) can be more efficient and effective in delivering services. Similarly, the ‘governance’ literature (Sørenson/Torfing 2007) has argued that self-organizing networks of social actors will contribute to more effective and democratic governments than those possible with more traditional political structures.

Both of these styles of reforming the public sector tend to weaken conventional controls and mechanisms of accountability within the public sector. If the Gerring and Thacker (2004) argument mentioned above is correct then these reforms are likely to create more opportunities for corrupt behavior.
The NPM reforms have tended to promote the autonomy of public actors and to provide public managers greater latitude to make decisions on their own. This enhanced autonomy, combined with the increased opportunities for appointing public managers from outside the career public service, reduces both institutional and ethical controls over their actions. There is no certainty that the New Public Management has increased, or will necessarily increase, levels of corruption, but it does mean that there are many more opportunities for irregular action within the public sector.

The governance models represent to a great extent an alternative format for governing that may enhance the opportunities for corruption, albeit generally not for personal gain so much as for the benefit of members of organizations involved in the process. Because they tend to involve various social actors in making decisions in the name of the public, these formats for governing may represent, in Lowi’s term, the ‘private use of public power’ (Lowi 1973). While they have been justified in terms of democracy, being a means of involving the public more directly in governing, networks also involve granting power to the groups who are considered appropriate for being involved.

The differential involvement of social actors in the processes of governing raises several questions about the democracy, and probity, of the networks format for governance. First, the democratic aspect of the network argument is weakened when it becomes clearer that not all segments of society are organized adequately to be able to participate (see Bogason/Musso 2006). Further, these groups are empowered to make decisions in the name of the public although they may in fact be representing only their own members. Thus, in the name of democracy and of enhanced public performance network reforms may have some of the same impact on the actual level of democracy as do the New Public Management reforms.

For both the NPM approach and governance the basic logic for governing has been less concerned with problems of corruption than with either efficiency or democracy. Both approaches toward reforming the public sector appear to assume that the ethical problems are solved in the political systems where these approaches have been implemented. While the industrialized democracies in which most of these reforms have been implemented have developed cultures that do not support corruption, there are changes at the margin of overt corrupt behavior that lead one to question the contribution of these schemes to ‘good governance’.

8. Summary

Attempting to link the structures of regimes to levels of corruption is rather difficult. First, we can find political systems with similar structures with markedly different levels of corruption, and systems with similar levels of corruption with rather different structures. The theory that presidential sys-
tems should be more corrupt seems plausible on its face but any findings of a relationship appear to be a product, to some extent at least, of the simple fact that most presidential regimes are in less-developed political and economic systems that may have greater incentives for corruption, or which have not had sufficient time to institutionalize controls over corrupt practice.

Further, that distinction between presidential and parliamentary systems may not be sufficiently fine-grained to capture many of the important differences among political systems. For example, the capacity of legislative bodies to exercise effective oversight over the executive is not at all identical across political systems. A legislature with adequate staffing and with a well-articulated structure will be capable of exercising control and provide countervailing powers to control the political executive and the bureaucracy.

The basic outcome of this analysis must be that any simple understanding of institutions as structures is incapable of shedding much light on the likelihood of good governance. There is so much difference within each of the regime types that making any predictions may conceal more than it reveals. Likewise, the causal linkage between institutional structures and the behaviors of the individuals within them is somewhat attenuated so that attempting to explain something like corruption on the individual level may be difficult, unless one adopts a conception of institutions that reflects more their value commitments than their structural features.

Institutions and regime types are important, but explaining how they exert their importance is more difficult than just asserting it. This paper has sought to understand how institutions – especially when defined as structures and regime types – can affect the level of informal political activity in a political system. Explaining that type of behavior is easier on the wholesale level than on the retail level, although most of the discussions of administrative corruption run in the opposite direction.

Table 1: Corruption in the American States

<table>
<thead>
<tr>
<th>Guilty Officials per capita</th>
<th>Most Corrupt</th>
<th>Guilty Officials per capita</th>
<th>Least Corrupt</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Dakota</td>
<td>Rhode Island</td>
<td>Nebraska</td>
<td>North Dakota</td>
</tr>
<tr>
<td>Alaska</td>
<td>Louisiana</td>
<td>Oregon</td>
<td>South Dakota</td>
</tr>
<tr>
<td>Louisiana</td>
<td>New Mexico</td>
<td>New Hampshire</td>
<td>Colorado</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Oklahoma</td>
<td>Iowa</td>
<td>Maine</td>
</tr>
<tr>
<td>Montana</td>
<td>Delaware</td>
<td>Minnesota</td>
<td>Oregon</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Alabama</td>
<td>Kansas</td>
<td>Vermont</td>
</tr>
<tr>
<td>Alabama</td>
<td>Kentucky</td>
<td>California</td>
<td>Minnesota</td>
</tr>
<tr>
<td>Delaware</td>
<td>Arizona</td>
<td>Utah</td>
<td>Montana</td>
</tr>
<tr>
<td>South Dakota</td>
<td>West Virginia</td>
<td>New Mexico</td>
<td>Iowa</td>
</tr>
<tr>
<td>Florida</td>
<td>Illinois</td>
<td>Washington</td>
<td>Kansas</td>
</tr>
</tbody>
</table>

Table 2: Mean Corruption Scores

<table>
<thead>
<tr>
<th></th>
<th>Presidential</th>
<th>Parliamentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>-0.72</td>
<td>-0.83</td>
</tr>
<tr>
<td>Above Average GDP Per Capita</td>
<td>-1.42</td>
<td>-1.59</td>
</tr>
<tr>
<td>Below Average GDP Per Capita</td>
<td>-1.04</td>
<td>-0.89</td>
</tr>
</tbody>
</table>

Calculated from World Bank Control of Corruption Data

12 Including semi-presidential.
Chapter 7:  
Constructing Corruption  

Gjalt de Graaf, Pieter Wagenaar, and  
Michel Hoenderboom  

1. Introduction  

As Deleuze and Guattari say to demonstrate the importance of concepts in philosophy and science: ‘Concepts are not waiting for us ready-made, like heavenly bodies. There is no heaven for concepts. They must be invented, fabricated, or rather created and would be nothing without their creator’s signature’ (1994: 5). Corruption, of course, is the concept of interest here. In this chapter, however, we will not study what the concept is or means, but discuss theories and studies that look at how the definitions of corruption have come about in academic and social discourses, with special emphasis on the effects of using the concept.  

Other chapters in this book (e.g. Huisman/Vande Walle, Huberts, and Rose-Ackerman) study corruption empirically within a positivistic research tradition; here we will look at theoretical and empirical corruption research that can be called post-positivistic, meaning that they are not after one truth, or out to find and agree on one ‘right’ definition or meaning of the concept ‘corruption’. The corruption researchers we will cite use different terms to label their theoretical stance. Some call it ‘cultural’ or ‘anthropological’, others ‘neo-classical’, and there are even those who use the term ‘post-modern’. Discussions and controversies about postmodernism are numerous (e.g. Bauman 1991, 1993; Latour 1991), both in terms of the concept and the ensuing societal changes of the second half of the twentieth century. Reviewing them or exploring the rather vague notion of postmodernism is, however, outside the purview of this chapter. The scholars cited here are interested in how the actors define corruption. Most other approaches in this book define what the phenomenon of corruption entails and then look at the causes of that phenomenon. Here we especially look at the causes and effects of the usage of the very label ‘corruption’. When looking at corruption in this sense, language plays an important role and the concept of discourse becomes important.
2. The social construction of corruption

What is most striking when looking at the definitions of corruption in post-positivist studies is the emphasis on social constructivism: ‘corrupt’ is what is considered corrupt at a certain place and at a certain time. Or, as Andersson and Heywood (forthcoming) put it:

‘The key point is that there are many different types of corruption, which vary according to the sector in which they occur (public or private; political or administrative), the actors involved (for instance, state officials, politicians entrepreneurs and so forth), the impact they have (localized or extensive) and the degree to which they are formalized (embedded and systemic or occasional and sporadic).’

Eleven years ago, Michael Johnston (1996: 331-334) proposed to define corruption as ‘the abuse, according to the legal or social standards constituting a society’s system of public order, of a public role or resource for private benefit’. He suggested studying how the meaning of terms like ‘abuse,’ ‘public role,’ and ‘private benefit’ are constructed at a given moment in a certain place, and how and why the lines between public/private, state/society, politics/administration, and institutions/sources of power are drawn.

A wide range of corruption researchers draws attention to the contextuality of corruption and its various definitions. Huntington’s (1989: 377) much-used definition of corruption is ‘behavior of public officials which deviates from accepted norms in order to serve private ends’. But just as ‘accepted norms’ change over time and across cultures, so do the distinctions between public and private, and between what is and is not corrupt. Many illustrations of this can be found in Haller and Shore (2005), who offer an array of authors’ perceptions of corruption in different cultural and institutional contexts with case studies from countries such as India, Bolivia, Portugal, Russia, Romania, and the United States. An example of their findings takes place in Russia’s transitional society of the 1990s, where personalized agreements between doctor and patient based on, say, a certain fee plus a few bottles of vodka, eventually superseded the official fee-for-service framework of state health care. Something that had been illegal and considered highly corrupt during the Soviet period – a physician commanding money for personal gain in exchange for services – was at that time considered morally acceptable. A patient-interviewee described such payment ‘as a moral action that conveyed recognition and respect for the professional's attention and expertise’. A physician’s demand for high prices was more a sign of his or her medical competence than a reflection of connections or privilege. On the contrary, it was the institutional state health care system that was eventually regarded as corrupt for favoring the higher strata of the population. Not only does this example prove a shift in norms concerning appropriate provision of healthcare, it also signifies that overstepping the boundary between the public and private spheres is not always adequate in labeling corruption (Rivkin-Fish 2005: 47-49, 63).
Tänzler (2007), who advocates a ‘cultural approach’ to corruption, tells of a Philippine Prime Minister forced from office precisely because he was not corrupt. If the Prime Minister refused to use his power to take care of family and friends, the line of thinking was, then what could the public expect from him? Tänzler demonstrates the importance of deconstructing the social realities of culture to perceive corruption (see also De Zwart, this volume. Note that De Zwart explicitly distances himself from postmodern approaches).

Sissener (2001), who proposes an ‘anthropological perspective on corruption’, finds that Western approaches of corruption are often exactly that: they are peculiarly Western, influenced as they are by Weber’s famous ideal type of bureaucracy, and not easily applied to non-Western societies. Sissener then tries to understand the values behind behavior that a Western observer would probably regard as corrupt, and how the social reality in which the behavior takes place is constructed from the inside. In countries like Bangladesh, China or Nepal, the public official who issues favors for a remuneration of some kind within an established network is not corrupt; his or her actions are simply a social obligation to help. Deals within the network are considered normal (Sissener 2001).

3. The effects of the corruption concept

The point of the previous section was to lay ground for a concept of corruption that is heavily contested and socially constructed. Post-positivist corruption theories demonstrate that the definition and meaning of corruption is hardly trivial, that the effects of using the label ‘corruption’ can be major, that ‘what the concept is is less interesting than what it does, a shift in emphasis that also allows us to put aside the somewhat stale debate about universal or culturally relative elements’ (Bracking 2007: 11). Post-positivistic approaches discussed in the remainder of this chapter focus less on what corruption is than what the effects of its usage are. We are interested in what causes the use of the concept of ‘corruption’ and the consequences thereof. Any specific definition of corruption will automatically lead to a specific ‘solution’ (de Graaf 2007); instead we will look at the causes and effects of corruption definitions and discourses.

Being labeled ‘corrupt’ usually has an enormous social impact. We once interviewed a Dutch police officer who was convicted for taking a bribe from a former colleague, then an attorney. He was convicted for accepting a cell phone in exchange for leaking some minor information to the attorney during a long phone conversation. Both he and his wife were fired from the police force. His wife fought for several years in court before being reinstated. They lost most of their friends and suffered emotionally. They were largely shunned at the few social events they still took part in; others did not want to be in the presence of a ‘corrupt police officer.’
Because of these enormous social consequences, the most important issue ‘may not be what the term ‘corruption’ means, but rather who gets to decide what it means and how widely those decisions will be accepted’ (Le Billon 2005: 686). Not surprisingly, accusations of corruption are often used strategically: ‘corruption serves to underwrite elite class formation in Zimbabwe, as well as being a key concept in discursive and ideological warfare between Mugabe and his opponents’ (Bracking 2009: 43).

The definition issue also raises questions of cultural bias. As Chadda (2004: 122) writes on the use of TI’s (Transparency International) definition in developing countries: ‘To judge transactions originating in the traditional sphere as corrupt because they clash with the requirements of the legal rational order can be seen as simply an ideological argument for the rapid destruction of the traditional sphere.’ Andersson and Heywood (forthcoming: 5) go so far as to claim that:

‘the very concept of corruption has been increasingly instrumentalized for political ends since the end of the Cold War – most especially in those countries where corruption is perceived to be a major issue. Indeed the debate on the meaning and interpretation of corruption has led to the development of proposed solutions for corruption which focus primarily on issues of institutional design’.

4. Language and Meaning

In recent decades, discussions on the nature of truth have profoundly affected social research. Instead of assuming a given world ‘out there’, waiting to be discovered, attention is being drawn to the language processes through which the world is represented. The access we have to a reality outside language is highly problematic. Language does not simply report facts; it is not a simple medium for the transport of meaning. The meaning and effect of words depend on the context in which they are spoken or written. Du Gay (1996: 47):

‘The meaning that any object has at any given time is a contingent, historical achievement (…) theorists of discourse argue that the meaning of objects is different from their mere existences, and that people never confront objects as mere existences, in a primal manner; rather these objects are always articulated within particular discursive contexts’.

Perhaps it is the case, as some philosophers claim, that what exists in the world is a necessity (independent of human beings or language), but things can only be differentiated through language. The world itself does not give meaning to objects; this is done through language. Stated simply, although things might exist outside language, they get their meanings through language.

This view of language implies the possibility of describing the context of corruption (cases) as a discursive construction. The meaning of anything always exists in particular discursive contexts; meaning is always contextual, contingent, and historical. The term ‘corruption’, therefore, is always socially and historically constructed as well.
How can we transition from an ontological and epistemological stance of meaning that is always historically and socially constructed to a theoretical model useful to empirical research? De Graaf (2007) has offered an example from postmodern corruption research where empirical corruption research is conducted based on Pierre Bourdieu’s theory of social action (1977; 1990; 1998; Bourdieu/Wacquant 1992). By combining macro and micro factors and everything in between, it is an example of how concrete corruption case studies can be conducted. Contextual research in this way can establish dispositions that can lead to corruption. Since dispositions do not always manifest, they cannot be called ‘causes’ in the strict sense of the word. What is important in this type of research is the receptiveness of an individual to corruption, and whether the receptiveness is triggered.

5. Discourse and discourse analysis

The concept of discourse plays an important role in most post-positivistic corruption research and has many meanings. Of its many interpretations (see Alvesson/Karreman 2000), here we define discourse as ‘a specific ensemble of ideas, concepts and categorizations that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities’ (Hajer 1995: 44). For example, psychiatric discourse brought the idea of an unconscious into existence in the nineteenth century (cf. Foucault 1977; Phillips/Hardy 2002: 3). Discourses contain groups of statements that provide a way of talking and thinking about something, thereby giving meaning to social reality. Discourses are not ‘out there’ between reality and language; they are not just a group of signs. They refer to practices that systematically form the objects we speak of. Discourse is not just a ‘way of seeing’ – a worldview – but is embedded in social practices that reproduce the ‘way of seeing’ as ‘truth.’ Discourses are constitutive of reality (de Graaf 2001). What is and is not true cannot be seen outside discourse; it is internal to it. By looking at what people say and write, we can learn how their world is constructed.

Since discourses in our context institutionalize the way of talking about something, they produce knowledge and thereby shape social practices. Corruption cases cannot be understood without the discourses that give them meaning. Discourses contain the conditions of possibility of what can and cannot be said. The fact that a question arises about corruption is as interesting as the question asked (and the questions not asked). And every question asked gets some form of an answer (including no answer), which has consequences. Discourses help us understand that a certain question is asked, and give us the spectrum of possible solutions to problems arising from it, i.e., what is or is not seen as a viable solution to a specific moral problem. A problem’s definition inevitably predisposes certain solutions, and vice versa.
‘When participants (...) name and frame the (...) situation in different ways, it is often difficult to discover what they are fighting about. Someone cannot simply say, for example, ‘Let us compare different perspectives for dealing with poverty,’ because each framing of the issue of poverty is likely to select and name different features of the problematic situation. We are no longer able to say that we are comparing different perspectives on ‘the same problem’, because the problem itself has changed.’

Like meaning, values are immanent features of discourse. When we give meaning to something, we are also valuing it. Even though a Durkheimian view is clearly not endorsed here (our emphasis is on language, not institutions), there is a parallel. To Durkheim social institutions, collective ways of thinking, feeling, and doing are not empty but full of values (values give meaning to relationships). In similar fashion, discursive practices are not empty; they are filled with values. By giving something a name, we highlight certain aspects. But in that same process, all other possible qualities are placed in the background or even ignored. Values, causal assumptions and problem perceptions affect each other. In our daily lives, we jump so often between normative and factual statements that we do not realize how much our views of facts determine whether we see problems in the first place. But when we study those discussions more carefully, we can see that ‘is’ and ‘ought’ are intertwined. Seemingly technical positions in discourses on corruption (‘was he bribed or not?’) conceal normative commitments. Discourses make more than claims of reality – they accomplish what Schön and Rein (1994) have called the ‘normative leap’, or the connection between a representation of reality and its consequences for action. Within most versions of discourse theory, the strict dichotomy between facts and values ceases to make sense. Facts and values here are not treated as ontologically different; discourse theory treats them as different sides of the same coin. The ‘is’ and ‘ought’ shape each other in countless ways. Language is thus neither neutral nor static in communicating meaning. The awareness that language does not neutrally describe the world is important to corruption research. Subtle linguistic forms and associated symbolic actions shape our convictions and presuppositions (Van Twist 1994: 79).

How does research with discourse theory work? A researcher conducts discourse descriptions or analyses, the basis of which are texts. All verbal and written language can be considered. A discourse analysis shows which discursive objects and subjects emerge in social practices, and which conceptualizations are used. Consequently, what is left out in social practices also emerges. It is not the purpose of discourse analysis to retrieve what authors meant or felt. Discourse analysis is not a search for meaning in texts, empirical or otherwise. The analysis focuses on the effects of the texts on other texts. Hajer (1995: 54): ‘discourse analysis investigates the boundaries between (...) the moral and the efficient, or how a particular framing of the dis-
discussion makes certain elements appear fixed or appropriate while other elements appear problematic'.

A discourse analysis inquires into forms of problematization and offers a narrative about the production of problems. Why is corruption considered a problem (or not a problem)? Some postmodern corruption scholars would answer that it is because of neo-liberal or Western interests (cf. Bahre 2005; Brown/Cloke 2004, 2005; Doig/Marquette 2005; Le Billon 2005; Roberts/Wright/O’Neill 2007; Szeftel 1998; Whyte 2007). We will return to this topic later.

In conducting a discourse analysis on corruption, we can establish the limits of what can and cannot be said in a particular context, what Foucault (1977) called ‘the conditions of possibility’ of a discourse. The analysis can identify the rules and resources that set the boundaries of what can be said, thought, and done in a particular (organizational) context or situation. Mauws (2000: 235):

‘Thus, if we are to comprehend how decisions are made (...) it is by examining the conditions of possibility in relation to which these statements are formulated, that is, the often implicit institutionalized speech practices that guide what is and what is not likely to be said (Bourdieu).’

Describing a corruption case in this tradition makes the discourses the objects of study, rather than the (corrupt) moral agents. By doing so, moral aspects come to the fore. In the case of Zimbabwe, for example, Bracking (2009: 35) argues that ‘only through a critical poststructuralist analysis, which examines how ‘corrupt’ subjects are fixed discursively, can one find a consistent position on when concessionary state redistribution becomes constitutive of patrimonial state practice.’

Brown and Cloke (2005) explore the limitations of the dominant neo-liberal perspective on governance, showing how international financial institutions have been promoting a specific discourse on corruption in Nicaragua that separates it from its historicity and the specific political economy within which it developed. Within this discourse, governance and institutional reform are seen as ways to combat corruption and are within the limits of what can be said in corruption discourse, whereas possible solutions that look at the historical roots of the Nicaraguan culture, like closer private sector/government relations, are not.

Lazar (2005: 212, 223-224) focuses on everyday corruption and local politics in the highland city of El Alto in Bolivia, looking at perceptions of corruption at different political levels. Corruption and its ‘necessary counterpart’, public works (obras), serve as the key discursive elements for citizens to assert expectations of their leaders. Lazar recognizes the typical clientelistic structures pervading politics in which issues such as the extent to which public money is used for private gain, but especially redistributed in the form of obras or jobs to the people, are central. Rumor and gossip serve as a means for the people to hold their leaders accountable pre-emptively, to es-
establish the notion of a public good that their leaders should serve. Corruption discourse can also serve to express powerlessness and dissatisfaction to leaders not listening to the needs of the people, and in doing so, to offset citizens’ limited capacity to hold their leaders accountable.

Ruud (2000: 271-272, 291) researches petty corruption of ordinary people in the rural eastern Indian state of West Bengal, trying to understand corruption on the basis of the levels and places of corruption’s occurrences. He emphasizes that the practices exist within a fully developed normative system that is no less moral that any other (i.e., Western) normative system. We should not regard corruption as an isolated act with a particular body of ideas and values, but take into account parallels in other social practices (and other bodies of ideas and values); otherwise, corruption would be difficult to understand. The distinction between public and private, often the basis upon which something is defined as corrupt or not, does not seem to carry the same moral weight in all societies. From Ruud’s case studies it becomes apparent that the application of the public/private distinction in individual cases is sometimes limited by ‘other more weightier considerations’.

6. Storylines and metaphors

One way to study how discursive practices about corruption are shaped is to look at storylines and metaphors. Our own particular worldviews and discourses position us within discussions in terms of the concepts, metaphors, and stories of that discourse. For corruption researchers, it is important that a discourse analysis can show how forces in language influence moral positions by looking at the role metaphors and storylines play within a discourse. Discourse analysis can also gain perspectives into the structure, dynamics, and directions of conflicting discourses, like narrative strategies.

Stories play an important role in people’s lives; in large part, they give meaning to them (Watson 1994). If you want to get to know someone, you ask for a life story. Stories tell about what is important and what is not. Philosophers like Johnson (1993) or McIntyre (1991) would go so far as to argue that stories are central to creating human understanding: ‘I can only answer the question “What am I to do?” if I can answer the prior question, “Of what story or stories do I find myself a part?” (O’Connor 1997: 304). Fisher (1987: xiii) claims that ‘all forms of human communication need to be seen fundamentally as stories’. It is therefore not surprising that stories are also important to studies of corruption. Many scholars agree that stories are filled with information and are efficient at conveying it (Roe 1994: 9). Boje (1991: 106) argues: ‘People engage in a dynamic process of incremental refinement of their stories of new events as well as ongoing reinterpretations of culturally sacred story lines’; (1995: 1001): ‘In sum people do not just tell stories, they tell stories to enact an account of themselves and their community’.
The assumption that meaning is produced in linguistic form fits well with exploring stories, which are simply one type of linguistic form, or elements of a discourse with certain characteristics. Stories are especially important for corruption researchers because they contain values—ideas about good and evil, right and wrong. For instance, Pujas and Rhodes (1999) address the report of the Committee of Experts of March 1999 concerning accusations of fraud and nepotism within the European Commission, in which a storyline develops of the crusade of a ‘clean north’ versus a ‘corrupt south’. That three of the four implicated Commissioners were from a ‘southern’ country (France, Spain, and Portugal) and only one from a ‘northern’ country (Germany) seemed to strengthen the view. Yet Pujas and Rhodes questioned its fairness:

‘Is there really a “clash of cultures” in Europe between quite different types of public administration, responsible for a “fundamental division” in the European institutions between the ambassadors of “clean” northern government and the cynical representatives of closed, corrupt and clannish southern bureaucracy?’ (1999: 688-689).

Within stories, ‘is’ and ‘ought’ are closely connected. Even if they seem to give simple factual descriptions, an enormous implicit normative power lies within narratives. Hayden White (1980: 26): ‘What else could narrative closure exist of than the passage of one moral order to another? (…) Where, in any account of reality, narrativity is present, we can be sure that morality or a moralizing impulse is present too’. According to White, the events that are recorded in the narrative appear ‘real’ precisely insofar as they belong to an order of moral existence, just as they derive their meaning from their placement in this order. It is because the events described are or are not conducive to the establishment of social order that they find a place in the narrative attesting to their reality (Ettema/Glasser 1988: 10). A narrative analysis can therefore shed light on how different moral positions relate to each other. It shows how narrative structures (partly) determine moral positions and identities, and how they thereby influence the actions of individuals and organizations. And they show how internal dynamics of a discourse can influence the moral position taken; this can also be used strategically. An example from a study by Bracking (2009: 44):

‘These attempts by members of the political elite to gain political ground relative to one another by attempting to fix the others’ behavior as “corrupt”, entail “corruption” acting as a signifier of moral detraction in a political discourse that pretends liberal reform but serves authoritarian power. Narratives like these often involve “illegal” foreign exchange transactions (…) There is also a popular narrative of corruption acting as a moral censure of a rapacious elite’.

Scholars have pointed to the moral significance of metaphors. Weick (1979: 50), for example, has pointed to their operational consequences. Like stories, metaphors are important to corruption researchers because of the (often implicit) moral baggage they carry. Describing metaphors in discursive prac-
tices can bring clarity to how metaphors, in part, morally shape discursive practices, that is, how morality is embedded in discursive practices. This is also noted in the theoretical postmodern corruption theories. Just think of the consequences it has once we use the slogan of ‘war on corruption’. The metaphor of ‘war’ opens up a discursive space in which all kind of military and violent options are on the table to deal with the ‘problem.’ Describing corruption as ‘a cancer that eats away at the body politic’ portrays it as a threat to the continued existence of the state or its subordinate civil authorities.

We could also look at non-textual imagery such as symbols and powerful images that have portrayed corruption. Consider, for instance, a 2008 cartoon by the South-African newspaper Sunday Times in which ANC leader Jacob Zuma is portrayed as a potential rapist of Lady Justice. Shortly before that Zuma had been charged with corruption, and in 2006 had been acquitted of rape indictments.

7. The presence of the past

As stated above, meaning is always a contingent and historical achievement; corruption discourses are socially and historically constructed. To this point we have mostly looked at the social construction; many researchers, however, look for the ‘presence of the past’: historical corruption research can follow the traces of a discourse back in history, reveal the contingencies of a current corruption discourse, and thus dissolve the current coherence of systems of intelligibility. Research like this is called ‘genealogical’. For example, Wither analyzed the change in meaning of the word ‘racketeering’ in his study of corruption accusations against the teamsters union in the 1930s (Kreike/Jordan 2004). He also observed the steadily growing discrepancy between the public opinion of racketeering and the way the phenomenon was conceived on the shop floor (Witwer 2004: 197-238).

In a 2008 special issue of the public administration journal Public Voices, several historians showed how our current systems of understanding are a historical achievement: definitions and morality concerning corruption are in constant flux. By producing historical representations of corruption and its morality – which are often unfamiliar to 21st century Westerners – and sometimes by isolating the moments in which more familiar representations have emerged, historical corruption researchers can disclose the instabilities and chance elements of our current understandings of corruption (cf. Shapiro 1992).

Hoenderboom and Kerkhoff (2008) investigated an Early Modern Dutch corruption scandal concerning the transgressions of a local magistrate, Lodewijck Huygens, in the city of Gorinchem. The scandal shows the importance of a contextual approach towards corruption as different sources of val-
ues and standards of conduct made up the (in)capability and corruption of this magistrate, such as legal arguments, public opinion as expressed in pamphlets and codes of the shop floor. The codes of the shop floor show that an Early Modern magistrate such as Huygens should at least be able to maintain harmony and balance in everyday administration, especially concerning the bestowal of office, gift exchange, and appropriation of funds. The codes of the shop floor contrasted sharply with legal standards, which entirely prohibited the obtainment of offices by offering money or gifts. An unambiguous standard concerning what constituted corruption was therefore lacking (Hoenderboom/Kerkhoff 2008).

Kroeze (2008) presented a comparable study for the nineteenth century. He emphasized the role of scandals in shifts in administrative values, and then focused on an 1855 scandal concerning the selling of votes, which was in sharp contrast with the value dualism characteristic of the Early Modern period. A dominant set of liberal values became visible whereby, for instance, putting particular interests (provincial, individual) above the general interest in matters of political representation was not allowed. Public officials were also expected to act with ‘dignity’, ‘openness’, ‘respect’ and ‘honor’, and all parties more or less agreed on the seriousness of violating these important values. All parties involved therefore shared the same discourse (Kroeze 2008).

In the same issue of Public Voices Engels (2008) considered the nineteenth century to be a period in which existing conflicts between value systems were finally resolved, and focused on turning points. His comparison of anti-corruption movements in three countries and focus on the related motives does not only show the public-private dichotomy becoming clearer, but also a visible tendency towards centralization and corruption criticism closely connected to an anti-pluralist world of ideas comprising anti-capitalism, anti-liberalism, and anti-Semitism. Interestingly, Engels stated that there was no positive link in nineteenth century history between modernizing or democratizing forces and the anti-corruption movement (Engels 2008).

Other historians have simply shown how different perceptions of corruption were in the past, thus sensitizing us to their social constructivist nature. Will (2004), who has studied administration in late imperial China, describes how a Weberian-like ethos on sufficient remuneration for impartial administrators could clash with the impossibility of supplying sufficient salaries and with a rival ethic of loyalty to an administrator’s extended family and place of birth. His work practically mirrored Sissener’s (2001; see above) (Will 2004: 29-82). Woodfine, who did not ‘seek to resolve the notorious difficulties of the concept of corruption, but will accept the term in the senses in which it was used in contemporary discourse’ (2004: 167), studied corruption rhetoric in England during the first part of the eighteenth century. In a world that did not know a strict public-private dichotomy or a clear separation between politics and administration, and one that was characterized by patron-
age and clientage, what did Walpole’s regime do to make it so vulnerable to
accusations of corruption? Walpole, it turns out, grossly amplified things by
turning corruption into an overt system and organizing machine politics much
more thoroughly than before (Woodfine 2004: 167-196). Coulloudon – an-
other historian whose approach resembles Sissener’s – describes how cor-
ruption in the Soviet Union was a practical necessity because plan targets
could often not be met without fraud. Failing to meet targets could have seri-
ous consequences for the workers involved. Superiors who committed the
necessary fraud were looked upon favorably. Unsurprisingly, therefore, cor-
rupt Soviet officials caught for fraud often felt no guilt at all (Coulloudon
2004: 247-249). Many more historical studies in which corruption is seen as
a social construct exist. See for example the recent Beiheft of the Historische
Zeitschrift (Engels/Fahrmeir/Nützenadel 2009).

8. Power and the consequences of anti-corruption
discourses

There is considerable power in structured ways of viewing reality. Power in
post-positivistic research is defined relationally rather than an institutional or
personal feature. So-called genealogical discourse analyses of corruption
cases and corruption controversies analyze how power and knowledge func-
tion, how the rules and resources that set the limits of what can be said are
working. Foucault (1977; 1984) has shown how power works through ‘sub-
jectification.’ Bracking (2009: 36) argues that

‘the formal definition of corruption used by international financial institutions (…) acts in
practice as a strategic resource and signifier within World Bank political discourse, indi-
cating bad governance, illegitimacy and geopolitical position (…) Rather it is the wider
strategic role that the concept plays as a disciplinary governance concept which is critical
to donors’ attempted management of African politics and societies.’

Every discourse claims to talk about reality. In doing so, it classifies what is
(not) true permitted, desirable, and so on. Truth and power are closely re-
lated. As Foucault (1984: 74) stated, ‘Truth is linked in a circular relation
with systems of power which induces and which extend it; a ‘regime of
truth’’. Power is not just repressive; it is always productive. A genealogical
discourse analysis of corruption cases can reveal some of the ways power

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1 By using a grammar in its descriptions that replaces the subject with consciousness by a
subject as the receiver of social meaning, static concepts are in genealogy made fluid in a
historical process. Within genealogy, Foucault (e.g. 1977) looked for the way forms of
problematiciations are shaped by other practices. Shapiro (1992: 29): ‘Genealogy is gray,
meticulous, and patiently documentary. Committed to inquiry, it seeks endlessly to dissolve
the coherence of systems of intelligibility that give individual and collective identities to
persons/peoples and to the orders that house them by recreating the process of descent
within which subjectivities and objectivities are produced’.
functions and can thus add to the understanding of the meaning of the corruption cases. It can follow back in history the traces of a corruption discourse and reveal the contingencies of a current discourse.

Building partly on the work of Foucault, some have shown how discourses on corruption with their inherent worldviews give some an advantage over others. For example, Roberts et al. (2007) have shown how the discourse on governance in the so-called Pacific Plan resulted in a technocratic direction such that a particularly narrow conceptualization of governance dominates. ‘In a direct reading of the Pacific Plan and the interventions it empowers there is ample evidence that governance (good and bad) is used in a disciplining way’ (Roberts/Wright/O’Neill 2007: 981). As a result, most emphasis in the region was laid on institution building (offices of auditing, statisticians, and so on).

‘The definitions and modes of monitoring governance provide a framework through (…) which Pacific Island elites (…) are able to know and analyze their region (…). As the Pacific comes under the gaze of an expert calculus that frames forms of governing as ‘good’ or ‘bad’ the island nations and people are once again defined in terms of lack, with answers proffered by development experts’ (Roberts/Wright/O’Neill 2007: 978/979).

To reveal the forces or power of a discourse, genealogy has to go back to the moment in which an interpretation or identity became dominant within a discourse, like the Pacific Plan, in which case many alternatives for the dominant governance discourses are available. In fact, in some cases the alternatives effectively challenge the governance interpretations of the Plan. ‘The continual remake of governance occurs in several ways as social movements act to make strategic use of the term within the context of the Pacific Plan and beyond it’ (Roberts/Wright/O’Neill 2007: 980).

In so-called critical corruption studies, questions are asked about the consequences of the international anti-corruption measures. Brown and Cloke (2006: 281): ‘Recently, together with several other commentators (Hanlon 2004; Harrison 2003; Michael 2004; Polzer 2001; Szeftel 1998; Williams/Beare 1999) we have been promoting the need for critical academic reflection upon the growing calls for an international ‘anti-corruption’ crusade’. Why, then, has there been such an explosion of interest in corruption since the 1990s, and why is there such an apparent political commitment towards tackling the problem (Brown/Cloke 2004) when there is no evidence that corrupt behavior has increased? Brown and Cloke (2004) argue that an important factor has been shifting geopolitical priorities after the end of the Cold War. The effects of anti-corruption measures turn out to be manifold, and towards much more than simply reducing the levels of corruption.

‘Despite the evolution of structural adjustment into a kindlier, cuddlier poverty reduction version, within the international financial institutions there is no serious commitment to address the issues of regulation and control so vital to any understanding or control of corruption that debilitates countries of the North, East, West and South’ (Brown/Cloke 2007: 318).
Once again, the importance of context is emphasized. Consequences of anything will always depend on the particular situation, so it is stressed. Brown and Cloke (2006: 282/283):

‘This lack of detailed, contextualized analysis of the implementation of supposed anti-corruption initiatives is, we would argue, reflected everywhere, rather than having anything to do with any uniqueness of Nicaraguan circumstances (…) we have also come across a series of major reservations expressed particularly by those whose evaluation of such activities stems from long-term research experience in the country concerned (…) Taken together, these points reflect our concerns that in too many cases what is referred to as corruption has been taken out of the context within which it occurs both globally (in terms of the interactions between North and South, the transforming influence of globalization etc.) and locally (reflecting a tendency to seek for global explanations for and solutions to a monolithic signifier named corruption, rather than more detailed considerations of the complex dynamics of the nature of multiple, interlinked corruptions within individual societies).’

Most of the critical corruption studies are not against anti-corruption measures per se, but what is labeled ‘corrupt’, what is not, and the effects thereof are critical. A special concern is what the negative consequences will be for the poor (e.g. Brown/Cloke 2006).

The intentions of anti-corruption discourses are questioned as well. Some claim, for example, that such discourses reflect a post-Washington consensus seeking to reinvigorate regulatory institutions while maintaining blame for the failure of development in South American governments (Le Billon 2005: 687). Another example: ‘Policy on corruption is deeply embedded within the wider constructions of global neo-liberal and free market economic governance (Brown/Cloke 2004, 2005; Marquette 2003; Szeftel 1998), where a clear divide between the political and economic and between the public and private spheres is expected’ (Bracking 2009: 37) – remarks similar to Roberts et al. in their study on the Pacific Plan. Kondos focuses on the meaning of favoritism using a set of Nepalese cultural practices, showing that ‘the favour’ and therefore ‘partiality’ as values are in accordance with Hindu cultural values. Yet he also explains how Western intellectuals tend to construct ‘favoritism’ to mean corruption and its motives. As a result an ideological conflict in the field of political ethics arises from Western pressure to adopt the principle of ‘impartiality’ in government (Kondos 1987). Gupta (1995: 375-402) focuses on discourses of corruption in contemporary India, specifically, practices within the lower echelons of Indian bureaucracy and representations of the state in the mass media. He stresses vigilance toward the imperialism of the Western conceptual apparatus, questioning the Eurocentric distinction between state and civil society and the conceptualization of the state as a unitary entity. Some also see the use of (insincere) anti-corruption discourse as a strategic tool to legitimize the invasion of Iraq (Le Billon 2005; Whyte 2007).
In some critical corruption studies we find criticism of ideologies, especially neo-liberalism. Neo-liberalism is not just blamed for promoting the interests of the elite via anti-corruption discourses; some even blame it for causing corruption. Whyte (2007: 179), for example, states: ‘Neo-liberalism creates a fertile environment for ‘corrupt’ market transactions to flourish, because it seeks the creation of limited space as a means of promoting entrepreneurialism and the pursuit of self-interests’, once again reminding us of Roberts et al. and the Pacific Plan. Paradoxically, the Enron scandal, which involved falsification of balance sheets, manipulation of accounting practices, and the creation of an image of financial health, showed the pervasive nature of corruption within corporate America – a hotbed of neo-liberal thought. MacLennan (2005: 156, 159) states, ‘corruption is more than a simple, isolated crime committed for personal gain. It is a part of corporate and political, culture – more pervasive and acceptable among elites than we realize. In short, it is becoming institutionalized’.

Others are very critical of almost all anticorruption measures – integrity workshops, national integrity system analysis, anti-corruption commissions – in the sense that they are seen as parts of wider mendacious practices where people are subjected as supernumeraries to human development: ‘The anti-corruption discourse and donor practice itself can cause perverse effects which aggravate cycles of deteriorating governance (discussed by various authors in Bracking 2007)’ (Bracking 2009: 37). Just as we saw in the Pacific Plan example (Roberts/Wright/O’Neill 2007), it is often stated in critical corruption literature that the current dominating anti-corruption discourse is too focused on technical solutions and the public-private distinction, resulting in too much attention to the public sector as the major cause of corruption. In short, the ‘anti-corruption crusade needs to be shorn of its anti-state bias’ (Brown/Cloke 2004: 291).

9. Fighting Corruption

So what remedies do post-positivist corruption scholars propose? Clearly, they are cautious about supporting anti-corruption measures. After all, to them any interpretation of corruption and its causes is contestable. Applying a post-positivist perspective to corruption could most importantly sensitize us to the fact that people live in different social realities, and therefore have different perceptions of what constitutes corruption. Knowing so might give us Western Weberians pause before flinging accusations of corruption. We should also critically study the effects of (academic) corruption discourses that necessarily result from any specific interpretation of or theory on the causes of corruption.

For Bourdieu/Wacquant (1992) reflexivity is key to entailing awareness of the effects of one’s own social position, perceptions, observations, and the
conditions of understanding that structure discourse. As an act of self-reference reflexivity serves to make explicit the underlying unthought structures that frame our social world. Lennerfors (2008: 393-397) asks in his dissertation how postmodern philosophers would have viewed corruption – one of his sections is called ‘Baumanian corruption’- had they dealt with the phenomenon. He then applies these insights to a Swedish case. In the last chapter of his book he asks himself what ‘gifts’ he has presented to practitioners, and ‘reflection’ is his answer. He invites administrators to reflect on clear rules and the pros and cons of grey zones. He also warns against concentrating on rules instead of on the underlying values. Reflection should also be given to the exact limits between the public and private spheres. As not everyone in an organization shares the same corruption discourse, reflection on which group of colleagues one would like to identify with could also be helpful. He issues a similar invitation to reflect on one’s attitude to the private parties involved, and invites the public in general to reflect on the reasons behind the accusations of corruption it reads in the newspapers.

Tänzler, who is scientific coordinator of ‘Crime and Culture: An International Research Project within the Sixth Framework Programme of the European Commission’, is rather more ambitious. The project he coordinates is aimed at finding ‘means to optimise corruption prevention in the EU’. The project’s point of departure is that the different perceptions of what constitutes corruption in the EU are a major obstacle to fighting it, as the remedies might well be based on corruption definitions not shared by the people they are targeting. Making clear what different perceptions of corruption European cultures hold might increase the fit between these perceptions, and the remedies used. The project explicitly aims at finding new remedies. It might thus lead to more success in combating corruption in Europe.2

Alternative explanations and understanding of corruption in particular countries can help us reconsider the effectiveness of existing policy instruments to combat corruption. Above all, the importance of context became clear. Too often, corruption and its remedies are discussed outside its social and historical context. This is dangerous because, whatever way one looks at the causes of corruption, the contingencies are many. Any proposed solution should take as many contingencies as possible into account.

10. Conclusion

In this chapter we looked at how post-positivistic theories study and view the causes of corruption and the ontological stances on which the theories are based (the importance of language and discourse). We saw that post-positivistic scholars do not study what corruption ‘really’ is or means, but

2 http://www.unikonstanz.de/crimeandculture/project.htm.
how the definitions of corruption come about, both in academic and all other discourses on corruption. And, very importantly, we looked at the effects of using the concept.

It turns out that there is no unifying post-positivistic corruption approach; indeed, most post-positivistic researchers denounce classifications. Lennerfors (2008: 309): ‘Had Bauman written about corruption, he might have claimed that the real issue of corruption lies within the more general project of classification and division – and hence the structuring of the world as such (...) Bauman describes classification as an act of violence.’ Many of the studies in this chapter turned out to have an affinity with social constructivist ideas, just as theories that look at the (power) effects of discourses on corruption. Or, as Lennerfors (2008: 307) put it, ‘A postmodern understanding of corruption is related to ambiguity and that no classification of the world is accurate.’ In other words, we live in an ambiguous world with no clear categories of right and wrong, yet there are demands for clarity and demarcation. This illustrates why, throughout the chapter, the context of corruption research and discourses is fundamental.

The causes studied here were primarily those of the usage of the label ‘corruption’. This in clear contrast to chapters in this volume that see corruption as a clear phenomenon whose causes can, at least in principle, be established. This does not mean that we believe it is not useful to try to establish the causes of corruption; the other chapters provide new invaluable insights. The value this chapter has added, however, is foremostly to show how useful it is to critically study the effects of corruption discourses. And it ends with a plea to corruption scholars to critically reflect on the effects that their own academic discourses have on corruption.
Chapter 8: 
The Criminology of Corruption

Wim Huisman and Gudrun Vande Walle

1. Introduction

Corruption is a form of crime. Most people, including scholars, would agree on that. Criminology is a scientific discipline that has crime as its object of study. Surprisingly, however, corruption has rarely been the focus of criminological research and mostly in the context of broader concepts of crime, such as organized crime. This is rather strange because other concepts are perfectly suitable for a criminological analysis of corruption. As criminologists, we are convinced of the added value of a criminological perspective on corruption. Taking criminology as the reference point we will address two issues in this chapter.

First, several criminological concepts, developed for the study of distinct forms of crime, will be discussed. These concepts enable a better understanding of corruption as a crime phenomenon. Concepts related to corruption are: organized crime, occupational crime, corporate crime, state crime, and the more recent derivatives such as state-corporate crime. We end this analysis with the concept of ‘victimization’ and the added value of victimology for a better understanding of the crime phenomenon.

One question that connects the different concepts is the question of definition. Mainstream criminology generally works within the context of the criminal law definition. For corruption this usually means the criminalization of bribing. Bribing has an active side of offering bribes by the ‘corruptor’ and a passive side of accepting bribes by the ‘corruptee’. From this narrow definition, an important question emerges when we reflect upon the meaning behind the criminalization of corruption, being the disapproval of the abuse of power for personal gain: ‘must we use the law to draw the line?’ (Nelken 1994). Should the criminological study of corruption be limited to those forms of corrupt behaviour criminalized by law – mostly offering and accepting bribes? Or should we extend the scope of research to legal behaviour that leads to the same sort of abuse of power?

In the second part of this contribution, several theories on the aetiology of crime will be explored to discover their explanatory value for a better understanding of corrupt behaviour. The selection of theories is based on the assumption that corruption is mostly committed by agents operating in the
context of organizations. A multi-level approach is chosen, exploring possible causal factors on the macro-level of globalisation and nation states, the meso-level of organizations and the micro-level of interactions of individuals.

We end this contribution by reflecting upon the methodology that has been used to study corruption as a crime phenomenon. Empirical research in criminology is limited and often based on second sources. Some remarkable research initiatives ought to stimulate further empirical research.

2. Fertile ground for corruption research

The most important concepts that have been host to corruption studies are organized crime, occupational crime and organisational crime. Organisational crime is further divided into corporate crime and state crime. Even if the latter domains retain their authenticity, researchers have crossed the border of their own domain and are now searching for connections and networks between organized, corporate, state and occupational crime. This border-crossing has been introduced by, among others, the criminologists Kramer and Michalowski, with the concepts state-corporate and state-organized crime (2006). Today more researchers refer to the blurring of boundaries between legal and illegal organisation and the unreliable employee. This approach starts from the perspective of the perpetrator. We end this chapter with a reflection on the contribution of victimology to the understanding of corruption victimisation.

2.1 Corruption and organized crime

Without any doubt organized crime has been the most important domain in criminology for research into corruption. This is due to international initiatives of criminal policy at the end of the 90s in the fight against organized crime. Organized crime was perceived as a crime phenomenon that was increasingly threatening the legal economy but it appeared to be impossible for the police to capture the illegal networks behind organized crime. Money laundering and corruption were considered as mechanisms used by criminal organisations to facilitate or to continue their lucrative illegal activities without being detected. Regarding corruption, differences could be made between corruption on the political level, on the enforcement level or on the level of administration. These moments of contact between the underworld and the upperworld gave a clue to the police for further detection of the criminal network. This idea of the strong link between organized crime and corruption of the upperworld was later affirmed by the Dutch Parliamentary Inquiry Committee concerning Investigation Methods, the Van Traa Commission. The commission said: there is organized crime when – among other require-
ments – the group is capable of covering up their crimes in a relatively effective way, particularly by demonstrating their willingness to use physical violence or to rule out persons by means of corruption (Fijnaut et al. 1998).

What could be called a ‘moral panic’ at the end of the 90s concerning organized drug trafficking and human trafficking has also had an impact on research in criminology. In the 1960s and 1970s, criminologists created mafia-like images of criminal organisations: organized crime was an underworld totally separated from the legal world. Beare refers to the ‘alien conspiracy notion’ that separated organized crime from normal society and therefore distanced organized crime from corruption (Beare 1997a: 66). The urgent demand for more profound research led to a more realistic picture on organized crime in criminology (see, e.g., Fijnaut 1998; Kleemans 2008; Rider 1997; Ruggiero 1996). Empirically based research such as the Van Traa Commission succeeded in de-mystifying the mafia-like image of organized crime in the Netherlands (Fijnaut et al. 1998). Independent academic research is now deconstructing organized crime in all its complexities, with particular attention for the moments of interface between the legal and the illegal world (Fijnaut/Paoli 2004; Van Duyne/Jager/Von Lampe/Newell 2004). Discussing organized crime is not the same as discussing one concept anymore. Among other reasons, the variety of organized crime will depend on the ability to garner support and assistance via corruption. The greater the ability to corrupt the greater the ability to remain invisible (Beare 1997a: 68). Fijnaut et al. (1998) see three further relationships of crime with the upperworld: parasitical, symbiotic and implantation. In a parasitical relationship the contacts with the legal economy are rather limited and only in the interest of the underworld. If an opportunity appears, the criminal organisation will try to corrupt. A symbiotic relationship is more complex, based on the mutual interests of the criminal organisation and the upperworld. Corruption becomes more important and gives mutual benefit. However, since the relation between both worlds is close, corruption is more complex and difficult to prove. The last kind of relationship type is implantation. The criminal organisation is partly absorbed in the upperworld and the criminal activities are totally mixed up with legal business. Corruption changes in a situation of permanent pressure.

The study of organized crime has stimulated attention for corrupt practices: even if there is no consensus about the necessity of corruption for the continuity of illegal activities, it is obvious that at the very least corruption can be a facilitator. On a world scale, Buscaglia and Van Dijk found a strong correlation between the perceived level of organized crime in countries and the level of perceived corruption in these countries as reported by Transparency International (Buscaglia/Van Dijk 2003). On the other hand criminologists must be aware that the connection with illegal organisations is only one specific dimension. Other dimensions of corruption, committed in the sphere of the legal economy, are possibly less obvious but may give to be more reason for the study of corruption as an independent crime phenomenon.
2.2 Corruption and white collar crime

A second criminological concept, providing the opportunity for independent corruption research, is white collar crime. Sutherland, who introduced the concept during the congress of the American Sociological Society in 1939, defined white collar crime as ‘crime committed by a person of respectability or high social status in the course of his occupation’ (Sutherland 1961: 9). His definition was not very precise but his empirical research made clear that he was referring to criminal behaviour committed by members of the upper socio-economic class during their occupation, independent of the fact that an individual or the company is the beneficiary (Sutherland 1961: 9-10).

Already from that very beginning of what is now called organisational criminology the definition of white collar crime was a main topic of debate. The discussion questioned whether it was the role of criminal law to define white collar crime. Sutherland was convinced of the fact that general criminal law did not cover all forms of white collar crime because most of the harmful activities conducted by white collar criminals are dealt with outside the criminal court by civil litigation or disciplinary rules. ‘Given that ‘upper class’ criminals often operate undetected, that if detected they may not be prosecuted, and that if prosecuted they may not be convicted the amount of criminally convicted persons are far from the total population of white collar criminals.’ (Slapper/Tombs 1999: 3).

This far reaching statement clashed with the opinion of some lawyers, e.g. Tappan, who saw in the extension of the definition of crime outside the criminal law an attack on the principle of innocent until proven guilty. The debate about the delineation of white collar crime is still going on today. The republican criminologist John Braithwaite, for example, returned to Sutherland’s definition in saying that the criminal code is at the centre of delineation but most organisational crime is redefined as a private law conflict (Braithwaite 1984: 6). Some other criminologists rejected the criminal law definition completely because it is an institution enforced by the state and dominated by the powerful. These criminologists put forward a human rights definition with social harm as central point of delineation (Schwendinger/Schwendinger 2001: 84-85). This definition-debate which had faded through the years pops up again when talking about corruption. The Global Integrity Report states that the majority of countries have anti-corruption law: even those countries perceived as vulnerable for corruption. But when we study the implementation of the corruption law the results are less optimistic (Global Integrity Index 2008). Even in the Netherlands and Belgium the amount of corrupt practices which end up in criminal sentences are limited (Huberts/Nelen 2005: 50, Database Central Registration of Punishment, Belgium)\footnote{As an alternative to incarceration, the information on the conviction rate of corruption in Belgium was provided by the Federal Department of Justice.}.
The case ends with a disciplinary sanction or a dismissal for lack of evidence (Slapper/Tombs 1999: 87). The record is even worse for private corruption or corruption committed between two private individuals. This crime phenomenon that is considered to have the highest incidence of all corruption phenomena is often settled in the private sphere or penalised by market mechanisms. For the years 2004 and 2005 not one case reached a Belgian court (De Bie 2009; see also: Database Central Registration of Punishment, Belgium).

Despite the immense impact of Sutherland’s work on criminology, the content of white collar crime refused to become clear. Sutherland failed to distinguish crime committed by an employee in favour of his organisation with crime committed by an employee in his own interest and against the interests of the organisation. After Sutherland, the concept of white collar crime fell into disuse and different sub domains were developed: the domain of ‘offenses committed by individuals for themselves in the course of their occupations and the offenses of employees against their employers’ (Clinard/Quinney 1973: 188) or alternatively, crime committed by a legal organisation or a member of that organisation in the course of his occupation in favour of the organisation. The legal organisation that commits crime can be a private company (corporate crime) or a public organisation (state crime).

2.2.1 Corruption and occupational crime

The concept of occupational crime is relevant when analysing passive corruption. It means that an employee, in a public or private organisation, has abused a position of power or trust for private gain and against the interests of the employer. Clinard and Quinney introduced occupational crime in ‘Criminal behaviour systems: a typology’ (1973). Friedrichs thought that the definition of Clinard and Quinney made a scientific debate impossible because the concept was still too broad. He further diversified the concept into three categories: ‘occupational crime’ referring to illegal and unethical activities committed for individual financial gain – or to avoid financial loss – in the context of a legitimate occupation; ‘occupational deviance’ as the deviation from occupational norms (e.g. drinking on the job; sexual harassment) and ‘workplace crime’ for conventional forms of crime committed in the workplace (e.g. rape; assault) (Friedrichs 2002). Other researchers who gave continuity to the work of Clinard and Quinney are, amongst others, Blount (2003), G. Green (1990) and Mars (2006).

When talking about corruption as a kind of occupational crime some remarks are necessary. Firstly, concerning passive corruption, it is certainly the case that the offender has a personal responsibility but the organisational and social context cannot be denied. Frequently, it will be a hybrid mixture of on the one hand the personal characteristics of the corruptee and the impact of organisational aspects such as organisational structure, organisational culture, and style of leadership (Mars 2006; Tillman 2009); and on the other hand
elements external to the organisation such as globalisation, the legal framework and law enforcement (Box 1983: 34-79; Mars 2006; Tillman 2009). Punch illustrated the complexity of occupational crime in his research on police corruption. He rejects the bad apple metaphor and focuses more on bad orchards, an institutional context where the organisation, the kind of work, and the culture play a key role. In Punch’s work police corruption is viewed as both individual and institutional failure. Even if corruption, from a certain perspective, possibly fits the definition of occupational crime, caution is called for in establishing a causal link (Punch 2000: 314-315; Punch 2009: 18). Gray expressed the same concern for health and safety problems in companies: while workers are often victims of health and safety problems they are often too easily portrayed as offenders (Gray 2006). Even if the initiative emanates from the civil servant, the organisational context often creates the opportunities to commit corruption. The organizational context as a causal factor in explaining corruption will be elaborated upon in chapter 3.

A second remark concerning corruption as a form of occupational crime is that occupational crime may not necessarily be against the interests of the employer. From the point of view of the corruptee in the case of public corruption, the organisation can often profit from individual actions, especially if the company has already participated in a long process of blurring moral standards. In case of private corruption the interests of the organisation and the interests of the corruptee correspond. One example is the case of the Belgian soccer club SK Lierse and the Chinese gambler Ye. The bribe that was paid to some players of SK Lierse guaranteed the continuation of the club, was a benefit for some players and a guarantee of profit for the gambler. In general, soccer seems prone to corruption (Hill 2009). In practice it is not easy to make a clear distinction between occupational and corporate crime and a continuum of activities which favours the organisation more than the employee or vice versa although the latter occurrence seems to be more representative.

Occupational crime as a subject of research has been barely studied in criminology. It could be argued that a previously pro Marxist approach in organisational crime deflected attention away from the deviant behaviour of employees (Cools 2009: 192). Another reason could be that organisations try to hide deviant behaviour of employees in order to avoid negative publicity or, in the case of a public organisation, to keep their legitimacy.

2.2.2 Corruption and organisational crime

The other part of white collar crime is organisational crime or crime committed by an organisation or a member of an organisation in the interest of

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2 Lierse SK ‘ naïef’ in omkoopschandaal (Lierse SK ‘naive’ in corruption scandal), Trouw 19 April 2006.
the organisation. A decade ago every text concerning white collar crime contained the statement that there is no criminological research on white collar crime (cf. Pearce/Tombs 1998: ix; Slapper/Tombs 1999: 9). Today, the domain of organisational crime represents a significant part of criminological research as a whole and phenomena such as environmental crime, food safety scandals or financial crime no longer pass unnoticed by organisational criminologists. This is not the same for corruption. Few organisational criminologists have studied the act of corruption as an aim in itself.3 This can be explained in the following ways:

First of all, corruption has always been strongly related to organized crime and studied as a facilitator of organized crime. It is only recently that criminologists have given attention to the seriousness of corruption as a crime phenomenon of the upperworld.

Secondly, and related to the first argument there was no pressure from ‘outside’ to set up corruption research. For a long time politics was indifferent to the deviant activities of legal organisations and it was certainly not supported by the private sector who considered the research of organisational crime as a threat to the free market. It is only during the last two decades that the attention for public integrity and business ethics has started to grow – also on the political level. This differs from organized crime which has always been considered as a threat for the legal economy and has always been taken seriously by the private sector as well as government.

Thirdly, corruption is an ambiguous concept. We have already mentioned that the debate about the demarcation of organisational crime is a constant theme. This is certainly the case for corruption. When leaving the safe legal framework of bribery and enlarging the definition of corruption to the ‘abuse of power for private gain’ a new world of insecurity and vagueness is revealed. Perception studies establish a wide range of perceptions on corruption depending upon the social position of the perceiver and the kind of corruption committed. Heidenheimer, for example, categorizes corruption according to social acceptance in white corruption, grey corruption and black corruption (Heidenheimer 1989). The lack of clear definition of corruption may restrain criminologists from studying corruption especially since criminologists have always had difficulties leaving the criminal law borders behind.

Finally, the lack of ‘visible’ victims could be a reason for the lack of interest into corruption as a form of organisational crime. Organisational criminologists have been traditionally sensitive to scandals and disasters with huge victimisation rates and serious financial, physical, and emotional impact (Van de Bunt/Huisman 2007). Even if corruption produces its own human tragedy:

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3 In 1990 Clinard published ‘Corporate corruption. The abuse of power’. However the title was misleading since the book is an analysis of unethical and illegal behaviour committed by the Fortune 500.
unemployment, lack of health care, school education or famine; it is a slumbering problem that is too easily accepted as part of a culture or tradition.

It is possibly the case that there are more reasons to be found for the neglect of corruption in organisational criminology. Nevertheless, the two next study domains in criminology: corporate crime and state crime, will prove to be valuable for the study of corruption.

2.2.2.1 Corporate crime
When the criminal law definition of corruption is analysed, it has two main players: the active corruptor and the passive corruptee. Little attention is given to the role of corruptor in the media and/or research. We have to agree with Levi when he says that crime committed by social outsiders is accepted far less gently than crime committed by the respectable company (Levi 2009: 51). Also in criminology, corruption committed by private companies or the active corruption side is a neglected crime phenomenon.

The debate on the definition of organisational crime takes on an extra difficult dimension the moment private companies become the central objects of research. Sutherland had already illustrated that an organisation is able to commit white collar crime without being perceived as criminal or without being detected or prosecuted. One of the explanations for their exclusion from the definition of crime is the social network of white collar people. The social network was, according to Sutherland, referable to the cultural homogeneity of people working for the government and in business: both being in the upper strata of the American Society, family and friendship, relations, and the mechanism of the revolving door. ‘Many persons in government were previously connected with business firms as executives, attorneys, directors, or in other capacities’ (1961: 248) Thus the initial cultural homogeneity, close personal relationships, and power relationships protect businessmen and women against critical definitions by government. This perception of the relationship between companies and the political level is something which fed the idea that companies always escape formal condemnation and that gave an impulse to the definition debate. This debate is still currently of high relevance in cases of corruption. While some activities of ‘abuse of power for private gain’ are considered as corrupt, other activities with the same risk of harm are considered socially acceptable; for instance networking and lobbying, make the regulator vulnerable for what is called regulatory capture. Another mechanism that endangers the independent position of the regulator is ‘a revolving door’. A revolving door refers to the mechanism of personnel shifting between affiliations in politics or regulatory agencies and executive positions in companies subjected to regulation. In fact people who left their

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4 In case of regulatory capture the regulating agencies act in favour of those who are regulated and not for the public interest. The reason for capture is the dominant position of the regulated in the regulation process. This dominant position is the result of a direct or indirect mechanism of influencing or even manipulation. (See also: Vande Walle 2010).
job come back in with other interests. The previous network and contacts will help to protect the interests of the regulated.

In comparing lobbying and corruption Campos and Giovanni have suggested that legal mechanisms such as lobbying are preferred in rich countries while companies in poor countries have to rely on corruption (Campos/Giovanni 2006). The promotion of medicines and the subtle interaction between pharmaceutical companies and physicians is a good illustration of the distinction between what is legal and what amounts to corruption. While general practitioners are seduced by pharmaceutical companies offering to equip their medical cabinets or facilitate participation in a conference with a luxurious destination they are also encouraged to prescribe new medical products of that specific company to their patients (Braithwaite 1984; Vande Walle 2005: 232-240). Despite the recognition of overmedication as a new western disease, such mechanisms continue to be tolerated.

In the near future more profound criminological research into the corruptive practices of private companies and the acceptability of the relationship between the private and political level seems to be essential. The initial impetus for the latter has already been given with the introduction of the concept known as state-corporate crime; a concept that emphasizes the importance of both the private company and the state, emerging from the compilation of the study of corporate crime with the study of state crime.

2.2.2.2 State crime
State crime is a relatively new study domain in criminology. Illegal or deviant acts perpetrated by or with the complicity of state agencies were until recently mostly studied international political sciences and anthropology (P. Green/Ward 2004: 431). The recent criminological attention has some specifications and challenges for the future. However, with the introduction of the International Criminal Court, state crime has gained academic attention, also in criminology.

In line with the competences of the ICC the attention has gone particularly to genocide, war crimes and crimes against humanity (P. Green/Ward 2004; Huisman 2009; Rothe/Ross 2009; Smeulers/Haveman 2008). With the exception of P. Green and Ward corruption is seldom considered as a state crime. We think it is a challenge for criminologists to further explore the relation between war crimes, genocide and crimes against humanity on the one hand and corruption on the other, as will also be discussed in section 3 (Banttekas 2006).

Relating corruption to human rights abuses brings the risk of the ‘overexposure’ of corruption in countries in transition and third world countries and makes people think about corruption in terms of ‘the other’ and ‘the self’. Criminology of the other is a type of criminology which speaks of poor countries and countries in transition ‘as if they are the gangsters, the rogue states, the failed states and we can present ourselves as police’ (P. Green/
Wim Huisman and Gudrun Vande Walle (2004). On the other hand, *criminology of the self* considers state crime as a ‘natural outcome of the economic, military and geopolitical rationalities of advanced capitalist states’ (P. Green/Ward 2004). This could be a fallacy when studying corruption and when overstressing the culture of a country or population. Criminology of the other is possibly an idea which is fostered by instruments such as Transparency International or the Global Integrity index which seems to isolate the responsibility for corruption to the government of the corrupt country while in a global economy more actors are involved. Although Transparency International has attempted to restore the balance by focusing its 2009 report on corruption into the private sector. In recent years, companies have gained access to the regulation process and other legal mechanisms of regulatory capturing have made corruption, in the strict juridical sense, less important. This evolution into co-regulation risks turning the attention of the criminologists away from the responsibility of western countries to poor countries.

To avoid the spurious dichotomy of the self and the other and of the relation between private companies and the state, a new approach has now become essential.

### 2.2.2.3 State-corporate crime

A last biotope for the study of corruption is state-corporate crime. State-corporate crime provides a framework for studying forms of organisational deviance created or facilitated by the intersection of political and economic institutions (Kramer/Michalowski 2006: 18). In the first decades of the study of corporate crime, criminologists were strongly focussed on the private legal organisation as the perpetrator and the study of the role of public authorities was somewhat limited (Kramer/Michalowski/Kauzlarich 2002: 270). In theories explaining corporate crime, state responsibility was reduced to a lack of state regulation or a lack of enforcement (Box 1983: 64) or, going back to Sutherland, was conceived as belonging to the same social class (1961: 248). However the statement ‘no corporate crime without the state’ holds water. Kramer, Kauzlarich and Michalowski reintroduced the state as participant in the commission of corporate crime, either as facilitator or as initiator. The introduction of the notion *state* came from a feeling of dissatisfaction with the underestimated responsibility of the state in committing corporate and organized crime. Their critique was based on the proposition of Quinney that ‘the definition and control of some behaviour as criminal and the selection of others as acceptable are the consequences of socially embedded processes of naming, not qualities in resident in the behaviour so named’ (Kramer et al. 2002: 265-266). With the introduction of state-corporate crime; Kramer and his colleagues reintroduced the state, not in the baseline as an element of explanation, but as a responsible actor. Certain behaviour committed at the intersection of corporate and state goals are not as seen as criminal; either because they are not named as such by law, or are not treated as such by those who administer and enforce the law, re-
Regardless of the social harm this type of behaviour causes (Kramer et al. 2002). State-organized crime is organized crime that is created or facilitated at the political level (Chambliss 1989). P. Green (2005) brought the three domains together in his study of the construction industry in Turkey and the disasters after the earth quakes. This same mechanism of the blurring of boundaries between organized, corporate, and state crime is remarkable in the illegal trade in natural resources and the relation of this illegal trade with arms trafficking (Boekhout van Solinge 2008; Reno 2009). A striking example is the scandal of ‘Angolagate’ in which French officials have recently been convicted of taking bribes and doing business with shady arms dealers to safeguard French oil interests in Angola and in which former executives of the French oil company Elf have been convicted for offering bribes to both parties in the civil war in this country (Frynas/Wood 2001).

Kramer and Michalowski further differentiated the responsibility of the state between state-initiated and state-facilitated (Kramer et al 2002: 271) notions that fit with what are called acts of commission and acts of omission. State-initiated activities are socially injurious activities initiated by a governmental actor. State-facilitated activities occur when government regulatory institutions fail to restrain illegal acts, ‘because of a collusive relationship or because they adhere to shared goals whose attainment would be hampered by aggressive regulation’ (Kramer et al 2002: 271-272). The corrupt activities of a civil servant in a tolerant environment without leadership or implementation of regulation could be considered as state-facilitated.5

State-corporate crime is a rather inflexible concept but it sets some reflections in motion. Firstly, it has contributed to a more complete view of the network of responsible actors involved in corporate crime. Not only is the private company important but also the state, as an institution of rule making and of enforcement. Secondly, the activities of the state itself are questioned more thoroughly. Finally, the concept of state-corporate crime highlights the debate about the criminal law definition of corruption: is the legal definition sufficient to encompass socially injurious relations between companies? This is a debate which pops up from time to time in criminology: reminiscent of the radical criminology of the Schwendingers who pleaded for a human rights definition of crime because the legalistic definitions cannot be justified

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5 Even if these different notions of responsibility hold water, their application in practice can be a rather complex exercise and nuances can be subtle. Take for example the weapons exported from the Belgian weapon factory Fabrique Nationale de Herstal or in short FN. Since 1997 the Walloon Region is the 100% owner of the Herstal Group which the FN factory belongs to. They provide employment for 3000 people in Belgium, Japan, Portugal and the US. In 2002 FN was front page news because the parliament of the Walloon region gave permission for the export of more than 5000 machine guns to Nepal whilst weapons export to regions in conflict is internationally forbidden. What was the Walloon region doing in this case: facilitating to protect a national traditional economy and employment or, initiating because they were 100% owners of the company in question? In other words – how do we categorize a case where the state is the company and the regulator at the same time?
as long as they make the activity of criminologists subservient to the state (Schwendinger/Schwendinger 1975: 138). In addition, P. Green and Ward specified the aspect of socially injurious by referring to human rights violations (P. Green/Ward 2004: 28). Barak moreover, says that in a sense, injurious activities of the state are more threatening than harmful activities of the private sector because the state makes the rules in the name of common interest or national welfare (Barak 1991: 5). Even if these contributions are radical criminological points of view which stand far from practical applicability, they keep criminologists alive to the relativity of the penal code and potential injurious effects of legal activities (Passas/Goodwin 2004).

2.3 Corruption in victimology

Corruption can have a wide variety of victims: the state, competing firms, the community or even entire societies. Moreover, those under direct or indirect duress to commit corruption offer a broad base for further criminological analysis. Surprisingly, however, victims are seldom the topic of concern in corruption studies. This is a general fallacy of organisational criminology. Corporate crime has often been represented as victimless crime for many reasons (Croall 2001: 8-9; Wells 1994: 26). Ross said it was due to the character of the perpetrator, the criminaloid, who consciously avoids victimising in his direct neighbourhood (Ross 1907). Others blame it on the private character of organisational crime: committed in offices or by using safe telecommunication. Also, the time-space distance between the offender and the victim plays a role (Vande Walle 2005: 39-44) Going back to the case of the export of counterfeit medicines to Nigeria, between the moment of bribing the customs officer and the consumption of the pseudo-medication a considerable period of weeks or months passed. Finding the causal link between the injurious effects and the transaction between company and customs officer was almost impossible. The distance between the offender and the victim reinforces the invisibility of victimisation and the unconsciousness of the injured of being a victim. Furthermore, especially in the case of corruption, the indirect effects on employment, health care and education, avoids public disapproval. Even if people were conscious of their victimisation, their social position makes it almost impossible to react with impact. The Global Corruption Barometer of Transparency International (2008) shows that low income households have to pay most bribes. This finding is in flat contradiction to the democratic character often attributed to corporate crime. Everybody can be a victim but the weakest, the poor, the uninformed, are the first victims.

The characteristics of corruption make the victim into what Sutherland called a weak antagonist, or a victim who resigns because of his low social status or lack of knowledge (Sutherland 1949: 230). It is one of the tasks of victimology to make victims more visible primarily, in their own interest but
also to get a better understanding of the mechanisms which operate to make people apparently resigned to their fate.

3. The aetiology of corruption

The previous section has shown that criminologists would place corruption in the scope of types of crime which take place in an organisational context. It is therefore plausible to explore whether theories that have been developed to understand the causes of these forms of crime, are also applicable to the aetiology of corruption. In addition, the distinction between organisational and occupational crime is parallel to the active and passive sides of corruption. In a corporate crime context, it can be a corporate agent who is offering bribes in order to achieve a corporate aim, for instance acquiring a contract or obtaining a governmental permit. On the passive side, it will be a member of a private or public organization taking the bribe for his or her own benefit, in exchange for a service or omission that will probably not be for the benefit of the organization.

This distinction can also be relevant for the explanation of corruption. Theories on the causes of organized and white-collar crime are often elaborations of general theories of crime. These theories focus on three categories of explanatory variables: motivation, opportunity and the operationality of control. According to Coleman (1987:409) motives are ‘a set of symbolic constructions defining certain kinds of goals and activities as appropriate and desirable and others as lacking those qualities’. Opportunities entail ‘a potential course of action, made possible by a particular set of social conditions, which has been symbolically incorporated into an actor’s repertoire of behavioural possibilities’. According to Shover and Bryant (1993: 144) opportunities for corporate crime are ‘objectively given situations or conditions encountered by corporate personnel that offer attractive potential for enriching corporate coffers or furthering other corporate objectives by criminal means’. The operationality of control is the opposite of opportunity: informal and formal control provided by guardians serve as a restraint on the commission of crime (Benson/Simpson 2009). While a motivation is a subjective construction of psychological desires, and opportunity and control are rooted in objective social conditions, these variables are inseparably interwoven in particular settings. Motivations evolve in response to a particular set of structural opportunities and have little meaning in another context. Equally, an opportunity requires a symbolic construction making that particular behavioural option psychologically available to individual actors. Finally, a lack of control contributes to the opportunities to commit crime. In other words, acting in an environment in which business opportunities present themselves after showing willingness to take care of the personal needs of authority figures might influence the motivation to do so.
This example shows that these explanatory variables can be found on several aggregate levels: the level of the individual offender and his or her social interactions, the organizational level of structural and cultural characteristics of organizations and the institutional level of political economy and business regulation (Kramer/Michalowski 2006; Shover/Bryant 1993). Vaughan (2002) has emphasized the importance of understanding the interconnections of the micro-, meso- and macro-levels and the relationships between the environment, the organizational setting and the behaviour of individuals within for the explanation of misconduct committed from within an organizational context.

3.1 The institutional level

On the macro-level, many criminologists attribute a criminogenic effect to the ‘culture of competition’, a complex of values and beliefs that is particularly strong in social systems based on industrial capitalism (Coleman 1995:363). In this worldview, the foundations of which can be traced back to the 17th century (Coleman 1987: 416), great importance is given to achieving wealth and success, while people are seen as autonomous individuals with powers of reason and free choice and therefore responsible for their own condition. In this way, the culture of competition defines the competitive struggle for personal gain as positive, rather than negative or selfish. Competition produces maximum economic value for society as a whole. This demand for success and the pursuit of wealth is seen by some criminologists as criminogenic in itself (Punch 1996). Others point to the fact that it is rather the flipside that brings a risk: when success is threatened and illegitimate means are perceived as the only remaining method of attaining wealth (Pas-sas 1990). According to Coleman, this ‘fear of falling’ is the inevitable correlate of the demand for success, which together provides a set of powerful symbolic structures central to the motivation of economic behaviour (Coleman 1995: 417). Furthermore, the principle of calculated self-interest of market exchange collides with principles of open sharing and reciprocal exchange found in societies that are not deeply influenced by industrial capitalism. It is this collision of capitalist self-interest and traditional reciprocal exchange which is often related to the observed ‘corruption eruption’ attributed to the internationalization of economic markets (Williams/Beare 1999). The question at hand is whether globalisation of business has increased the prevalence of corruption or has globalisation increased the visibility and sensibility of corruption.
3.1.1 Globalisation and anomie

Most authors in the field of criminology regard globalisation as a criminogenic development. According to Passas (1998), globalisation multiplies, intensifies and activates ‘criminogenic asymmetries’ that lie at the root of corporate crime. Passas defines these asymmetries as ‘structural disjunctions, mismatches and inequalities in the spheres of politics, culture, the economy and the law’. These are criminogenic in that they offer illegal opportunities, create motives to use these opportunities and make it possible for offenders to get away with it. Passas sees corruption as a conservative force that maintains or increases asymmetries (Passas 1998: 26). It hampers social, economic and political progress and it facilitates the illegal markets which are the result of asymmetries. Corruption, on the other hand, is also a consequence of asymmetries (Passas 1998: 27). ‘Companies operating in countries with slow and inefficient administration will be tempted to pay ‘speed money’ in order to get the job done.’ Economic asymmetries might foster attitudes justifying corruption as functional to local economies and as way of redistributing wealth. Corrupt practices might become seen as patriotic acts, for instance in skimming off funds of international organisations intended for economic development.

Criminogenic asymmetries can also be found in the field of the regulation of corruption. The nature and the firmness of the regulation of corruption may differ from one country to another, ranging from total absence of binding standards, to an emphasis on self regulation and criminalization. Although most countries that abide by the Rule of Law have criminalized corruption and 37 – mostly developed – countries have ratified the 1999 OECD Anti-Bribery Convention, bribes paid in international business are still tax-deductable in several countries or alternatively, there is a lack of legal enforcement, creating ambiguity around the illegitimacy of corruption (Transparency International 2008). Asymmetries in the regulation of corruption might not only provide de jure opportunities but they can also contribute to the moral ambiguity of offering and accepting bribes. Ambiguity surrounding regulatory requirements and therefore applicable norms and boundaries of acceptable behaviour is often seen as a typical feature of white-collar crime (Nelken 1994; Zimring/Johnson 2005).

‘As in the study of white-collar crime, to study corruption is an attempt to follow a moving target: the way that certain transactions move in and out of acceptable behavior as the boundaries of what is legitimate are softened, reaffirmed or redrawn; this is the classic stuff of labeling theory’ (Levi/Nelken, 1996).

Situations in which there is a high degree in uncertainty or confusion as to what is and what is not acceptable, due to radical changes in society, were labeled by the great sociologist Durkheim as ‘anomie’ (Durkheim 1897/1997). According to Durkheim and the criminologists who have elaborated upon his theory, in an anomic environment, comparatively high levels of crime might
be expected. Countries which reputedly have high levels of corruption, as
might be deducted from the Transparency Corruption Index, might be in the
process of experiencing such rapid and radical changes. ‘Likewise any sud-
den political or economic shift – such as into free-markets, democratic sys-
tems – may result in a contemporary state of heightened corruption and insta-
bility. The corruption may not be to blame for this chaos, but in fact may be
reflective of it’ (Beare 1997b: 163). An alternative reading of the influence of
globalization on corruption is that it has increased the sensitivity for corrup-
tion. Based on the review of the publications and policy statements of the
leading anti-corruption crusaders – namely the OECD, the IMF and the
World Bank – Williams and Beare (1999) claim that the key change that has
occurred over the past few years is not the growth of overall levels of corrup-
tion or the severity of its effects on domestic economic growth, but rather, the
reframing of corruption as a source of economic risk and uncertainty that
must necessarily be problematized according to the objectives and interests of
the global economy.

It will be discussed below how the anomie can be found on the meso- and
micro-levels within organizations, contributing to causes of corruption. How-
ever, first the relations between nation states and multinational corporations
will be discussed as relevant to the concept understanding of corruption.

3.1.2 Corporations and states

Nation states are responsible for exercising control of corporations by regu-
lating business and enforcing the regulations by actively inspecting compli-
ance and when necessary, sanctioning non-compliance. Corporate crime is
state-facilitated when this social control is lacking; when government regu-
latory agencies fail to restrain deviant business activities. This failure might
be due to negligence, but it might also be an intentional strategy to attract
foreign corporations. As mentioned above, corporate crime might also be ini-
tiated by the state. State-initiated corporate crime occurs when corporations,
employed by the government, engage in organizational crime at the direction,
or with tacit approval of the government.

Corruption can be a causal factor or a result of this nexus of state-
corporate relations leading to deviant behaviour. The concept of state-
corporate crime reflects the fulfillment of mutually agreed objectives of a
public agency and a private entity achieved through cooperative illegal activ-
ity (Friedrichs 2007: 147). The study of state-corporate crime rests on the
premise that on the one hand, in order to operate, the modern corporation re-
quires a particular legal, economic and political infrastructure which is pro-
vided by governments; while on the other hand, governments in capitalist
states depend on corporations to supply goods and services, provide an eco-
nomic base and support government policies (Harper/Israel 1999). ‘A trawl
of literature (largely non-criminological) reveals a great many cases where
corporations and states have colluded in criminal enterprise for mutual benefit’ (P. Green/Ward 2004: 29)

Corruption might be used as a lubricant, to create situations of dependency of governmental agencies or officials, making them more willing to serve corporate interests. This might especially be the case when a large multinational corporation is dealing with a weak government of a developing country. The desire for development through foreign investment often results in developing countries ending up dependent on investment by foreign corporations. This dependence might lead a government to sacrifice the environment and the human rights of its population to economic development. This dependence will increase in situations of armed conflict: then the revenues of foreign investment are needed to keep the war effort going. Dependency on foreign investment is also strong in countries with a large financial debt, as is the case in almost all developing countries. According to Barnhizer, ‘the debt service obligation almost compels governments to look the other way when foreign and domestic investors offer some hope of increasing economic development and hard currency earnings from foreign trade’ (Barnhizer 2001: 146-147).

Furthermore, strong dependence arises in large projects in which the government of a developing country is doing business directly with a large corporation: such as the building of a gas-pipe by the military Junta in Burma and the US-based corporation Unocal (Marshman 2003) and the Ok Tedi mining project and Australia’s largest mining corporation Broken Hill Pty in Papua New Guinea (Harper/Israel 1999). In these cases, governments might even be willing to change the law so that the operations of this specific corporation is not restricted by regulation that would be violated, while the actions of its civilians directed against the corporation might be criminalized, as happened in the Ok Tedi case (Harper/Israel 1999).

Again, bribing might further increase dependencies. Shell has admitted that their way of doing business stimulated the corruption in Nigeria. Also, while being used by corporations as a means to facilitate smooth business, profiting from these kickbacks might become the prime motivation for the business at the receiving end. In the Angolagate scandal it was uncovered that, via complicated schemes, French officials provided the MPLA government with arms that were to be used in its civil war with the rebels of UNITA. Apparently, these arms were not of very high standard. Sometimes the arms were just delivered solely for the commission and were directly put into a tank graveyard because the tanks could not function any more (Shaxson 2007).

The privileged positions of corporations with exclusive contracts or joint ventures with state-organs might also lead to strong personal relationships between corporate executives and politicians or public officials. These per-

sonal relationships may further facilitate corruption. Allegedly, Liberian president Charles Taylor and Gus Kouwenhoven, director of Liberia’s biggest logging companies OTC and RTC had such a relationship. ‘Taylor and Mr. Gus were close friends’, told the former management-assistant of OTC to a reporter of the Dutch newspaper Trouw, ‘they often stayed together here on the complex and played volleyball or went fishing’. The reporter also describes how these logging companies paid large kickbacks to Taylor and his accomplices to obtain logging concessions. Often, these personal relationships go hand in hand with corruption. The desire to generate foreign exchange at an institutional level coincides with the desire of individual political and corporate elites to gain personal profit.

In general, a high level of corruption may facilitate harmful business conduct, such as human rights violations and environmental pollution (International Council on Human Rights Policy 2009). Due to this causality, Bantekas proposes to qualify corruption as a crime against humanity in these situations (Bantekas 2006). The countries in which human rights abuses are frequently committed also score highly on the Corruption Perception Index of Transparency International (2008).

Corporations will be able to pay off any unfavourable governmental reaction to their harmful business activities. They may also be able to let governmental forces do the dirty work deemed necessary to protect corporate interests. For example, in Nigeria, a representative of the oil company Chevron was allegedly seen handing money to governmental soldiers, after having shot and killed protesters who had occupied one of Chevron’s oil platforms (P. Green/Ward 2004: 38-39).

Not surprisingly, corporate involvement in human rights violations occurs in countries with dictatorial political systems. In such a system there is no democratic control governing the deals that the regime is making with corporations and the ways in which the government facilitates corporate interest and the destination of the revenues of such cooperation. Controversially, but interestingly, Le Billon also points to possible positive effects of corruption in situations of armed conflict: ‘buying-off’ belligerents can facilitate a transition to peace (Le Billon 2003; 2008).

The preceding section might create the impression that developing countries are particularly prone to corruption. However, the public governance structures of developed industrial societies might also create vulnerabilities for corruption. An example closer to home (at least the home of one of the authors) is the so-called Poldermodel that is seen as typical for public governance in The Netherlands, and especially in Dutch governmental policies regarding business. It has an historical meaning and refers to the crucial cooperation of the inhabitants of the Netherlands (‘the low countries’) to im-

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polder’ their land and maintain dikes, in order to keep the water out, otherwise all would drown. This must have shaped Dutch civil society into resolution by negotiation and settlement rather than conflict. In the 1990s this Dutch form of public governance was labelled the *Poldermodel* (Delsen 2000). It represented the organized cooperation between the Dutch government, employers and trade unions, aimed at reaching agreements rather than conflict (Léonard 2005). The model gained official status by the 1992 report of the Dutch Social Economic Council (*The Economy of Convergence and Consultation*) (Sociaal Economische Raad 1992).

For years this model of public governance was praised, even by the former president of the United States, Bill Clinton. According to Dutch criminologists, this famous *Poldermodel* also has its less desirable side-effects (Van de Bunt/Huisman 2007). The result is that Dutch governmental bodies are dependent in many ways on the commitment of corporations to realise their goals. A criminogenic side-effect is an obscure web of shared interests and secret understandings that can be characterized as ‘collusion’. The small number of cases of corruption by public authorities in the Netherlands (Huberts/Nelen 2005) may well be related to widespread collusion: it is not even necessary to bribe enforcers and other public authorities in the Netherlands because they are already perfectly willing to keep in mind the interests and views of corporations. The concept was also used as an explanation for the malpractice in the construction industry that led to a parliamentary inquiry (Van den Heuvel 2003). When a whistle-blower reported on the large scale price-fixing of which public authorities were the main victims, it was hastily assumed this was due to bribing practices. However, although some examples of business trips to exotic locations and attending brothels did occur, these could not explain the widespread nature of overpricing governmental contracts. This was better explained by the close relations between local officials and construction companies leading to collusion (Van den Heuvel 2003).

This Dutch example reaffirms the suggestions presented above that more refined forms of corruption enable developed countries to escape the more blunt form of bribery found in developing countries (Campos/Giovanni 2006; Johnston 2005).

### 3.2 The organizational level

It was discussed above that the strong emphasis placed on the goal of ‘success’ typical for the culture of competition found in capitalist societies has spread through globalisation to the world economy; moreover, situations of anomie that can occur in societies and that anomic situations are also fuelled by globalisation. This culture of competition and situations of anomie are often related to high levels of white-collar crime, such as corruption. A macro approach, however, cannot fully explain why some corporations or corporate
agents are willing to bribe foreign officials to get certain contracts, or domestic officials to get certain permits, or to escape sanctioning, while others do not. The macro perspective does not explain differences in compliance between organizations and their agents subjected to the same macro-variables. Therefore, it is necessary to look at organizational characteristics that may also influence the behaviour of organizational members. ‘Corporate crime is organizational crime, and explaining it requires an organizational level of analysis’ (Kramer 1982).

3.2.1 Strain

On the meso-level of organisations, the culture of competition can be related to organizational crime as a result of the strain that is felt between being able to achieve goals and having the means to do so. The strain-theory was originally formulated by Merton as a general theory of crime (Merton 1957). In his analysis of the American society in the nineteen thirties, Merton argued that the goal of economic success was valid for all members of society – the ‘American Dream’ – while the cultural prescribed means for achieving these goals are not evenly distributed among all members and social groups in society. This could bring groups with less access to legitimate means for acquiring wealth to search for alternative, possibly illegitimate means, dubbed by Merton as ‘innovation’. Cloward and Ohlin added to this that also the availability of illegitimate means may not be evenly distributed among society (Cloward/Ohlin 1960). Adolescents growing up in neighbourhoods with extensive informal economies might have easier access to illegitimate business opportunities than youngsters growing up in neighbourhoods without these criminogenic opportunity structures. While having been developed for the explanation of crime in the lower classes of society, the strain theory proved very popular in the explanation of white-collar crime, especially combined with the notion of anomie (Cohen 1995; Passas 1990). Several studies have focused on the relevance of strain-situations that can exist within organizations for understanding white-collar crime. Specifically on the use of corruption by firms in Russia, Venard (2009) found a positive relationship between the intensity of competition and the level of corruption.

Especially when opportunities for making profit are threatened and the continuation of a corporation is at stake, corporate agents might transfer to illegitimate means to make profit, such as offering bribes to get the necessary contracts. In their classical and extensive study on corporate crime in American businesses, Clinard and Yeager found that ‘firms in depressed industries as well as relatively poorly performing firms in all industries tend to violate the law to a greater extent than those not in this situation’ (1980:129). However, the application of the strain theory is not restricted to marginal corporations. First, since all types of organizations are goal-seeking entities, innovative means to achieve goals – besides profit – can be used when conventional
means are blocked. Corruption as an innovative means to reach organizational goals – which can be closely connected to personal goals – can therefore also be found in non-profit organizations, such as political parties and NGO’s. Second, it is rather the level of ambition with which goals are set and the perception that goal attainment is threatened that creates a feeling of strain than that it is an objectively desperate situation. Even in quite profitable and economically healthy firms, strain can be a motive for rule-breaking when ambitions are set so high that they can only be met by using ‘innovative’ ways. By consolidating the notions of reference groups and relative deprivation, the strain theory could predict rule breaking in any organization, at every level. In his study on retired managers of large corporations, Clinard (1983) found that especially middle-managers experienced strain. Top management sets the goals and the responsibility for achieving these goals is then passed in the organizational hierarchy to middle managers. Ambitions at the top may create so much internal pressure that the perceived only possible reaction of those in the middle is to break ethical and legal rules.

Although lower ranking personnel may be forced to do the dirty work, such as the actual bribing, they may not be without personal benefit for finding innovative courses of action. Indeed, the attainment of personal goals of success might be connected to and dependent upon the prosperity of the organization. Personal gain may take the form of career advancement, having stock and receiving personal bonuses. The alignment of personal interests and organizational goals is not limited to corporations but can be seen in political organizations as well.

The breach of legal norms can at the same time constitute behaviour which conforms to the standards and expectations prevalent in the organization. ‘Such standards may emerge out of efforts to deal with problematic situations and structurally generated strains’ (Passas 1990:165). This means that informal, standard, operating procedures come into being that are clearly not in accordance with the law, but that are viewed and rationalized as acceptable and non-criminal, for instance because there are no real victims. This was exactly the landmark-rationalization given by a respondent in Geis’ case-study of price-fixing in the heavy electrical equipment industry in the nineteen fifties: ‘Illegal? May be, but not criminal’ (Geis 2006). The same rationalization could apply to corrupt standard procedures, as one of the authors was told in an interview with an executive of the former Dutch aviation industry Fokker: ‘What do you think? If we do not first offer a Fokker Friendship to the president, we won’t be able to do business in Africa’ (Huisman 1995). Other rationalization in situations in which corruption is endemic is that one is merely conforming to expectations and that everybody is doing it. Indeed, in systemic corrupt societies, ‘clientelism’ and patronage are the norm and not taking part might be seen as deviant behaviour.

These rationalizations lead to a myth of normality surrounding nothing less than deviant behaviour which has become deeply entrenched in the organiza-
tional culture and which is passed on to new organizational members. Although Shover and Hochstetler (2002) warn us of a ‘monolithic bias’ of using organizational culture as an explanation for organizational crime and stress that culture is no ‘straightjacket for action’, they do point at the evidence that the stance towards ethical conduct and compliance with the law taken by organizational leadership may be a critical determent of organizational culture.

The choice for innovative strategies for goal attainment is even easier when the lines between legitimate and illegitimate behaviour are blurred due to regulatory obscurity, as might be the case in the regulation of corruption. The above analysis shows that the relation between strain and anomie is double-sided and mutually reinforcing: in anomic situations it is easier to defer to illegitimate means to achieve otherwise strained goals and strain can contribute to the blurring of norms of acceptable behaviour, creating deviant subcultures. When it is not clear which rules are applicable, or when such behaviour is condoned in the specific subculture, offering or taking bribes will come to be seen as an acceptable way of achieving organizational or personal goals. By so doing, this informal norm will become more deeply rooted.

3.2.2 Loosely coupled structures

Besides organizational goals and the pressure put on their attainment, another organizational feature that has been related to rule-breaking within the organization is the organizational structure. While the long hierarchical lines of a classic bureaucratic organization might lead to a diffusion of information and internal control, facilitating the occurrence of misconduct, deviant behaviour has recently been related to the contemporary trend of ‘loose-coupling’ in organizations. Loose coupling is the answer to increasing uncertainty in the environment of organizations, partly due to the internationalization of markets, and creates the capacity to respond to changes in the environment – threats or opportunities – with greater flexibility. Loose coupling is a form of decentralization in which sub-units are partly detached from the parent organization and receive a greater amount of autonomy. Although a loosely coupled structure allows an organization to better adapt to change, it also has some dysfunctions which may become an impetus to disreputable and illegal behaviour (Tombs 1995). A highly divisional, loosely coupled system may lack internal control. Because of the autonomy of sub-units, illegal behaviour may not come to the attention of the parent’s management. While this behaviour may be an unwanted side-effect, de-coupling may also be a deliberate strategy to isolate subunits that run a higher risk of being accused of disreputable or illegal behaviour, for example because it is operating in a corruption ridden market or country (Gobert/Punch 2003). Uhlenbruck et al. (2006) show that corporations that enter foreign markets in corrupt environments adapt to the risk of corruption by using equity modes of entry such as short term contracting and joint ventures.
A step further in detaching from liability and reputation risks, is outsourcing questionable activities. This can often be observed as a corporation’s reaction to a scandal concerning one of its subsidiaries. For example, when the large multinational fruit corporation Chiquita had to agree to a plea-bargain after being accused of providing pay-off money to the AUC in Colombia – a paramilitary group that is on the US terrorist organizations list – it officially left Colombia. Instead, a new company and independent company was formed for the export of bananas, Banamex, which has as sole client Chiquita and used all the infrastructure formally owned by Chiquita (Windsor 2008).

3.3 The interactional level

Although the discussed theories follow the common assumption in organizational sciences that organizations could be studied as actors, this anthropomorphic approach seems to forget that in the end it is people who are offering or accepting bribes. Most authors in the field of white-collar crime stress that white-collar offenders are ‘normal’ people, meaning that their personality traits, demographic and socio-characteristics are more similar to law-abiding middle-class citizens than offenders of regular, street crime. ‘it is generally agreed that personal psychology plays no significant role in the genesis of white-collar crime and that the white-collar criminals are indeed psychologically normal’ (Coleman 1995). The scarce literature on the profile of white-collar offenders confirms this view (Weisburd/Waring 2001).

3.3.1 Socialization of deviance

White-collar criminologists emphasize the conditioning effect of the organization on the individual’s behaviour. Individuals who do not have a deviant self-image, become offenders through the pressures of the ‘normalization’ of deviance as discussed above. Organizational sociologists refer to the numbing effects of modern bureaucracies upon the moral sensibilities of their employees. Drucker labelled this as the ‘Organization man’, who is under pressure to conform to the image that individuality and personal ethical standards must be scarified for the sake of career. Processes of socialization can create a kind of ‘moral numbness’, in which unethical or illegal activities appear to be a normal part of daily routine.

According to Cohen (1995), organizational members who are subjected to the contradictions between behavioural norms in society and the norms being transferred in the organizational subculture, might suffer from psychological anomie. However, one might say that the processes of the socialization of deviance offer a way out from this state of alienation. Passas (1990: 166) even states that: ‘In anomic situations, offenders are in a better position to neutral-
ise and rationalize their acts, and at the same time preserve their self-esteem’. Organizational subcultures provide their member with appropriate justifications. According to Coleman, police subcultures, for instance, often distinguish between ‘clean’ and ‘dirty’ pay-off money and hold that there is nothing unethical about accepting the former (Coleman 1987).

So, at the interactional level we can see that white-collar deviancy, such as corruption, is normal learned behaviour. We should thank Sutherland not only for introducing the concept of white-collar crime, but also for developing a theory for understanding social learning of deviancy. According to his differential association theory, criminal behaviour is learned like any other behaviour and the criminal must learn both the techniques of crime and motivations favourable to criminal behaviour. Through differential association and techniques, rationalisations and attitudes are passed on.

‘The hypothesis of differential association is that criminal behaviour is learned in association with those that define such behaviour favourably and in isolation from those who define it unfavourably, and that a person in an appropriate situation engages in such behaviour if, and only if, the weight of the favourable definitions exceeds the weight of unfavourable definitions’ (Sutherland 1949: 234).

3.3.2 Neutralization techniques

While there are several forms of corruption, and it could be assumed that their techniques are not hard to grasp, it might be more interesting to look at the neutralization of corruption. As white-collar offenders are generally strongly committed to the central normative structure, every offender has to cross a moral threshold to be able to violate laws or ethical norms. To maintain an identity of being a respectable citizen, a white-collar offender has to adjust the ‘normative lens’ through which society would view his behaviour. In their classic study, Sykes and Matza showed that delinquents adjust this normative lens by using techniques of neutralization that deny the seriousness of the offence and the blameworthiness of the offender (Sykes/Matza 1957). As Coleman pointed out so clearly, neutralisation techniques are not only post hoc rationalizations of white collar crime, but can also precede rule breaking and thereby morally facilitate non-compliance. ‘A rationalization is not an after-the-fact excuse that someone invents to justify his or her behaviour but an integral part of the actor’s motivation for the act’ (Coleman 1987: 411) This would lead to the assumption that having neutralisation techniques at one’s disposal is a crucial condition for getting involved in corruption and being capable of offering or accepting a bribe. Besides the obvious opportunities and limited control mechanisms, these neutralisation techniques could be an important object of study when doing research on corruption.

In a study on the accounts which convicted white collar offenders used to justify or excuse their behaviour, Benson identified three general patterns in accounting strategies: accounts oriented toward the offence, accounts toward
the offender and accounts toward the denouncer (Benson 1985: 1998). Accounts that focus on the offence either emphasize the normality and general acceptability of the behaviour (‘business as usual’) or portray the offence as an aberration, not representative of typical behaviour patterns. When the perpetrator himself is the subject of the account, he will try to show that no matter how the offence is eventually characterized, it is not indicative of his true character. Perpetrators must show that they are ordinary, reasonable individuals to be seen as separate from their offence and emphasize the crime’s unique character. Accounts that aim at the denouncer condemn the condemners. For example, the offender might claim that prosecutors are motivated by personal interest rather than a desire to defend social or legal values, and that they were singled out for political reasons that had nothing to do with the harmfulness of their behaviour.

Both Benson and Coleman constructed a typology of the techniques of neutralization used by white-collar criminals. Anand, Ashforth, and Joshi (2005) applied these to corruption in organizations.

One of the most common techniques is the denial of harm. According to Coleman, the convicted white collar offender frequently claims that their actions did not harm anyone, and that they therefore did not do anything wrong. This technique is rather obvious in neutralizing corruption. Although the relationship of the stakeholders in a corruption scheme is often portrayed as a triangular affair – the one that is bribing, the one that is being bribed and the victim – the victim is often more difficult to detect. Of course, as discussed in section 2.3, victimization can always be constructed: competitors who did not get the contract, refugees who receive less aid because of the amount of kickbacks taken by local officials, and the integrity of the political system in general. However, for both sides benefiting from corruption it will often be easy to maintain that no harm has been done.

A second neutralisation technique used by white collar offenders is to claim that the laws they are violating are unnecessary or even unjust. Offenders using this rationalization find support in the influential neo-liberal Chicago school of economics which argues that market systems can only operate at a maximum efficiency when there no artificial barriers such as government regulation (Friedman 1962; Posner 1976). ‘The state has no role except to get out of the way’ (Snider 2000: 182). In the light of corruption this argument is interesting, because it is due to the pressure of international business that international organizations such as the World Bank, the IMF, the OECD and the European Union are forcing nation states to prohibit and prevent corruption, trying to create a ‘level-playing-field’ for multinational corporations. Corporations wish to be able to operate as inexpensively and rationally as possible throughout the world. Systems of graft and bribes are unpredictable, unreliable and costly (Williams/Beare 1999). Nevertheless, those who are struck by these regulations might say that they only promote international business at the expense of the local economy.
A third neutralisation is that the violation of regulation is necessary to achieve vital economic goals or just to survive. Both on the active and the passive side of corruption this neutralization can be identified. Those who offer bribes will stress that this – however undesirable – is necessary to be able to conduct business. Those who receive the bribes may say that the regular salary is not sufficient to survive and that the extra income is necessary to take care for the family.

A fourth technique of neutralization involves transfer of responsibility from the offender to a larger group. This will be especially useable when corruption is endemic. Both those who are offering and who are accepting bribes might claim that ‘everybody’s doing it’. The accompanying rationalization is that it is unfair to condemn one violator unless all other violators are condemned as well.

The fifth neutralization method is that a person is not responsible for his behaviour – which therefore cannot be qualified as criminal – when merely conforming to expectations of others. This refers to the escape of middle-management to situations of strain: through processes of socialization, using bribes might be seen as an acceptable way of meeting the targets set by higher management. Moreover, when clientelism and patronage are endemic, paying or taking bribes is expected.

Finally, many occupational crimes are justified on the grounds that the offender deserves the money. This rationalization clearly only applies to the receiving end of corruption, but it might be a dominant neutralization for the more daily forms of kickbacks that are attached to a certain position in public office. A good example is the saying used by members of the All Peoples Congress administration of Sierra Leone, as recorded by Thompson and Potter (1997: 150), ‘Da sae wey den tie cow, nar dey e go eat grass’ meaning literally that ‘A cow will graze on land allotted to it for that purpose’.

4. Methodological considerations

A final issue to discuss is the methodology to explore corruption as a crime phenomenon. It is debatable whether we should discuss a criminological methodology of the study of corruption. First, in the domain of criminology empirical research on corruption is very limited. Second, being a social science of which the boundary with other social sciences is blurred, research methodology would also be equally similar. Nevertheless, in criminological research, methodological strategies have been developed to overcome the handicaps connected to studying behaviour which people would neither see nor hear due to its illegal nature (Bijleveld/Nijboer 2003).

Basically, two types of data are used in criminological research to study crime (and its offenders, its causes and its consequences). The first type is data produced by law enforcement agencies, such as police reports, court
The second type consists of data directly gathered from offenders or victims of crime, mostly by victim surveys and self-reporting surveys.

Corruption is a consensual crime, of which reporting to the police benefits neither the corruptor nor the corruptee and the victims may be oblivious to their victimization. Most corruption cases remain hidden because both parties respect the rule of silence, because nobody in the environment reacts to the corruption or because their corruptive practices are not perceived to be corruption. Furthermore, corruption cases that occur in an organisational context are often settled in alternative ways, such as a disciplinary procedure.

Therefore, corruption is a crime phenomenon with a large ‘dark figure’. This concept refers to the amount of crime that is not reported and therefore not visible in official registrations and files. Official data show only the tip of the iceberg. As a Founding Father of research into white-collar crime, Sutherland was aware of the problem that the files of the criminal court only represent a small part of corruption cases and that most cases were settled out of court or in a civil or a disciplinary procedure. To study the true amount of legal violation committed by the largest American companies, he collected both the criminal and civil court files together with databases of disciplinary agencies. Since only a small amount of cases are dealt with in the criminal courts the researcher must broaden their research domain to non-judicial enforcement organisations. A recent example is the research on corruption in the Dutch public administration, executed under order of the Ministry of Justice of The Netherlands (Huberts/Nelen 2005). The aim was to gather information on the extent, nature and settlement of corruption cases in that country. To study the extent of corruption, the researchers started from the idea that the corruption files at the level of criminal justice are known. They completed the information by sending a questionnaire to the public administrations asking to report on the files of internal settlement of corruption cases. The methodology to study the nature of corruption was particularly case-study research. The settlement question was explored by a triangulation of conducting interviews and the analysis of files of the public prosecutor and the public administration.

Every crime, even murder, has its dark figure. But because of its diffuse character and its apparent victimless nature, the portion below water surface of the iceberg of corruption will be relatively large even if all law enforcement agencies are included. Victim surveys and self-reporting have been developed to overcome the dark-figure-problem in studying crime. However, the limited awareness of corruption victims of being victimized, and the ambiguous criminalization of many forms of corruption, limit the added value of these instruments in studying the prevalence and the nature of corruption.

In line with Transparency International some criminologists chose for perception study (Dormaels 2010; Zang/Cao/Vaughn 2009). Instead of measuring the prevalence of corruption, social scientists developed a methodology to measure the people’s perception of corruption (see, eg., Gardiner 1967;
Gibbons 1990; Heidenheimer 1989). These perception studies give an idea of the way people judge acts of politicians and civil servants. These types of study primarily shed light on people’s trust in public authorities and processes of the criminalization of corruption. However, their contribution to criminological research questions on prevalence and causes of actual acts of corruption is negligible.

The dark figure of corruption cases makes a quantitative analysis based on official registration or victim surveys useless. Therefore, most corruption research in criminology is based on a qualitative methodology: interviewing, participant observation and case-study. For example, in his research on corporate crime in the pharmaceutical industry, Braithwaite interviewed management and employees of pharmaceutical companies to find out whether and how companies commit corruption (Braithwaite 1984). A lot of publications could be read as case-studies even if the methodology is not that rigid. We refer to the work of Punch on police corruption. His research on police corruption is based on interviews with police officers and arrested police officers, on informal talks, on the interaction with police officers during presentations, on visits to police stations etc. (Punch 2009)

The method of case study certainly has its merits. Shover and Hochstetler (2002) mention that ‘the findings of case-studies can be used to generate hypothesis or to cast doubt on theory-based hypothesis’. Case-studies also enable the researcher to study the ‘real thing’, and getting a better understanding of the meaning of corruption in the social setting in which it is committed. However, they also point out the shortcomings of explaining organizational crime on the basis of case-studies. Usually the more serious cases concerning high-profile individuals or organizations in which they occurred are singled out, in the process becoming landmark-narratives of scholarship on corruption. As Shover and Hochstetler remark, findings gained from the most egregious incidents and offenders may have limited application to the more typical corruption, if such a thing exists. For instance, besides the obvious example of mafia-ridden countries like Italy, the Dutch perception of corruption was for a long time shaped by the exceptional case of the bribing scandal of Prince Bernhard who at the time of the scandal was the husband of the reigning monarch, Queen Juliana of The Netherlands. The prince was embroiled in scandal with the American arms manufacturer Lockheed, in the process of the procurement of new fighter jets for the Dutch Air Force in the 1970s. The same could be said about the more recent Agusta-scandal in which two Belgian ministers and the Belgian secretary-general of NATO were found guilty of being bribed in the acquisition of attack-helicopters (Cools 2009).

A discrepancy seems to exist between the study of corrupt behaviour of civil servants or politicians on the one hand and the scientific indifference vis-à-vis the corruptive practices of private companies and of civilians. Most research is directed to the passive corruption side while the active corruptor at-
tracts less attention. Shichor and Geis who carried out a survey on transnational bribery confirm that business men escape the disapproval: people think that accepting a bribe is worse than offering a bribe (Shichor/Geis 2007). One of the explanations for this underestimation is that criminologists for a long time have shown restraint in entering private companies. Indeed, ‘getting a foot in the door’ is widely recognized as the greatest methodological challenge of researching corporate crime (Verhage 2009). Once inside, a second challenge is getting past the socially desirable answers of the public relations departments and getting managers to talk about the sensitive issues of corruption. Exceptions in the field of corruption are Venard (2009), who interviewed a mere 552 managers of Russian firms on the issue of environmental pressures and the decision to adopt corruption, Van de Bunt (1993) who got corporate security officers in The Netherlands talking about corruption in the private sector and the already mentioned Braithwaite who linked corruption to the pharmaceutical industry. One of the recommendations for criminological research is to intensify the study of the responsibility of private companies in corruption cases. The annual Global Corruption Report 2009 of Transparency International may stimulate research on corruption in the private sector.

5. Conclusion

This chapter started with the observation that corruption has seldom been the topic of criminological research. Nevertheless, corruption is a crime. However, as shown by the several domains of study in which corruption is of interest, corruption can be both causal factor and side-effect of categories of crime, such as organized crime, corporate crime and state crime.

Even if these criminological domains are fertile ground for corruption research it has been a rather limited list so far. Generally, corruption is not studied per se but comes into the picture as a facilitator for organized crime or a crime phenomenon typical for third world countries. One of the explanations for this scarce attention is the lack of public indignation. Levi gives the example of the corruption practices of the International Olympic Committee (Levi 2009: 58). The media who gave some publicity to the case had to prevent being blamed for publicity-seeking incompetence. Illustrating this point, Box said with reference to his research of police corruption: ‘Corruption penetrates the public consciousness rarely, like a missed heart-beat in an otherwise perfectly functioning body’ (Box 1983: 93).

Due to the natural evolution of the discipline itself, but also because of the social context, we predict an increase in criminological corruption research in the near future. First of all, the move to transnational crime research that discloses the sometimes deviant connection between the western market and local and national governments of third world countries or countries in
transition, shows the urgency of corruption research. Secondly, the anti-
corruption measures that have been taken at the international and state level
and the positive pressure that goes out from non-governmental organisations
such as Transparency International have a stimulating effect. Thirdly, actors
in the private sector also start to take initiatives that disturb fair competition.
In the Ethical Corporation magazine corruption is perceived as ‘the’ corpo-
rate crime of the century (Roner 2008). The criminal investigations on the
corrupt practices of Siemens, Statoil and BAE Systems do not pass unno-
ticed. The resistance with which organisational criminologists are confronted
when doing research concerning injurious corporate crime is apparently dis-
appearing.

Finally, we would like to warn against adopting a narrow perspective on
deviant relations between public authorities and the private sector. It is not
only corruption that makes the position of private companies more comfort-
able. The relation between the political level and the private sector has been
changing from a state-regulated market into a policy of co-regulation and de-
regulation. We wonder to what extent corruption is still a necessity for the
protection of companies’ interests and if the danger is not moving to legal
relations between the public authorities and the private sector; in particular,
lobbying, networking and the risk of the revolving doors. The European
commission has recently tried to regulate the market of lobbyists who work at
the European level in Brussels but had to reduce its plans from an obligatory
system of transparency into a voluntary system of openness to the public.8

This chapter has raised the question whether the definition of corruption
should go beyond legal boundaries and include other socially injurious forms
of entanglement of interests. A problem of so doing is the inevitable net-
widening and inflation of the term, further blurring the boundaries between
corrupt and non-corrupt acts. However, not doing so limits the scope of the
criminality of corruption to the usual suspects: the more visible and bare
forms of bribing. Or, as McBarnett has put so eloquently: ‘is corruption a
‘crime for the crooks’ or are some activities ‘whiter than white collar
crime?’’ (McBarnett 1991: 3) In the case of the latter, Passas (1998) quali-
fies corruption as ‘crime without law violation’.

The application of criminological theories results in a plausible hypothe-
sis on causations of corruption. This hypothesis illustrates the interplay of
motivation, opportunity and control at the individual, organizational and en-
vironmental levels. This dynamic and mutually reinforcing relationship can
have a spiraling down effect, amplifying deviance and increasing the likeli-
hood of corruption (Den Nieuwenboer/Kaptein 2008).

However, there are two possible flaws in our analysis. First, the many
forms of corruption might challenge the assumption used in this chapter that
it is often committed in a white-collar crime context, and second, this as-

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8 See for the list of lobbyists: https://webgate.ec.europa.eu/transparency/regrin/welcome.do
sumption and also the hypothesis based on it need to be empirically tested, therefore. However, there is hardly any criminological research that explicitly focuses on corruption. Nonetheless, in corporate crime research, some methodology has been developed for studying ambiguous and seemingly victimless crimes committed in organizational context.

Seeing corruption as forms of organized, occupational or organizational crime would also suggest that the strategies developed and derived from cautions for combating these forms of crime, would also apply to fighting corruption. It is noticeable that international and non-governmental organizations involved in the fight against corruption, often stress the importance of criminalization and the application of criminal law enforcement. However, it is questionable if this plea serves as a moral message or as an assumption of the instrumentality of criminal law. Looking at the responses to organized and organizational crime, it is generally assumed that the deterrent effect of criminal law – or any legal sanctions for that matter – is rather limited. While in theory, total control would deter organizational crime; in practice the deterrence strategy suffers from too many flaws to be effective. On the basis of a meta-analysis of studies of the effectiveness of deterrence of corporate crime, Simpson concludes:

‘The evidence is far from conclusive regarding whether corporate violators should be criminally prosecuted or whether other justice systems (civil or administrative) produce higher levels of corporate compliance or if sanctions should be directed toward the company, responsible managers, or both (…) ‘Get tough on corporate crime’ recommendations have relatively little empirical merit at this point of time, especially without consideration and research on how legal sanctions operate in conjunction with other social control mechanisms’ (Simpson 2006: 69, 77).

And also the recent studies and policy document on combating organized crime show a realistic view on the limitations of the effectiveness of the application of criminal law: ‘You can put them in jail, but you cannot put them out of business’ (Huisman/Nelen 2007). Because of these limitations, contemporary criminal policy is more focused on taking away the opportunities for committing criminal offences. Crucial in such situational crime prevention, is blocking the access of offenders to potential target or victims. However, with many white-collar crimes, specialized access to corruptees is connected to occupational roles and blocking this might not be feasible in the organizational or business setting (Benson/Madensen 2007).
Chapter 9:
A Multi Approach in Corruption Research:
Towards a More Comprehensive Multi-Level Framework to Study Corruption and Its Causes

Leo W.J.C. Huberts

1. Introduction

Corruption and causation are among the most contested concepts in (social) science and their combination offers an intriguing as well as a seemingly unsolvable puzzle. In this chapter, I will try to clarify some of its pieces.

The first puzzle piece concerns the characterization of corruption. It is crucial to be clear about the actual interpretation of the corruption concept. Is it bribing and being bribed; is it private profit from (public) power; is it unethical (public) behavior? (§ 2) Second, whenever causes are debated, the question of how causation is interpreted arises. Stemming from the literature on power and influence, the view on causes as INUS conditions is presented. A cause is a characteristic or condition that is an ‘Insufficient’ but ‘Necessary’ part of an ‘Unnecessary’ but ‘Sufficient’ condition for the effect (§ 3). Many conditions can lead to corruption and in research, it is essential to try to find the element that cannot be missed among the many that together contribute to it.

A third complication and challenge is the interrelationship of many conditions at different ‘analytical’ levels. We all are familiar with the micro-meso-macro distinction. Although many researchers focus on one or two of these levels – often because their disciplinary orientation so limits them – few will deny that the real challenge is in (inter)relating these levels. A number of approaches and studies will be presented with different and challenging foci on the factors that determine corruption. First some descriptive multi-level frameworks will be summarized (§ 4); second a number of challenging ‘limited level’ studies will be presented (§ 5). After the brief sketches of these studies on the conditions and causes of corruption, we conclude with a first idea about a multi-level approach or a better framework for analysis (§ 6). Not surprisingly, it becomes clear that there is no simple way out of multi-dilemmas. The main conclusion is nonetheless optimistic. A comprehensive framework that relates types of corruption with a variety of factors at different levels might help. And although we are only in the first phase, that is, collecting and summing up what might matter, I am optimistic about using that knowledge for overlapping theory building.
2. Multi-Corruption

It is often stated that the corruption phenomenon is complex, complicated, and difficult to grasp, resulting in the notion that defining corruption is more or less a mission impossible. In my view, however, there is not so much a serious conceptual problem of obscurity or complexity but primarily a matter of disagreement between scholars and practitioners. To put it simply: interpretations of what corruption vary between broad and narrow, and we can avoid Babylonian confusion of speech by being explicit in definition and specification.

Often ‘corruption’ is related to acting in opposition to what is considered morally good or right (Barker/Carter 1996; Bull/Newell 2003; Caiden 1991; Caiden/Dwivedi/Jabbar 2001; Cooper 2001; Crank/Caldero 2000; Dobel 1999; Heidenheimer/Johnston 2002; Huberts/Jurkiewicz/Maesschalck 2008; Johnston 2005; Menzel/Carson 1999; Preston/Sampford/Connors 2002). In other words, it is equal to violating what is considered to be in line with relevant moral values and norms, equal to the violation of integrity (and rather close to ‘improper interests involved’, when the last part is interpreted broadly).

The interpretation is quite different from the probably most-favored definition of corruption in terms of private interest and profit from (public) office (Lawton/Doig 2006; Menzel 2005; Pope 2000). This interpretation is widespread but has to compete with an ‘even more’ specific interpretation that concentrates on where the private profit is coming from. Is misusing office for private profit always corruption or is it conditional whether there is a third party involved? If so, we are concentrating on bribing and other types of improper influence (active and passive); if not, all types of theft, fraud, and misuse of resources are included.

In VU research, a broad typology of integrity violations is used. It was originally formulated through an analysis of the literature on (police) integrity and corruption and later adapted and validated (Lasthuizen 2008) based on empirical research on internal police force investigations. The typology explicitly incorporates violations of law as well as of (informal) moral norms and values, violations in function within the organization, private time (mis)behavior, behavior serving private personal interests, and misbehavior in favor of the organization (‘noble cause corruption’) (Lamboo 2005).

Among the types of integrity violation are corruption (bribing and favoritism)

1 Thus, only bribing and favoritism explicitly use the corruption label. Corruption as bribing involves the abuse of powers for private gain, coming from an interested third actor (because of advantages promised or given). In corruption as favoritism, the advantages promised or given to the corrupt functionary can take the form of indirect personal gains, such as when family or close friends (nepotism), friends or peers (cronyism), or a party or one’s own organisation (patronage) are favoured.
through jobs, improper use of authority, misuse and manipulation of information, indecent treatment of colleagues or citizens and customers (including discrimination and sexual harassment), waste and abuse of organizational resources, and private time misconduct. To distinguish between them is important, especially when discussing the causes of ‘corruption’. It seems plausible that corruption as ‘bribing’ will not be caused by the same factors as other corruption-related violations (favoritism, fraud, conflict of interest, and so on), let alone other types of violation (for example, waste and abuse of resources and private time misconduct).

**Focus**

This chapter will concentrate on corruption with an interpretation used by other authors in this book, that is, corruption as the *abuse of a (public) authority for private benefit*. This is more or less in line with Michael Johnston’s definition of corruption as ‘the abuse, according to the legal or social standards constituting a society’s system of public order, of a public role or resource for private benefit’ (1996: 322). More specifically, this means that the following elements of the typology are incorporated:

1. **Bribing**: Misuse of (public) power for private gain: asking, offering, accepting bribes.
2. **Favoritism**: Misuse of authority to favor family, friends or party (nepotism, cronyism, patronage).
3. **Fraud and theft**: Improper private gain from the organization, colleagues, or citizens without an interested external actor.
4. **Conflict of (private and public) interest** through gifts, services, assets, or promises taken.
5. **Conflict of (private and public) interest** through sideline activities (jobs, position, activities).

**Conclusion**

It seems important to realize that future research will have to differentiate more clearly between types of violations, but for now it is most important that we are clear about the phenomenon we are addressing. I will from this point focus on corruption as the abuse of a (public) authority for private benefit. In terms of the integrity violations typology, it means that it includes bribing, favoritism, conflicts of interest, and fraud and theft. But please, keep in mind that when we concentrate on corruption as improper private profit from public power, we should not then over exaggerate the relevance of results for the causes of other types of integrity violations.
3. Multi-Level Causation

Causation is in a sense a more complex and disputed concept than corruption. Its content is essential for much of the work of social scientists, whatever their field. We all agree that ‘correlation is not causation’ and that co-variation as such is only a starting point for attempts to come to conclusions about cause and effect relationships. But what are the characteristics of a relationship that enables us to conclude it is a causal one? First it is important to be specific about the effect that is analyzed in order to establish causes. Second it is conditional that cause and effect both have occurred; that cause and effect are distinct ‘events’; that, in the circumstances, if the cause had not occurred the effect would not have occurred; and that cause is prior to the effect.

Very strict interpretations of causality then imply that we only speak of the cause of an effect when the cause is necessary and sufficient for the effect, but this does not bring us much further in trying to understand the diverse and complex corruption phenomena we see in society. More often, a combination of conditions and circumstances seem to contribute to the effect or result, a corrupt person, regime, or organization.

A way out seems to be Mackie’s idea to about ‘INUS conditions’ meaning ‘Insufficient’ but ‘Necessary’ part of an ‘Unnecessary’ but ‘Sufficient’ condition for the effect (Mackie 1965, 1974). Mackie stressed that effects have, typically, a plurality of causes. That is, a certain effect can be brought about by a number of distinct clusters of factors. Each cluster is sufficient to bring about the effect, but none of them is necessary. Each single factor is an insufficient but non-redundant part of an unnecessary but sufficient condition for the effect.

In other words, trying to find out more about the causes of corruption means trying to discover conglomerates of conditions that actually have led to cases of corruption. When there is corruption, there is by definition a set of sufficient conditions present. The next step is to disentangle the conglomerate, trying to find out what conditions seem to be most prominent or necessary or in INUS terms non-redundant.

Multi-Level

Another aspect of any approach is taking into account at which level corruption manifests itself and is analyzed. The common distinction between levels is that of micro (the individual), meso (group, organization), and macro (society).

Many scholars see the macro-meso-micro problem as hard to solve and many discussions on the importance of causal factors for corruption stem from researchers’ involvement with different levels. Sometimes this is done by eclectic mapping of whatever is mentioned as a cause in (part of the) literature. Other examples concern researchers who consciously try to combine multi-level factors in empirical studies.
4. Eclectic Mapping of Causes


The starting point for that typology of factors was the ‘ecological approach’ of Ben Hoetjes, a Dutch pioneer in this field, who worked on development administration (primarily India) and on corruption in the Netherlands (1977, 1982, 1998, 2000). Hoetjes distinguished between four disciplinary approaches or clusters of relevant factors and causes (1977: 53-65). The first ‘Weberian approach’ sees corruption as a lack of rationalization of the public service and corruption is a phase on the route from patrimonialism to rational legal authority. Second is the structural functionalist approach. Which function fulfills corruption in a certain society? Is it for example the lubricant between the central and the local levels or between state and business levels? Or does corruption provide protection and influence for social groups with material wealth but little or no political influence? (Riggs 1964). The third approach, institutional economics, sees corrupt officials as rational utility maximizers who simply take the most profitable course of action. It favors perceiving ‘individuals as rational beings attempting to further their own self-interest in a world of scarce resources’ (Rose-Ackerman 1978: 4) and is also interested in the conditions that determine a profitable course, including the discretionary power of an actor and the expected costs of accepting a bribe (Rose-Ackerman 1999, 2006).

Hoetjes favored another approach to corruption that he called ecological, which concerns distinguishing the environment that furthers corruption (Hoetjes 1977: 60-65; Hoetjes 1982: 72-76). In his framework, many social, economic, and political factors are identified, but he does not limit himself to the environment or an ‘ecological orientation’. He added many personal and organizational characteristics. The following set of causes can be derived from his work:

- Individual and personal factors: personal experiences, feelings of insecurity, personal identity, moral ambivalence
- Informal group factors within the organization: group or clique propensity to corrupt, informal group leadership, relationships with colleagues
- Formal organization: unclear tasks and responsibilities, lack of central authority, semi-publicness (between public and private), uncontrolled

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2 See also chapter 1 of this book.
growth of the organization, demoralizing working conditions, contradictions between organizational circumstances and social expectations

- Society as a whole: social inequality, rapid social change, norms and values, apathy and ignorance, distrust
- Economy: poverty and inequality, inflation, sudden influx of external resources, state intervention in economic life, state monopolies, feelings of injustice concerning economic conditions
- Politics: increasing (party) political influence and de-bureaucratization, lack of democracy, lack of openness and public debate (also via the media).

It seems fruitful to reinterpret Hoetjes’ four approaches in terms of questions on the causes of corruption. Weberians see the relationship between politics and administration as the key factor (including the quality and independence of the civil service) and ‘economists’ point to motives of the involved actors (individuals in particular) and their self-interest. Functionalists point to positive effects for the functioning of the system to explain the persistent presence of corruption, but they are not specific on the causes (more in general: the interests of the political and economic actors). Ecologists add that context is crucial and characteristics of society, politics, law, economy, technology, and culture have to be taken into account.

Figure 1: Hoetjes’ Corruption Approaches: Weberian, functionalist, economics and ecological

Hoetjes’ impressive inventory of factors may serve as a starting point, but a number of clarifications, changes and additions seem necessary to make the framework (more) useful for and appealing to corruption researchers. First, we have to take into account that the inventory was in part based on personal
impressions, which makes it rather random. State-of-the-art theory and research will have to be built in. Leadership characteristics, for example, are nowadays often seen as important to explaining and understanding corruption, but they are only impressionistically mentioned (Ciulla 2002; Lasthuizen 2008; Treviño et al. 1999). Second, it seems wise to reinterpret the four approaches by including all the mentioned factors on the micro (motives and circumstances), meso (organization) and macro (society) levels as possible causes of corruption. Third, it should be clearer that the corruption phenomenon to be explained manifests itself at different levels and thus causes and effects can be so situated and analyzed. Are we interested in individual, organizational or (social, political, economic) systemic corruption?

Expert Panel Views
When so many factors at different levels seem to contribute to corruption, an obvious question is what really matters (most). More than a decade ago, I carried out some research on the importance of a variety of multi-level causes of corruption (Huberts 1996, 1998). Twenty social, economic, political, organizational, and individual factors from the literature were selected as possible causes of public corruption and fraud (defined as the misuse of public power for private gain). An international expert panel was surveyed by mail about the extent of their nation’s public corruption and fraud, the causal conditions, and the methods and strategies they considered to be effective combatants. (Huberts 1998). A total of 257 respondents from 49 countries answered the questions, 190 from higher and 67 from lower income countries. The panel was asked to indicate the importance of 20 factors, including social (inequality, norms and values, crime), economic, political, organizational (culture, structure, leadership) and individual (norms and values, income) factors. Table 1 summarizes the results.

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3 75 respondents from Western Europe, 4 from Eastern Europe, 65 from Asia, 14 from Oceania, 55 from North America, 37 from Latin America and 7 from Africa. ‘Higher income countries’ and ‘lower income countries’ were distinguished on the basis of the GNP per capita (GNP per capita > $6,000 = higher income country).
Table 1: Importance of Multi-Factors for Corruption in (Lower and Higher Income) Countries

<table>
<thead>
<tr>
<th>Factors</th>
<th>higher income countries</th>
<th>lower income countries</th>
<th>total panel</th>
</tr>
</thead>
<tbody>
<tr>
<td>(\text{(very) important cause of public corruption or fraud in own country})</td>
<td>((n=190))</td>
<td>((n=67))</td>
<td>((n=257))</td>
</tr>
<tr>
<td>social factors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>➢ increasing strength of organized crime</td>
<td>79.3%</td>
<td>90.0%</td>
<td>82.0%</td>
</tr>
<tr>
<td>➢ social inequality</td>
<td>66.7%</td>
<td>90.2%</td>
<td>72.8%</td>
</tr>
<tr>
<td>➢ rapid social change</td>
<td>64.7%</td>
<td>81.4%</td>
<td>69.0%</td>
</tr>
<tr>
<td>➢ strong family ties and obligations</td>
<td>52.4%</td>
<td>61.4%</td>
<td>54.6%</td>
</tr>
<tr>
<td>➢ social norms and values concerning private and public (rights and duties)</td>
<td>78.0%</td>
<td>73.7%</td>
<td>76.9%</td>
</tr>
<tr>
<td>➢ values and norms concerning government and state officials and organizations</td>
<td>84.6%</td>
<td>79.7%</td>
<td>83.3%</td>
</tr>
<tr>
<td>economic factors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>➢ economic problems: inflation/recession</td>
<td>62.2%</td>
<td>85.2%</td>
<td>68.0%</td>
</tr>
<tr>
<td>➢ fast economic growth</td>
<td>51.4%</td>
<td>67.3%</td>
<td>55.3%</td>
</tr>
<tr>
<td>political factors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>➢ growth and size of government organization</td>
<td>60.0%</td>
<td>72.9%</td>
<td>63.2%</td>
</tr>
<tr>
<td>➢ strong interrelationships: politics and administration</td>
<td>67.0%</td>
<td>86.4%</td>
<td>71.8%</td>
</tr>
<tr>
<td>➢ strong interrelationships: business, politics, state</td>
<td>86.8%</td>
<td>92.9%</td>
<td>88.3%</td>
</tr>
<tr>
<td>➢ penetration of market ideology in the state</td>
<td>47.1%</td>
<td>43.9%</td>
<td>46.3%</td>
</tr>
<tr>
<td>➢ increasing significance of lobbying</td>
<td>76.5%</td>
<td>72.9%</td>
<td>75.6%</td>
</tr>
<tr>
<td>organizational factors: culture</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>➢ public sector culture (values/norms)</td>
<td>83.3%</td>
<td>76.8%</td>
<td>81.8%</td>
</tr>
<tr>
<td>➢ lack of commitment of leadership (giving bad example)</td>
<td>82.2%</td>
<td>90.2%</td>
<td>84.2%</td>
</tr>
<tr>
<td>organizational factors: structure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>➢ misorganization and mismanagement</td>
<td>80.7%</td>
<td>91.9%</td>
<td>83.5%</td>
</tr>
<tr>
<td>➢ lack of control, supervision, auditing</td>
<td>87.2%</td>
<td>93.3%</td>
<td>88.8%</td>
</tr>
<tr>
<td>➢ computerization of administrative procedures</td>
<td>31.4%</td>
<td>30.4%</td>
<td>31.1%</td>
</tr>
<tr>
<td>individual factors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>➢ norms and values of individual politicians and public servants</td>
<td>88.4%</td>
<td>98.4%</td>
<td>90.9%</td>
</tr>
<tr>
<td>➢ low salaries in the public sector</td>
<td>56.9%</td>
<td>87.1%</td>
<td>64.6%</td>
</tr>
</tbody>
</table>

According to the experts a conglomerate of causal factors was important to explaining cases of public corruption and fraud in their country. Not surprisingly, some factors related to developmental problems were considered more important by respondents from lower income countries. These factors were ‘social inequality’, ‘low salaries in the public sector’, and ‘economic problems: inflation/recession’. The simple message here was that policies against poverty and underdevelopment would contribute to establishing more integrity in the public sector.

At the same time, there was much more agreement on the importance of causes in differing contexts than expected. The three most important were identical for higher and lower income countries, and most of the other most important causes of corruption in higher income countries were important in
lower income countries as well. In all parts of the world, rich or poor, corruption and fraud were associated with (1) the values and norms of individual politicians and civil servants, (2) the lack of commitment to public integrity of leadership, (3) organizational problems and failures (lack of control and supervision and mismanagement), (4) the relationship between the public sector and business, and (5) the increasing strength of organized crime.

What to think of these results? What is the use of presenting the aged views of an expert panel in a new book on the causes of corruption? I of course agree that the account presented is by definition questionable: the data are empirically limited and the work is poor on theory. The research nonetheless shows that experts can combine and relate causal factors at different levels in an analysis of corruption in their own countries. This makes me optimistic about the possibility of a comprehensive multi-level framework and of moving forward, empirically and theoretically.

An important question then is whether the many ensuing studies on the causes of corruption justify that optimism. The next section presents a selection of that important work with studies on the macro, meso, and micro levels.

5. Multi-Studies on the Causes of Corruption

Introduction

In this section we summarize a number of studies on the causes of corruption, concentrating first on macro level research, followed by meso and micro studies. The sketch is meant to be illustrative, not at all pretending to select the best studies nor present the state of the art.\(^4\)

Macro Studies of Causes of Corruption

Two of the most quoted and famous contributions on the causes of corruption are that of Treisman (2000) and Lambsdorff (2005).\(^5\) Both researchers focus on the macro level, analyzing many countries and taking into account a limited number of primarily macro characteristics. Later, both authors reviewed the enormous body of literature in their field that was published in the last decade. Most of these studies use corruption perception data to assess corruption levels across countries. Many surveys ask businesspeople, citizens, analysts and others to estimate the amount of corruption in countries (defined in terms of the ‘abuse of power for personal gains’) and these data are combined into indexes. Most often data from Transparency International or the World Bank (Kaufmann et al. 2007) are used.

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\(^4\) I also immediately acknowledge that I lean on studies familiar to me, in particular the work of a number of esteemed VU colleagues.

Based on his review of the wave of empirical studies in 2005, Lambsdorff concluded that corruption clearly correlates with a low Gross Domestic Product (GDP), income inequality, inflation, crime, policy distortions and lack of competition. The direction of causality for these indicators, however, is controversial. ‘Corruption may cause these variables but is at the same time likely to be their consequence as well’ (2005: 27).

The general idea is that countries can be trapped in a vicious circle where corruption lowers income, increases inequality, inflation, crime and policy distortions, and helps monopolies at the expense of competition. These developments in turn escalate corruption. Lambsdorff adds that not all empirical results were consistent with his expectations on the causes of corruption:

‘For example, the disciplining and motivating effect of higher official wages was found to be rather limited. Also the impact of colonialism on corruption was ambiguous. Press freedom and the (de facto) independence of the judiciary and prosecutors appeared to be important elements in reducing corruption. Increased corruption also resulted from complicated regulation of market entry and tariffs. Corruption was found to increase with the abundance of natural resources and with the distance to the major trading centers. However, these two latter results provide no direction for reform. The same is largely true of cultural dimensions. In particular, a mentality of accepting hierarchies was found to increase corruption.

Democracy obtained the expected positive impact on absence of corruption. However, this impact was more complex. Only countries with high levels of democracy, or electoral systems with high rates of participation, are able to reduce corruption. Medium levels of democracy can even increase corruption. The effect of democracy is also not immediate but takes decades rather than years. Thus, democracy reduces corruption in the long run, but not the lukewarm type of democracy’ (2005: 27).

Another central scholar in this field, Daniel Treisman, reflected on the state of the art in 2007 in ‘What Have We Learned About the Causes of Corruption from Ten Years of Cross-National Empirical Research?’ Treisman reviewed the efforts by political scientists and economists to explain cross-national variations in corruption using subjective ratings, and examined the robustness of reported findings (2007: 241):

‘We now know that states are perceived by business people and their citizens to be less corrupt if they are highly developed, long-established liberal democracies, with a free and widely read press, a high share of women in government, and a long record of openness to international trade. Countries are perceived to be more corrupt if they depend on fuel exports, have intrusive business regulations, and suffer from unpredictable inflation.’

But like Lambsdorff, Treisman is skeptical about the causality of the relationships. We cannot reliably say that most of these factors cause corruption perceptions to be high or low, he states, although evidence of this is strongest for economic development. Very important is that Treisman compares perception data on corruption with information on actual experiences of corruption. The United Nations Crime Victims’ survey, the World Business Environment Survey and Transparency International Global Corruption Barometer, for ex-
ample, offer measures of how frequently citizens or business people encounter demands for bribes in different countries. Treisman concludes (2007: 211):
‘Quite strong evidence suggests that highly developed, long-established liberal democracies, with a free and widely read press, a high share of women in government, and a history of openness to trade, are perceived as less corrupt. Countries that depend on fuel exports or have intrusive business regulations and unpredictable inflation are judged more corrupt. Although the causal direction is usually unclear, instrumenting with income as of 1700 suggests higher development does cause lower perceived corruption. However, controlling for income, most factors that predict perceived corruption do not correlate with recently available measures of actual corruption experiences (based on surveys of business people and citizens that ask whether they have been expected to pay bribes recently). Reported corruption experiences correlate with lower development, and possibly with dependence on fuel exports, lower trade openness, and more intrusive regulations. The subjective data may reflect opinion rather than experience, and future research could usefully focus on experience-based indicators.’

Meso and Micro Studies of Corruption
Many studies on corruption and integrity at the meso and micro levels also pay attention to the causes of corruption. To illustrate the line of reasoning and empirical results, I will summarize a number of studies of the VU research group Integrity of Governance that address the relationship between cases of corruption and characteristics of the involved individuals and organization(s).

Lasthuizen (2008) investigated the relationship between leadership and integrity violations in organizations via empirical work within a Dutch police force. The research defined, conceptualized, and empirically operationalized distinct notions of (ethical) leadership and integrity violation types, as well as the mediating factors of ethical culture and moral judgment. Corruption appeared to be a complex as well as very partial phenomenon among the integrity violations the police is confronted with (Table 2). Corruption and fraud in terms of bribing, favoritism (by supervisors and employees), fraud and theft, and conflicts of interests were distinguished.

One finding was that the respondents perceived most types of integrity violations seldom occurred in the direct work environment and judged them unacceptable practices. However, the responses also suggested that favoritism by supervisors, fraud, indecent treatment of colleagues and customers, and waste and abuse may be more widespread, an observation that, for fraud, coincides with a milder moral judgment (i.e., fewer respondents find this violation unacceptable).
Table 2: Moral Judgments on and Observed Frequency of Integrity Violations in the Police

<table>
<thead>
<tr>
<th>Types of integrity violations</th>
<th>Observed frequency percentage</th>
<th>Acceptability percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corruption: bribing</td>
<td>96%</td>
<td>98%</td>
</tr>
<tr>
<td>Corruption: favoritism by supervisors</td>
<td>51%</td>
<td>64%</td>
</tr>
<tr>
<td>Corruption: favoritism by employees</td>
<td>80%</td>
<td>78%</td>
</tr>
<tr>
<td>Fraud</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>Theft</td>
<td>82%</td>
<td>96%</td>
</tr>
<tr>
<td>Conflict of interest through gifts</td>
<td>72%</td>
<td>60%</td>
</tr>
<tr>
<td>Conflict of interest through jobs</td>
<td>83%</td>
<td>57%</td>
</tr>
<tr>
<td>Improper use of authority</td>
<td>78%</td>
<td>83%</td>
</tr>
<tr>
<td>Misuse and manipulation of information</td>
<td>84%</td>
<td>89%</td>
</tr>
<tr>
<td>Discrimination against colleagues</td>
<td>85%</td>
<td>96%</td>
</tr>
<tr>
<td>Sexual harassment of colleagues</td>
<td>92%</td>
<td>99%</td>
</tr>
<tr>
<td>Indecent treatment of colleagues</td>
<td>54%</td>
<td>72%</td>
</tr>
<tr>
<td>Indecent treatment of customers</td>
<td>58%</td>
<td>80%</td>
</tr>
<tr>
<td>Waste and abuse</td>
<td>60%</td>
<td>85%</td>
</tr>
<tr>
<td>Private time misconduct</td>
<td>73%</td>
<td>71%</td>
</tr>
</tbody>
</table>

What caused these integrity violations? Lasthuizen focused on leadership types as possible causes or explanations of what went wrong. She concluded that, contrary to the assumptions prevalent in the literature, leadership is neither a Eureka concept nor a panacea. Rather, the influence of the relationship between leadership and the incidence and prevalence of integrity violations primarily works indirectly through the ethical culture and employee moral judgments. Only a few direct effects were established. Specifically, positive direct effects (i.e., the limiting of integrity violations) were found for inspirational leadership on favoritism by supervisors; and for role-modeling leadership on bribing, favoritism by supervisors, and private time misconduct. However, negative direct effects (i.e., the allowing of integrity violations) were observed for passive leadership on waste and abuse, for integrity-focused leadership on discrimination against colleagues, and for unethical leadership on favoritism by supervisors and manipulation and misuse of information.

Employee moral judgment appeared to be an important factor for limiting the incidence and prevalence of integrity violations. If employees find a specific type of integrity violation unacceptable, fewer integrity violations of that type will occur. Employee moral judgments can be influenced by the ethical leadership styles of role-modeling and integrity-focused leadership. Lasthuizen presented AMOS models to illustrate the various indirect paths along which these total effects were reached (dependent on type of integrity violation). Figure 2 presents the results on bribing. The arrows represent the effect of the independent and intermediate variables on the dependent vari-

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6 Covariances were permitted between all leadership styles, as the correlational analysis has shown that the leadership styles intercorrelate significantly.
able, while the numbers represent the effect size; only significant standardized betas are included.

To summarize: inspirational leadership causes bribing to be more (!) prominent; result-oriented leadership is much less influential; role modeling and integrity-focused leadership help to limit bribing.

**Figure 2: Leadership Styles and Bribing**

![Leadership Styles and Bribing Diagram](image)

**Nature of Corruption**

Another example of a study on the causes of corruption at the meso and micro levels is De Graaf’s work on the nature of corruption in the Netherlands. The project was part of a broader study on corruption (Huberts/Nelen 2005). Definitionally, ‘public officials are corrupt when they act (or fail to act) as a result of receiving personal rewards from interested outside parties’. De Graaf studied ten Dutch corruption cases in depth (De Graaf/Huberts 2008). The confidential criminal case files, which included taped telephone conversations, official reports, suspect interrogations, and witness interviews, were studied thoroughly along with all available public sources such as newspaper articles and court records. Fifteen interviews were held with the respective case detectives and their superiors to glean as much as possible about the accused officials and their organizational context. Where possible, the propositions were compared with existing literature on the nature of corruption.
The research findings on the nature of corruption derived from the ten cases concerned (1) the individual corrupt official, (2) his or her organizational context, and (3) the relationship between the briber and corrupt official (De Graaf/Huberts 2008). Among the conclusions and propositions were:

1. Next to material gain, the most important motives for officials to become corrupt are friendship (or love), status, and making an impression on colleagues and friends.
2. Officials 'slide' toward corruption; most processes of becoming corrupt can be considered a slippery slope.
3. Corruption rarely evolves from personal problems – financial, for example – of the official. In no case studied here was there a conscious cost-benefit calculation as to whether to accept bribes or not. In almost every case, the process of becoming corrupt can be characterized as a gradual one, a slippery slope.
4. Often, corrupt officials have dominant and strong personalities, know how to ‘get things done’, take or get the freedom to do things independently, and overstep formal boundaries of authority. The more the public official is a ‘business type’, the higher the risk of corruption.
5. In most corruption cases, supervision of the corrupt official is not strong. In each of the criminal files of the ten cases, complaints were found about the direct superior’s or the organization’s executives’ failing to supervise the corrupt official.
6. In most corruption cases, management had not promoted a clear integrity policy. Integrity was not an issue.
7. Because of loyalty and solidarity, colleagues are hesitant to report suspicions of another’s corrupt activities. Signals of something ‘irregular’ surfaced before the corruption case was discovered; the signals, however, were not properly handled.
8. The relationship between briber and the official is most often enduring. The firmness of the relationships between the corrupt officials and their bribers is notable.
9. Corrupt officials, including those who operate external ‘corrupt networks’, do not limit their corruption to one incident.

**Bad Apples, Bad Barrels**

Whether misbehavior and corruption is more a function of bad apples (personal characteristics) or bad barrels (organizational and societal variables) is constantly debated in the literature. The evidence of the sketched multiple case-study supports the argument of many social researchers (cf. Kish-Gephart et al. 2010; Vardi/Weitz 2004) that (1) neither the individual nor the organizational perspectives fully explain corruption, and (2) integrative explanations are the most useful to explain corrupt behavior (De Graaf 2007).

So we need the combination of meso and micro, but what about macro? The studies presented in the previous paragraph illuminated the importance
of macro characteristics (as wealth, culture, democracy and the judicial system) for the amount of corruption in a country. Should the metaphor of bad apples and bad barrels be systematically completed by paying attention to bad trees and bad orchards?

6. Conclusion and Discussion

Let me open for discussion and future research a number of concluding observations on a possible multi-approach in the study (of the causes) of corruption.

1. Reflection about the causes of corruption should start with a definition of corruption.
We can work with many interpretations of the phenomenon, but clarity is crucial. In this chapter, corruption was defined in terms of private profit from public power. Corruption then includes types of behavior such as bribing, favoritism, fraud, and conflict of interest.

2. Explaining corruption demands being explicit about the explanandum.
When the definition of corruption used is clear (private profit for public power), it is also important to be specific about the explanandum. What ‘effect’ are we trying to explain? Are we interested in the causes of one specific corruption case? Do we want to know what caused individual X, organization Y, or party Z to become corrupt? Or is our interest more general, looking for what causes individuals, organizations, parties, policy sectors, countries to become corrupt? And if so, what type of corruption is the explanandum? Is the focus on ‘grand corruption’ by elites in politics and administration (Moody Stuart 1997) or ‘petty corruption’ by street-level bureaucrats?

The answers will vary with the chosen research question, including the selected ‘effect’. When a police officer falls in love with a criminal, and ‘exchanges’ confidential information for love, the cause of the case clearly has to do with that characteristic. No love, no corruption. It is also clear, however, that love is much less important to a more general explanation of the corruption of individuals (let alone organizations and countries).

It is worthwhile to explain all types of corruption (cases). The more specific to the more general can be the topic of our research, but they require different frameworks of (micro, meso, and macro) factors that might be causally relevant.

3. Reflecting on the cause of corruption (of a person, case, organization, sector, country) presupposes taking into account a multitude of factors on different levels.
A starting point for theoretical progress should be that all actual specific cases of corruption are related to micro, meso, and macro level characteristics and circumstances or causes.
Even in the most specific cases of individual corruption, the influence of multi-level causes can easily be recognized. Research has shown the importance of the lack of supervision and the absence of integrity policies, clearly meso in character, but they will depend heavily on macro characteristics. In the Netherlands, for example, government organizations are obliged by law to formulate and evaluate integrity policies. On the opposite side of the spectrum, macro studies on the level of corruption in countries include variables such as the salaries of public servants and the percentage of women in government.

Additionally we have to realize that all analyses of corruption will thus have to take into account the interrelatedness of causal factors at different levels. When we reflect on the causes of a specific case, the organizational context matters (structure, culture, leadership, policy) as well the broader societal context, including the public’s moral values and norms. These factors or causes are, of course, also related.

4. Conglomerates of factors matter at all levels, but not all factors matter. Reflecting on the cause of corruption presupposes an idea of the necessary or most influential factors among a collection of conditions that appear to be leading to corruption.

It is easy to state that ‘factors at all levels matter’, but how can we prevent getting lost in a complex mix of multi-level causes of corruption amidst an infinite number of potentially relevant aspects and characteristics at the micro, meso, and macro levels (and their interrelationships). Selection is inevitable. What among the many relevant factors is really necessary in an ever-complex context with many contributing factors?

Theories can provide information and expectations about the causes as well as the causal mechanism (how cause brings about effect). Many chapters in this book show how a theoretical framework can lead to a number of possibly relevant causes (leaving out many others). The specificity is understandable; it brings focus and understanding. The offered explanations, however, are often limited.

Another line of reasoning takes the results from empirical work as a starting point to come to the conglomerate of factors to take into account. Results are collected, analyzed and combined, and detached from their theoretical embeddings. This might lead to conclusions and hypotheses to be tested in further research. This eclectic approach may start at the different analytical levels, micro-meso-macro, as I try in the brief summary of factors that follows. A next step should concentrate on establishing a framework that explicitly relates factors proven to be significant at the personal, group, organizational, and national levels.

At the individual and personal levels several characteristics are important. The studies presented and existing multi-level frameworks have shown that
character matters: strong personalities receive more bribes. Emotion can be crucial too: falling in love makes us vulnerable. Neither can the economic circumstances of the (public) functionary be ignored. If corruption is the only strategy of ‘economic survival’, the result seems obvious unless the dependency is contradicted by his or her personal and group values. These values are directly related to the functionary’s general ideas about being treated right or wrong (in the organization and in society). The resulting view on the acceptability of unethical behavior (including corruption) is an important intermediary factor explaining the resulting behavior.

The type of work matters, which is often related to characteristics of the organization. At the group and organizational level the behavior and opinions of direct colleagues and supervisors are influential as well as the content of the job in terms of the power to decide about others. Discretion is conditional to deciding because of inappropriate interests. This is directly related to the type of function, the type of (durable) contacts with the outside world and the embeddedness in a stable trustful network.

Within the organization important causes of corruption are lack of control and supervision, failing (ethical) leadership, and a culture with values and norms justifying or even demanding corruption. Failing policy on corruption and integrity matters as well.

At the country level crucial factors seem to be the level and stability of economic (under)development, the dependency on (fuel) exports, the relationship between state and business, the social norms and values (perceived fairness of the system), characteristics of the system of democratic accountability (including press freedom and citizen participation) and, importantly, the strength of the judicial system. Of course, these interrelate with factors mentioned that cause corruption at the individual and group levels.

8. Multi-types of causes.
Table 3 summarizes important individual, organizational and system factors, which without exception belong to the agenda of the broad community of researchers dealing with the causes of corruption. The framework nonetheless sends a message to the many researchers involved in studying a limited segment of it.
### Table 3: Multi-Types of Corruption Causes

**Individual**  
Character/personality, private economic circumstances, personal values (moral judgment), emotions, discontent

**Individual and work-related**  
Type of work, colleagues, relationships and (trustful) network, discretion, operational leader(ship)

**Organizational**  
- Structure: lacking control/supervision, separation of responsibilities, discretion  
- Culture: goals/mission, values and norms (informal and formal) on corruption, ethics  
- Policies: integrity policy, reward system  
- Failing leadership: operational, strategic

**Environmental**  
Economic (high-low income; openness and trade)  
Political-administrative (state-business, politics-bureaucracy)  
Judicial (the system, rule of law)  
Societal (norms and values, feelings of injustice, crime)

9. **Multi-approach.**  
The real challenge results from the necessity to build theories that combine the many multi-level factors in an interconnected framework for understanding corruption. Let me end with the presentation of a very preliminary explanatory framework of the types of causes of corruption.

Corruption in **countries** is first related to political, economic, and social macro circumstances with, at the core, the idea that the amount of corruption in a country will depend on the perceived fairness of the existing polity, economy, and society. When parts of the population do not get their ‘fair’ share of the benefits in terms of power and wealth, private profit from public power becomes a justifiable way of life. This is true for countries poor and rich. The idea of fairness might be expected to coincide with the morals of citizens, including their views on the acceptability of corrupt behavior.

Not all organizations and individuals will become corrupt, however; what they do is influenced by the macro social, economic, and political context. Organizational and individual factors also matter.

Political and bureaucratic corruption can be limited or stimulated by meso factors. The closer the organizational relationships between politicians and bureaucrats and between those functionaries and business, the higher the public corruption and the more corrupt the country. One aspect of the relationship is organizations and sectors having something ‘to offer’ (business sectors such as fuel and construction seem important). Another is what the organizational policy and leadership in words and deeds signal to the individual and the group about the acceptability of corruption. If corruption is accepted practice throughout the organization, the individual or group cannot be expected to behave differently. However, having leaders and policies express the importance of ethics and integrity is no guarantee for similar micro behavior. Some will still become corrupt because of private circumstances...
(love, finances), character and values (personal motives and views on corruption), and opportunity (risk of discovery, sanctions expected as well as work discretion and nature of the services). Being dissatisfied with the organization seems very important in this respect.

Many individual and organizational factors are also characteristics of the macro or country level. A country’s culture can be more or less individualistic, repressive, or tolerant; a country’s systems of political, bureaucratic, private, and business organizations can be more or less interconnected and tight, rely more or less on compliance and sanctions or on integrity and values, give employees more or less discretion, and so on. Research on the corruptness of countries often ignores such types of ‘macro’ characteristics, which is a pity. In that sense, the criticism of many micro-meso researchers that macro researchers ignore the ‘real’ context of actual corruption (cases) is correct. We need to become more sensitive to consequences of multi-level interplay on the research that is done.

However, this is also true for the criticasters. When micro-meso researchers picture the causes of a specific corruption case, they often ignore the broader macro context. Politics, culture, economics do matter and are often reflected in a specific ‘context’ of behavior. What we lack are comparative case studies in different countries on the amount and character of corruption. Micro studies are too ‘local’; macro studies too monotonous in the variables studied.

The interrelationship between causes at different levels will have to be explored further. To conclude this chapter, I summarize a first general idea for the direction of that exploration. Each level of analysis seems to have some very specific factors, causes, conditions, or variables but a number of related areas could be given more attention. Table 4 summarizes the argument.

Table 4: Multi-Approach for Further Research

<table>
<thead>
<tr>
<th>Level</th>
<th>Type of factor</th>
<th>Culture</th>
<th>Values</th>
<th>Economics</th>
<th>Political / organization</th>
<th>Policy: compliance and integrity</th>
<th>Injustice Discontent</th>
<th>Other factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Macro / national</td>
<td>social values</td>
<td>culture</td>
<td></td>
<td>economic</td>
<td>state-business</td>
<td>judicial system; law; integrity policy</td>
<td>feelings of injustice social discontent</td>
<td>crime</td>
</tr>
<tr>
<td></td>
<td>values</td>
<td>culture</td>
<td></td>
<td>situation</td>
<td>politics-administration</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>politics-society (networks)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meso / organizational</td>
<td>organizational values, culture</td>
<td>reward system</td>
<td>control system</td>
<td>job discretion</td>
<td>leadership</td>
<td>norms and sanctions leadership integrity policy</td>
<td>discontent in organization reward system</td>
<td>policy sector</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Micro / individual</td>
<td>personal values, moral judgment</td>
<td>personal financial situation</td>
<td>personal relationships (internal, external)</td>
<td>type of work</td>
<td>moral judgment risk of punishment</td>
<td>individual discontent and frustration (society, work, job)</td>
<td>character emotions</td>
<td></td>
</tr>
</tbody>
</table>
Individual character, personality, and emotions seem rather specific but may be related to the broader culture. The personal values and moral judgment are almost by definition related to and influenced by organizational and social values and the same is apparent for the personal economic or financial situation, the organizational reward system, and the state of the economy. Factors stemming from the political and organizational structure also find their counterparts in characteristics as the relationships at work and the amount of discretion of the individual (and the group). Very important and under researched is the relationship between feelings of injustice and frustration at the different levels.

Two last additional remarks are important. First, the mechanisms and conditions causing corruption should of course not be limited to the columns in the table. Values and culture, economics, politics and social structure are interrelated and causes of corruption will entail different dimensions.

Second, the selection of types of factors obviously depends on the specific question that we are trying to answer. The explanation of an individual case of corruption asks for another set of factors than the explanation of the amount of corruption of a country. What the Multi Approach adds is the need for more sensitivity concerning the multi-level and multi-factor character of causal relationships. A more comprehensive framework might contribute to our understanding of the complex corruption phenomenon as well as help to connect the different approaches sketched in this book.
1. Introduction

Corruption: we all have an idea about what it is, and we all have more or less experience with it. It is an object of research that inspires numerous – and diverse, as this book manifestly proves – academic endeavors. While many may have known that the concept of corruption is essentially contested and its definitions various, *The Good Cause* shows that the differences in academia travel farther and deeper than the differences in definition. Within different discourses specific ideas exist on what the research questions are, what they should be, and how knowledge on corruption can be gained. In other words, the differences are not only on the level of what the object of research is or should be; the epistemologies within *The Good Cause* differ profoundly. One example would be ‘empirical studies’. In institutional economics it translates primarily to employing a range of clever devices to generate quantitative estimates, but in criminological studies it means studying actual corruption cases – two entirely different interpretations within the same area of research. The reason for the epistemological differences has also become clear: the underlying ontologies are different. In some areas of corruption research – the Rose-Ackerman chapter for example – the ontology is not part of the (mostly positivist) research; in other areas, like the Hiller, and the De Graaf, Wagenaar, and Hoenderboom chapters, it is. In a sense, therefore, corruption research reflects social science research in general. It demonstrates how research in the social sciences and humanities differs from the beta sciences where paradigm shifts take place, but not many paradigms exist at the same time. Collier (Collier 2002) is right when he states that an interdisciplinary theory on the causes of corruption never emerged. He is also right when he claims that it is because corrupt behavior is extremely complex social behavior – but even that is only the beginning of the explanation. Corruption research attracts people whose ideas on what the social world is are so fundamentally different that a new interdisciplinary approach is not likely to emerge. It is worth noting here that the various approaches’ units of analysis also differ widely, a detail discussed later in the chapter.

Beyond the definitions, methodologies, epistemologies, and ontologies, the concept of ‘causes’ also varies profoundly. In the introduction we discussed the philosophy of causality, in which we can distinguish epistemo-
logical and ontological traditions (Schinkel 2004). Here we can say on a practical level that what some call ‘causes’ of corruption others describe as ‘contributing factors’, ‘motives’, or ‘enhancing circumstances’. And in many cases it is perhaps better to speak of studies trying to ‘understand’ corruption rather than to ‘explain’ it (compare Weber 1921). Rose-Ackerman points out that in most economical studies the consequences of corruption are difficult to distinguish from the causes; the causal arrow appears to be bi-directional. In sum (and unsurprisingly), because the differences in approaches are great, so are the differences in the book’s chapters.

Whereas different paradigms in the beta sciences lead to conflicts until one is ‘proven right’, in The Good Cause, we find a kind of stalemate. On one side are universalists, who work with a definition of corruption they assume to be the same everywhere in the world; on the other are particularists, who have no specific definition of corruption, expect that corruption definitions can differ widely between cultures or social groups, and find benefit in studying the differences. In the next section we discuss the differences between the approaches, and follow with sections on their similarities. We conclude by pointing at blind spots in existing corruption research and discussing the (im)possibility of finding an ultimate remedy.

2. Understanding and Researching Corruption

Weberian approaches use ideal-type guided research, comparative, and historical research. Causes of corruption are located in the wider context of a specific form of domination and personal rulership (cf. Rubinstein/von Maravić, this volume). An explicit understanding and legally-sanctioned definition of corruption comes into existence with the separation of private household and public office, which occurs with the rise of a bureaucratic system; the legal-rational system is dominated by an explicit rule system that sanctions the use of public power for private means. The unit of analysis is the system of governance. Corruption occurs when one system slowly makes way for another.

F.W. Riggs’s theory is Weberian in the sense that corruption is typical of a developing society, especially in his use of ideal types, but he veers off from Weber by taking a structural-functionalist approach. According to Riggs, societies consist of structures with functions. ‘Fused’ societies have very few structures, each of which fulfills many functions. ‘Diffraacted’ societies are the opposite, i.e., they have many structures fulfilling few functions each. Corruption occurs in the intermediate stage of development – in the ‘prismatic’ society – from the friction between the fused and diffraacted logic. Riggs then explains the peculiar logic of such prismatic societies and shows how fused practices are often hidden behind diffraacted facades.

In terms of institutional economics, corruption occurs where private wealth and public power overlap; institutional frameworks determine the na-
ture and the extent of its opportunities. The units of analysis can be countries, organizations or individuals, even though economic theory is poorly equipped to explain variation across individuals who face the same structural incentives. Preferred research techniques are survey methods and experiments.

The multi-approach by definition uses a multitude of levels, analyses, and all possible research methods. Beginning with one (classic) definition of corruption – the abuse of (public) authority for private benefit – it is the most comprehensive attempt of all the approaches in this book to arrive at an interdisciplinary framework. At the country level, for example, corruption is related to political, economic, and social macro circumstances. This framework observes causes of corruption at all possible levels.

Systems theory has a very distinct approach. Corruption is seen as the linkage of different horizons of meaning in social communication. The research question stemming from it is how the linkages of meaning come about. Corruption arises when organizations (networks, groups, individuals) assigned to particular functional contexts fail to uphold the appropriate functional logic in their decisions. How is the corruption observed? By whom? – These are the possible research questions with which to start. We can think of studying the structural conditions that must be observed for a phenomenon to become the subject of a moral discourse and for corruption to be potentially labeled reprehensible.

Institutional design looks primarily at meso and macro levels. Differences between regimes represent different sets of institutions that may (or may not) be able to constrain behavior. The concept of corruption captures behavior that is beyond the pale of what is commonly accepted in industrialized democracies; behavior that undermines fairness and probity in governing makes it apparent to the public that appropriate standards of integrity are not being followed by public officials. Some doubts remain about the relevance of macro-level political structures for explaining corruption: the basic outcome of Peters’ analysis in this book is that any simple understanding of institutions as structures or rule systems is incapable of shedding much light on the likelihood of good governance. According to Peters so much difference exists between the regime types that making predictions is next to impossible. The causal linkage between institutional structures and the behavior of individuals within them is so attenuated that attempting to explain corruption on an individual level is difficult.

De Graaf, Wagenaar, and Hoenderboom state that, from a constructivist perspective, any interpretation of corruption and its causes is contestable. Some overlap with the Hiller chapter is clear. Their unit of analysis is discourse, not (corrupt) agents on the individual level, and they study the effects of texts on other texts. Included in this approach are historical and genealogical studies that illustrate how discourses on corruption are always socially and historically constructed.
Criminological approaches look at corruption as deviating from legal standards. Several criminological theories exist, but most employ three elements at three levels: motivation, opportunity, and control at the individual, organizational, and environmental levels. Units of analysis are both individuals and organizations, sometimes even the state. The empirical studies in this approach turn out to be unexpectedly limited, dealing mostly with the role of organized crime in corruption. Data used for research are partly produced by law enforcement agencies and gathered directly from offenders or victims. Most corruption research in criminology is thus qualitative in the form of interviews, participant observation, and case-studies.

3. Corruption and Morality

One of the similarities in the different academic discourses that struck us is the agreement that corruption, both conceptually and empirically, has a clear moral connotation. Rose-Ackerman for example points out that where some institutional economists claim to be purely positive, their analyses also contain normative aspects. Hiller writes that the social observation of corruption is a matter of moral communication. All researchers, regardless of their approach, seem to agree that the phenomenon they study is part of a moral discourse. De Graaf, Wagenaar, and Hoenderboom point out that by describing discourse on corruption, moral aspects come to the fore. Hiller even goes so far as to state that the moral observation of corruption is one of the most exciting areas of corruption research.

Moral norms change over time and place, but corruption – whatever it is – is always considered reprehensible. People disagree about the norms that determine whether someone is corrupt, not about the concept’s reprehensiveness. Anyone labeled ‘corrupt’ is judged in a morally negative way. Corruption is therefore morally loaded – like ‘integrity’, but with an opposite moral loading. In the De Graaf, Wagenaar, and Hoenderboom chapter attention is drawn to the consequences of being so labeled. Several Dutch civil servants convicted for corruption in a court of law admitted they did something wrong, but denied being ‘corrupt’. As Hiller quotes Fleck and Kuzmicks (1985: 7): ‘what is considered morally reprehensible and whether certain behavior is considered in this way varies from time to time (and from place to place), but the fact that attributing the label is equivalent to an evaluation is as good as unaffected by social change.’

Officials can also be certain ‘degrees’ of corrupt. A public official illicitly receiving €5000 is ‘more’ corrupt than one receiving €500. And, research shows, people regard a police officer who asks for €20 from a driver to overlook a speeding ticket as being more corrupt than one who accepts €20 when it is offered to him. A comparison of research on public attitudes towards corruption concludes:
'Over and over, the research found that respondents judged elected officials more severely than they judged appointed officials; judges more severely than police officers; bribery and extortion more harshly than conflict of interest, campaign contribution, and patronage; and harmful behavior more harshly than petty behavior” (Malec 1993: 16).

The authors of The Good Cause differ on how to deal with morality surrounding corruption. Some start out with a corruption definition, which means presupposing a clear boundary between right and wrong; others believe such boundaries vary with cultures. De Zwart points out that in Riggs’s view, the principles and techniques of modern public administration reflect the normative structure of Western societies. Corruption is even defined as normlessness. But of course then the relevant norms become important (cf. Huberts, this volume). Transplanted to another culture, Western corruption is still morally wrong in Western eyes, but not in a different normative structure. De Zwart points to the basic problem of moral relativism: to deny it is cultural imperialism, but to accept is to ‘tolerate barbarity and atrocity in those cultures. Damned if we do and damned if we don’t – either way the prospects are bleak’ (Aya 2004: 31). This is similar to Rose-Ackerman’s pointing out that the meaning of ‘misuse’ may indeed vary across cultures.

4. Public Corruption and the Outside World

We have noted that in most approaches the relationship between public and private is important. Most speak of corruption as abuse of public power and in doing so make a public-private distinction. Collusive public-private relationships also contribute to corruption. Huisman and Vande Walle ask whether the legal definition of corruption encompasses the socially injurious relations between companies. We can ask the same about non-legal definitions.

What we see in many chapters – the one on criminology, for example – is that close relations between private and public partners contribute to certain forms of corruption. Huisman and Vande Walle: ‘In comparing lobbying and corruption Campos and Giovanni have suggested that legal mechanisms such as lobbying are preferred in rich countries while companies in poor countries have to rely on corruption’ (Campos/Giovanni 2006). Huisman and Vande Walle point to Shichor and Geis whose survey on transnational bribery confirmed that businessmen often escape disapproval: people think accepting a bribe is worse than offering a bribe (Shichor/Geis 2007). One explanation for this underestimation is that criminologists for a long time have shown restraint in interfering with private enterprises. The same seems to hold for most other approaches. For example, Peters points to clientelism, in which a powerful patron provides his clients favors in exchange for political support (see also Rubinstein/von Maravic, this volume). Both Rose-Ackerman and Peters wonder where ‘pork barrel’ ends and corruption begins.
At present the relations between public and private organizations in most countries are rapidly changing because of developments like New Public Management, privatization, outsourcing, hybridization, and public-private partnerships. Do the increasingly blurred boundaries between public and private sectors mean that we can expect more corruption in the future (see Doig 1995, 1997, 1998; Erlingsson et al. 2008; Kolthoff et al. 2007; von Maravić/Reichard 2003; von Maravić 2007)? And what are the consequences for corruption studies? After all, most approaches use the public-private distinction to make the corruption concept clear, instead of victims, and most look differently at corruption in public versus private organizations. Thus when the sectors get blurred, the concept changes meaning and, in turn, influences future research endeavors.

5. Fighting Corruption: Now What?

Different approaches come with different solutions. Weber was interested in how legitimate political and economic order is created and maintained. His work illustrates how a society effectively restraints certain forms of behavior and encourages others. The metaphor of the ‘iron cage’ implies that corruption occurs when the system of legal-rational dominance is not yet complete; loopholes remain for the bureaucrat’s private motives. In other words, the distinction between the private-public role is not clearly delineated, offering a gateway for deviating behavior that could stem from explicit rules, suboptimal methods of sanctioning and supervision, an inferior system of recruitment, or an organizational ethos that has not been fully penetrated by the official structure. A Weberian approach to fighting corruption would therefore focus on the separation of the public-private domain, the formalization of rules, and a clear public office ethos. This collectivist vision (Hood 2000: 73-97; du Gay 2000: 1-13, 136-148) clashes, however, with the global Zeitgeist of privatizing public functions, deregulating, outsourcing, public-private partnerships, and other forms of hybrid governance.

Nor does the prismatic view in non-Western countries offer clear anti-corruption or prevention interventions. We either await normative change, or accept that administrations are corrupt. There is much skepticism – as with postmodern and system analytical accounts – about good governance programs and Western interventions promoted through institutions like the World Bank. We cannot transplant Western-designed administrative models and practices into a different normative order and expect them to function. And although De Zwart points to the work of Johnston, claiming, “[f]rom his work it follows that articulating group interests, stimulating politics, state formation, and bottom-up organizations can help the ‘good government cause’”, Rose-Ackerman points out that even documented damage from grand-corruption can escape the power or political will to be systematically
changed – another bleak picture. Institutional design does not come with clear, institutional or otherwise, recommendations on how to prevent corruption.

Then there are scholars who claim that deep historical factors are the determinants of corruption and that countries cannot escape their history. The important issue from a policy perspective is whether the factors contributing to corruption are exogenous or whether people react to others’ behavior. As with every academic approach, institutional economics wants to address what it sees as the underlying conditions (factors, causes, incentives) that create corrupt incidents, meaning promoting incentive-based policy responses like rearranging the rewards and costs of honest and corrupt behavior. Yet,

‘[c]lever technical solutions, based on economic incentives, may not be enough. If corruption is one of the pillars supporting a political system, it cannot be substantially reduced unless an alternative source of revenue replaces it. Powerful groups that lose one source of patronage will search for another vulnerable sector. Strong moral leadership is necessary but not sufficient. Tough political and policy choices need to be faced squarely’ (cf. Rose-Ackerman, this volume).

Hiller concludes that differentiation theory cannot lead to recommendations on how to combat corruption. Huisman and Vande Walle emphasize the importance of leadership in ethical conduct and corruption prevention. No chapter disputes this; in fact, every approach that looks at organizational-level culture makes this point.

Post-positivist students of corruption are also careful with recommending remedies for corruption. They point to the problem of interpretations of corruption and the negative side effects of a corruption fight. What they do have to offer, however, is reflection.

Collier wrote (2002: 2): ‘Additionally, my analysis demonstrates that the corruption phenomenon is so complex that it can only be addressed through grassroots changes in a state’s political, economic, and cultural institutions – changes that are not only technical but also social in nature’. Indeed, no Good Cause author disagrees with that or suggests catching and punishing ‘rotten apples’. A conclusion of this book is, however, that agreeing on ‘cause’ is impossible, let alone a or the cause of corruption – a problem if we want to conclude with ideas on how to fight it. The many remedies named in this book are helpful in the sense they can better the design of organizations and influence cultures in such a way that it lessens corruption. Even so, De Graaf, Wagenaar, and Hoenderboom warn us about unintended consequences.

Another problem is that the literature suggests many such devices, but which works under what circumstances at how much of a cost is unclear. When is a certain type of leadership important? How do we make sure public ethos continues to support traditional public values? Since these theories do not offer a premise on the cause(s) of corruption and are based on general research and broad correlations, they do not say much about contingency, which is so important for social research – especially corruption research be-
cause of its complexity. This is an important point made by Anechiarico and Jacobs (1996) in their comprehensive classic study in New York City. The authors documented and analyzed the manifold liabilities of a vast range of corruption control projects. They showed how corruption control mechanisms, which might make sense when based on general research, might not work in a specific context. ‘You name the anticorruption reform, the authors point out its severe organizational liabilities’ (Silverman 1998: 182). And how do we fill the gap noted by Van Hulten (2002: 182), who said that almost no empirical studies offer conclusions about which anti-corruption methods work under what circumstances? The literature currently offers much confusion. ‘The right mix of corruption controls will undoubtedly differ from governmental unit and from agency to agency within the same governmental unit. Moreover, the optimal mix changes over time’ (Anechiarico/Jacobs 1996: 198). It is safe to say we know next to nothing about which corruption controls are most efficient under different circumstances. Take, for example, the installment of ‘integrity systems’ proposed by Transparency International. Is it successful in preventing corruption? Perhaps. Gilman (2000) and Huberts (2000) seem to think so. Others, however (Anechiarico/Jacobs 1996; Brown 1999; Cooper 1998), disagree and would probably maintain that the programs would be ineffective at best.

The diversity of answers given by the authors in this book is a function of the empirical complexity of the phenomenon itself, different research foci, and various epistemological and ontological traditions. It is easy to lament the cacophony of corruption analyses and the non-unitary state of the social and behavioral sciences, but this does not help reduce corruption. We should abandon the idea of a ‘scientific law’ in the sense of Hempel and Oppenheim (1948: 152), one that has the quality of a ‘true statement’ and forever determines a ‘treatment’ for corruption.

We do not, however, propose to give up the effort to seek causal knowledge. Reflective causal knowledge is essential for decision makers to adapt to external challenges, especially to knowledge that indicates manipulable causes. Causality in the behavioral and social sciences also has a temporal dimension, which makes causal explanation highly dependent on context. If we are analytically and practically confronted with such a complex social phenomenon as corruption, and choose to reflect on it, perhaps the most important contribution of this book is to remind us that there are different ways of conceptualizing corruption and we have offered different pathways to reflect critically on our own approaches. We should always be aware that the type of analytical lens we choose determines what we will propose to do about corruption. We should avoid dangerous conceptual lock-ins and getting trapped in the Achilles’ heel of each strategy. What some might call ‘a bewildering cacophony’ we see as desirable pluralism enriching the analytical toolbox for phenomena that cannot be ignored, are complex, and deserve complex answers. No more or less, at least for the moment, can we take for given.
What this book clearly shows is that every approach sees different problems with corruption and has different solutions. Relevant contingencies prohibit us from testing what works under what conditions. Finding one clear solution remains an illusion. After reading all the chapters, it becomes clear that the theoretical model chosen to a large degree determines the direction of the proposed solutions (cf. Peters, this volume). Different causal chains, or even ideas about causality, lead to different discourses on corruption prevention and corruption control. The logical consequence of multiple causes can only be multiple answers. But in what combination and what doses? As yet we do not know, and in the end it depends, despite all attempts to reach universal answers, on the single case and tailor-made solutions. What can be said from other fields in which institutional design plays a significant role – for instance, common-pool resource problems (Ostrom/Walker/Gardner 1994) or grid-group concept (Douglas 1970; cf. also Hood 2000) – is that sustainable institutional solutions depend on the combination of different institutional strategies – be they hierarchical, competitive, or trust-based – to overcome each one’s inherent vulnerability.

Despite all this, we end with a strategy that might help in fighting corruption. The idea stems from the realization that most research approaches pay little attention to the victims of corruption except in a very general way, e.g., some corruption is related to underdevelopment and poverty, and the poor generally suffer the most. Little research exists on direct victims of specific corrupt relationships. Attention to the third party in a corrupt relationship, the ‘end user’ of corruption, is largely missing.

Several approaches mention that those involved in corruption deny doing or intending harm. Perpetrators try to avoid the concept of ‘corruption’ and thus disengage their actions from moral discourse. Part of a strategy to fight corruption is for corruption researchers, whatever their approach, to emphasize and highlight the moral aspects of corruption and corruption cases. Who, in the end, is the victim? What, precisely, is the harm? Identifying the victims and damage gives corruption a face and a voice. And we know from moral theory that victims who can be seen and heard receive attention.
Bibliography


Bibliography


Database Central Registration of Punishment, Belgium.


Bibliography


Gool, Bas van (2008): Untouchable Bureaucracy: Unrepresentative Bureaucracy in a North Indian State. Leiden: Leiden University, PhD.


Harrison, Elizabeth (2003): Unpacking the anti-corruption agenda: dilemmas for anthropologists. Paper read at Workshop on Order and Disjuncture: the Organisation of Aid and Development, SOAS.


Bibliography


List of Authors

Gerald E. Caiden
Gerald Caiden, Ph.D., has research and teaching interests in several areas of public administration, notably comparative and development administration, administrative theory, and the study of maladministration and bureau pathology. He is responsible for over 29 books and over 270 academic articles on diverse topics, such as administrative corruption, public accountability, auditing, ombudsman, public service ethics, comparative administrative cultures, and public management systems. He is best known for his pioneering studies in administrative reform, organizational diagnosis, ombudsman, comparative corruption, and public sector innovations. Among his more recent books are Administrative Ethics (Fudan University Press, 2003), Administrative Reform Comes of Age (Walter de Gruyter, Berlin 1991), A Dragon's Progress: Readings in Korean Development Administration (Kumarian Press, 1991), Development: A Reader (Human Resources Institute 1988), The Economics and Politics of Organized Crime (Lexington Books, 1984), A Select Bibliography of American Public Administration (Garland Press, 1983), An International Handbook of Ombudsman (Greenwood Press, 1983), Public Administration (Palisades Press, 1982), and Strategies for Administrative Reform (Lexington Books, 1982). He was editor of The International Journal of Technical Cooperation (London, 1995-1999). He is currently a member of the U.N. Panel of Experts in Public Administration and Development since 1994. He won the USC Mellon Foundation Award for Excellence in Mentoring for the 2005-2006 academic year.

Gjalt de Graaf
Gjalt de Graaf, Ph.D., is Associate Professor in the Department of Governance Studies at the VU University Amsterdam. He made methodological, theoretical, and empirical research contributions to the field of public administration, especially administrative ethics. One of his primary methodological contributions concerns the successful use of Q-methodology in administrative ethics. He worked on several theoretical aspects, one of which is the concept
of corruption and how to research it empirically. A related area of work has been on the concept and causes of whistleblowing, both empirically (establishing when someone blows the whistle) and theoretically (establishing whistleblowers’ dilemmas as loyalty dilemmas). He also carried out theoretical research on public administrators’ loyalties by distinguishing seven objects of loyalty and empirically showing where administrators’ loyalties lie. Currently he is doing research on good governance, with emphases on conflicts between governing with integrity and governing effectively, and on public values in the context of outsourcing and public-private partnerships. Journals which have accepted his work for publication include Journal of Public Administration Research & Theory, Public Administration Review, Social Sciences & Medicine, Public Administration, American Review of Public Administration, Public Management Review, Perspectives on European Politics and Society, Public Integrity, Journal of Business Ethics, Business Ethics: A European Review, Public Administration Quarterly, Administration & Society, and Health Policy.

**Petra Hiller**
Petra Hiller is Professor of Organisation and Governance at Nordhausen University of Applied Sciences, Germany. She received her doctorate and venia legendi for sociology at Bielefeld University, Germany. Her research interests centre on sociology of corruption, cognitive theory of organisation, public governance and sociology of law. Petra Hiller was Visiting Scholar at Oxford University, England, and at the International Institute for the Sociology of Law, Spain. She is Guest Professor at the Institute for Sociology at Vienna University, Austria.

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Michel P. Hoenderboom, M.A. is a Ph.D candidate at the VU University Amsterdam, department of Governance Studies. His research interests include public integrity, the history and development of public values and corruption in the seventeenth and eighteenth centuries (1650-1750) in the Dutch Republic (for more information www.corruptionproject.nl).

**Leo Huberts**
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**Wim Huisman**
Wim Huisman is a professor in criminology and chair of the department of Criminal law and criminology of the VU University of Amsterdam. Huisman is also chief editor of the Dutch Journal of Criminology. Huisman has written many academic publications on the prevalence, nature and causes of corporate crime, as well as on tackling the problem of organizational misconduct. Currently, Huisman is studying corporate complicity to gross human rights violations.

**Patrick von Maravić**
Patrick von Maravić, Ph.D. is assistant professor at the Department of Public Management & Governance at Zeppelin University in Friedrichshafen, Germany. He received his doctoral degree from Potsdam University in 2006. Patrick is a researcher on public management reform, corruption analysis/theories, methods of ethics research, and institutional development. He is currently conducting a research project on the methods of sensitive research subjects and conducting research on representative bureaucracy in Europe. Since 2005 he has been a member of the editorial board of the journal *Public Administration and Management Review*. Journals that have accepted his publications are *Verwaltungsarchiv, International Public Management Review, Public Integrity, Public Administration Quarterly, International Public Management Review*.

**B. Guy Peters**
B. Guy Peters holds the Ph.D. degree from Michigan State University (1970) and honorary doctorates from two European universities. He is currently Maurice Falk Professor of American Government at the University of Pittsburgh, and also Professor of Comparative Governance at Zeppelin University in Germany. He also has honorary professorships in Hong Kong, Belgium, and Denmark. He has published 40 books and over 300 articles, most recently the *Handbook of Public Administration, The Handbook of Public Policy and Institutional Theory in Political Science*, and *Debating Institutionalism*. The first two were co-edited with Jon Pierre, and the last with Jon Pierre and Gerry Stoker. He was founding co-editor of *Governance* (now rated as the #1 international journal in policy and administration), and is now founding co-editor of the *European Political Science Review*. He is
also an Associate Editor of the *International Encyclopedia of Political Science*.

**Susan Rose-Ackerman**

Susan Rose-Ackerman is the Henry R. Luce Professor of Law and Political Science at Yale University and holds a doctorate in economics from Yale University. She has written widely on corruption, democratic transitions, administrative law, and law and economics. Her most recent books are *Corruption and Government: Causes, Consequences and Reform; From Elections to Democracy: Building Accountable Government in Hungary and Poland*, and an edited volume, *International Handbook on the Economics of Corruption*.

**William D. Rubinstein**

Professor Bill Rubinstein MA, PhD (Johns Hopkins), Fellow of the Royal Historical Society, has published extensively on modern British history, especially the history of elites; and on Jewish history. His works include *Elites and the wealthy in modern British history: essays in social and economic history* (1987); *Capitalism, culture, and decline in Britain, 1750-1990* (1994); *A History of the Jews in the English-speaking world: Great Britain* (1996); *The Myth of Rescue: Why the Democracies Could Not Have Saved More Jews from the Nazis* (1997); *Britain's century: a social and political history, 1815-1905* (1998); and *Philosemitism* (1999), with Hilary Rubinstein. He is currently continuing research on wealth-holding in modern Britain, and modern Jewish history, is completing a number of textbooks, and plans to write books on the history of genocide and on subjects which ‘amateur historians’ write about and their world. Professor Rubinstein has recently written three articles in *History Today* on subjects debated by ‘amateur historians’ but ignored by academics, on the assassination of President Kennedy, the identity of ‘Jack the Ripper’ and the Shakespeare authorship question.

**Gudrun Vande Walle**

Gudrun Vande Walle (criminologist) is postdoctoral researcher at the University College Ghent - dep. Business and Public Administration where she is a member of the Governing and Policing Security research unit. She is also guest professor in Financial-Economic crime and Sociology of Law at Ghent University. Her PhD project (2004) concerned conflict resolution between private companies and consumer victims of corporate practices in the pharmaceutical industry. Research and teaching activities cover corruption and anti-corruption policy in public and private organisations; governance and ethics; governance of security, and organisational criminology.
**Pieter Wagenaar**
Pieter Wagenaar, Ph.D. received his doctoral degree from Leiden University in 1997. In 1998 he became an assistant professor at the department of public administration at Leiden University, where he took part in the NWO pioneer project *The Renaissance of Public Administration*. In 2001 he was appointed assistant professor at VU University Amsterdam. He is a co-applicant of an NWO research project on the construction of corruption called *Under Construction*, a cooperation between VU University and Leiden University that started in 2006. Pieter has published in various journals including the *International Review of Public Administration* and *Public Administration*.

**Frank de Zwart**
Credentials

‘After a generation of renewed effort against corruption it is time to step back and reconsider the big picture. This book gives us a challenging view of the emergence of key concepts of corruption and reform, of new perspectives on the origins of corruption problems and the nature of change, and of ways in which we need to adapt familiar ideas to new knowledge and circumstances. It will stimulate important conversations among reformers and scholars alike.’

Prof. Michael Johnston, Charles A. Dana Professor of Political Science, Colgate University; author of ‘Syndroms of Corruption’ and co-editor of ‘Political Corruption: Concepts and Contexts’

‘This book brings together world experts to discuss the complex nature of corruption that undermines the legitimacy, performance, and credibility of all institutions. The emphasis is on the impact of corruption on public policy, law, and administration. The contributors investigate why corruption has persisted throughout history and why it is so difficult to combat.’

Prof. Gerald E. Caiden, University of Southern California, School of Policy, Planning, and Development; author of ‘Where Corruption Lives’

Those of us concerned with problems of public integrity are better off now that we have a clear, thorough analysis of the principles guiding discourse and action on corruption. So many have either ignored the challenge of understanding corruption or have failed trying to grasp its complexity that it is startling to read a book that takes the challenge head on and succeeds chapter by chapter. Each analytic approach, represented by a first rate scholar, is connected to the overall mission of presenting an accessible, sophisticated review of corruption and the ideal of honesty in governance. This book is an invaluable asset to scholars and practitioners alike.

Frank Anechiarico, Maynard-Knox Professor of Government and Law, Hamilton College, Department of Government
The new Journal
Politics, Culture & Socialization

PC&S publishes new and significant work that report on current scientific research, discuss theory and methodology, or review relevant literature. It welcomes the following types of contributions on topics which fall within our aim and scope:

- Empirical research articles
- Theoretical articles which analyze or comment on established theory or present theoretical innovations
- Methodological articles
- Book reviews

The journal is published four times a year for an international audience. It relies on a wide range of subjects, compiled by scholars from around the world.

Editors: Prof. Dr. Christ'l De Landtsheer (University of Antwerp, Belgium), Prof. Dr. Russell Farnen (University of Connecticut, USA), and Prof. Dr. Dan German (Appalachian State University, USA).

Rates: Individual subscription (print) 59.00 €, (print + online) 69.00 €; institutional subscription 100.00 € (for institutional online, please contact publisher (josef.esser@budrich.eu); reduced rates (students, members of certain IPSA RCs) (print) 49.00 €. Postage added.
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ISBN 978-3-86649-293-6

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2010. 226 pp. Pb. 22,00 €, 22,70 € (A), 39,00 SFr
ISBN 978-3-86649-311-7

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The World of Political Science – The state of the discipline.
2010. 156 pp. Pb. 19,90 € , US$29.95, GBP 17.95
ISBN 978-3-86649-143-4
A. With reference to Article 7 – Public Sector (UNCAC), cite and summarise any measures that:

i. Establish and strengthen systems to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, including where specific procedures exist for the recruitment and hiring of senior officials in criminal justice institutions, if they are different from other civil servants.

In Trinidad and Tobago, the Public Service Commission is largely responsible for the recruitment, hiring, retention, promotion and retirement of public officials in the prison service. The Public Service Commission Regulations, and the Prison Service Act, Chap 13:02 (and subsidiary legislation, the Prison Service (Code of Conduct) Regulations), have conferred on the Commissioner of Prisons for the Trinidad and Tobago Prisons Service (TTPS), authority to, inter alia, recruit and promote officers, up to a certain rank. Vacancies for the position of Prison Officer I are advertised nationally, with the Superintendent of Prisons making an initial selection of candidates who have satisfied the legal qualifications listed in the vacancy announcement. Background checks are usually carried out at this stage. Candidates are required to attend an interview with a panel of senior prison officers, and may also be required to take a written test.

The Public Service Commission is directly responsible for the recruitment and promotion of senior officials in the Prison Service, from the rank of Assistant Superintendent of Prison to Commissioner of Prisons. Promotional examinations are available for senior officers in the Service, and consideration is given to the results of these examinations, as well as seniority, educational qualifications, merit and ability.

In the case of the Trinidad and Tobago Police Service (TTPS), the Commissioner of Police (COP) is empowered to manage the Police Service, and to ensure that the human, financial and material resources available to the Service are used in an efficient and effective manner. This power is guided by the provisions of the Constitution of the Republic of Trinidad and Tobago Chap 1:01, the Police Service Act, Chap. 15:01 and the Police Service Regulations Chap 15:01. These offer strict procedures and guidelines related to the recruitment, hiring, retention, promotion and retirement of officers.
In the TTPS, recruits are required to submit a non-intimate DNA sample and a police certificate of character upon application. Once shortlisted by the Recruiting Officer, candidates are required to attend an interview with a panel of senior officers. If successful, candidates must then submit to a polygraph test, a psychological test and a test for dangerous drugs. Additional background checks and vetting may be required, depending on the unit to which they are assigned. Performance assessments, examinations and a probationary period, are tools used in the promotion of officers.

In the case of the TTPS, the Police Service Commission (PSC) was established to oversee the recruitment of senior officials, namely, the posts of Commissioner of Police and Deputy Commissioner of Police. The Commission functions as an independent body with a constitutional mandate to execute the following core responsibilities:

(i) Appoint persons to hold or act in the office of Commissioner of Police and Deputy Commissioner of Police.
(ii) Make appointments on promotions and confirm appointments.
(iii) Remove from office and exercise disciplinary control over the Commissioner and Deputy Commissioner of Police.
(iv) Monitor the efficiency and effectiveness of the discharge of their functions.
(v) Prepare an annual performance appraisal report in such form as may be prescribed by the Commission respecting and for the information of the Commissioner and Deputy Commissioner of Police.
(vi) Hear and determine appeals from decisions of the Commissioner of Police, or any person to whom the powers of the Commissioner of Police have been delegated, as a result of disciplinary proceedings brought against a police officer appointed by the Commissioner of Police.

Additionally, the Police Complaints Authority (PCA), an independent, civilian oversight body, primarily established to investigate criminal offences involving police officers, police corruption and serious police misconduct, advises and recommends to the TTPS, ways and means of strengthening systems for transparency and accountability.

11. Implement adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption in criminal justice institutions and the rotation, where appropriate, of such individuals to other positions.

With regard to training in general, the Research and Developmental Training Department of the Prison Service is responsible for identifying and meeting the training needs of the Service. In the case of Second Division Officers, the Superintendent of the respective stations, are responsible for nominating candidates for the training courses offered by the Service. In the case of First Division Officers, in determining nominees
for training opportunities, consideration is given for those requiring relevant training in order to be eligible for promotion or lateral movement.

In the case of the TTPS, performance appraisals, requests of certain units and divisions, and the TTPS strategic plan, guide the general work plans of the Police Training Academy and the Human Resource Department. As is the case with the TTPrS, heads of the various stations, units and branches are responsible for nominating officers and civilians for training opportunities.

Within the TTPS, the rotation of officers across the various units and divisions, is employed in order to, inter alia, safeguard against corrupt practices or behaviour.

iii. *Prescribe criteria concerning candidature for and election to public office for members of criminal justice institutions, if applicable, as well as measures to enhance transparency in the funding of candidatures and of contributions to political parties, where applicable.*

As per the *Police Service Act, Chap 15:01*, regarding political activities, a police officer is disqualified from membership of the Senate, the House of Representatives, the Tobago House of Assembly, or a Municipal Corporation. The *Police Service (Code of Conduct) Regulations, Chap 13:02*, similarly disqualifies members of the TTPrS from membership in the Senate, House of Representatives, Tobago House of Assembly, or a Municipal Corporation.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY UKRAINE

ARTICLE 7 UNCAC

PUBLIC SECTOR

UKRAINE (EIGHTH MEETING)

According to measures concerning art.7 of the Convention in relation to establishing and strengthening the system of ensuring transparency and accountability in the recruitment the Prosecutor General’s Office established an independent Inspector General's Office (IGO) in December 2016. The special department is aimed at counteracting bribery and other kinds of abuse of office by prosecutors. Main task of the IGO is continuing the process of cleansing the public prosecution system and combating corruption within the office.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY UNITED STATES OF AMERICA

ARTICLE 7 UNCAC
PUBLIC SECTOR

UNITED STATES OF AMERICA (EIGHTH MEETING)

The U.S. Constitution created a federal system of government in which power is shared between the federal government and the state governments. Due to this system, both the federal government and each of the state governments have their own court system and certain law enforcement responsibilities. This response is specific to the federal court system established under Article III of the U.S. Constitution, the federal judiciary and federal law enforcement agencies, and does not include courts established under any other federal jurisdiction, such as military courts.

Recruitment, Hiring, Retention:

Law enforcement responsibilities in the United States are divided between the federal government and state, county, and municipal governments. At the federal level, law enforcement responsibilities primarily fall under the executive branch. Federal law enforcement personnel are therefore subject to applicable merit hiring standards as other executive branch employees. The U.S. Office of Personnel Management (OPM) is the central human resources management agency for the executive branch. OPM develops civil service regulations consistent with the laws passed by Congress and is responsible for ensuring compliance with those laws and regulations. It delegates to the other executive branch agencies, including those with law enforcement responsibilities, the authority to operate various human resources functions, including the authority to competitively examine and hire employees.

In general, there are two basic categories of career public officials in the federal executive branch, both of which are hired under merit system principles: 1) competitive service employees, who are hired through a competitive examination process and must meet government-wide suitability and qualification standards; and 2) excepted service employees, who may be hired non-competitively but must still be found fit and qualified for their positions, either under government-wide standards or agency-specific standards. Each agency is responsible for developing selective factors, if appropriate. Personal favoritism, nepotism, and political influence are not permitted in the selection
process. Any occurrence of non-merit favoritism is viewed as a “prohibited personnel practice.” The head of each agency is responsible for the prevention of prohibited personnel practices.

The U.S. Department of Justice is exclusively responsible for federal criminal prosecutions and primarily responsible for civil prosecutions. The Department of Justice employs career prosecutors whose tenures, except in special circumstances, are not for fixed terms. Career prosecutors are generally “excepted service appointments.” The official appointments are made by the Attorney General after a competitive selection process conducted by others in the Department. The hiring of career federal prosecutors is overseen by the Office of Attorney Recruitment and Management (OARM) in strict compliance with applicable federal hiring regulations. OARM reviews the suitability of every prosecutor offered a position at the Department based on a candidate’s completed security forms, fingerprint and financial background checks, as well as a full field FBI background investigation and tax and attorney bar check.

Promotions and mobility are typically within the purview of the career and appointed supervisors within each agency. In the Department of Justice, because offices, including Offices of the U.S. Attorney, vary in size from dozens of prosecutors to hundreds of prosecutors, promotions within the offices are decided by the office’s management team, depending on the structure of the office. As in the rest of the career service of the executive branch, decisions on performance reviews, promotions, reassignments, bonuses, discipline and other administrative actions are initially made by supervisors, following standard personnel procedures. Promotion to a small number of career supervisory positions within the Senior Executive Service is more formal, and must involve advertisement, a qualification process and interviews. Positions appointed by the President and confirmed by the Senate, which includes U.S. Attorneys, U.S. Marshals, and the heads of all executive agencies including those with law enforcement components, are not eligible for promotion.

Training:

Even prior to coming on board, prospective employees must be alerted to the importance of the Department of Justice’s ethics program. As part of executive-branch wide requirements, agencies must issue notices to prospective employees in written offers of employment regarding the agencies’ ethics programs and applicable ethics requirements.¹ Senior officials within the Department of Justice who are serving in presidentially appointed, Senate-confirmed (PAS) positions also receive substantial counselling with regard to

¹ 5 C.F.R. § 2638.303.
the application of the federal conflict of interest laws prior to appointment and in conjunction with their preparation and submission of their first public financial disclosure report for purposes of their nomination and appointment.

In addition, agencies, including the Department of Justice, must issue notices regarding applicable ethics requirements to employees who are newly hired or promoted to supervisory positions. The notices emphasize that, in their new roles as supervisors, these employees will have heightened personal responsibility for advancing government ethics. This notice must be issued within one year of appointment, which corresponds to the time period established in the regulations of the Office of Personnel Management for supervisory training.

The ethics notices to prospective employees and new supervisors are complemented by ethics training requirements. Within 3 months from the time an employee begins work for a federal agency, including those with law enforcement responsibilities, the agency must provide the employee with initial ethics training. The initial ethics training must focus on ethics laws and regulations that the Designated Agency Ethics Official (DAEO) deems appropriate for the audience and must address concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts. Agencies must also provide the employee a summary of the Standards of Ethical Conduct for Executive Branch Employees, relevant agency supplemental standards; and instructions for how to contact the DAEO.

In addition, agency leaders must receive an ethics briefing around the time of appointment. This requirement applies to most civilians serving in presidially appointed, Senate-confirmed positions, and supplements other applicable requirements. For the Department of Justice, this includes the Attorney General, U.S. Attorneys, and U.S. Marshals. During this individualized briefing, the agency ethics official discusses the appointee’s basic recusal obligation, the mechanisms for recusal, the commitments made in the appointee’s ethics agreement, and the potential for conflicts of interest arising from any financial interests acquired after the nominee financial disclosure report was filed.

Executive branch employees, including Department of Justice attorneys, are required to complete certain training requirements, determined by the type of

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2 5 C.F.R. § 2638.306.
3 5 C.F.R. § 2638.103.
4 5 C.F.R. § 412.202(b).
5 5 C.F.R. § 2638.304.
6 5 C.F.R. § 2638.305.
position held, on an annual basis. This includes ethics training on financial conflicts of interest, impartiality, misuse of position, and gifts. Prosecutors can seek advice from a variety of sources, including an Ethics Advisor or the Departmental Ethics Office.

The Federal Bureau of Investigation (FBI) is one of the primary national security agencies at the federal level, with both law enforcement and intelligence gathering responsibilities. At the FBI, ethics function resides organizationally within the Office of Integrity and Compliance (OIC). The OIC administers the day-to-day operation of all aspects of the FBI Ethics and Integrity Program. This includes overseeing and administering the Ethics and Integrity Training Program to ensure compliance with all executive branch-wide regulations (as noted in the preceding paragraphs) and FBI policies. For new FBI Special Agents, ethics is woven into the curriculum of the FBI’s New Agents’ Training which is conducted at the FBI Academy. A course on ethical leadership is provided during regularly scheduled classes throughout the duration of the program.

Candidature

There are no federal law enforcement positions that are filled through elections.
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY THE UNITED STATES OF AMERICA

ARTICLE 7, PARAGRAPH 4 UNCAC

PUBLIC SECTOR

UNITED STATES (THIRD MEETING)

U.S. Office of Personnel Management Website

- **RELEVANT ARTICLE SECTIONS**
  - Article 7, Paras 1. and 1. (a) - recruitment, hiring, retention, promotion and retirement based on principles of efficiency, transparency and objective criteria

- **ABOUT**
  - The U.S. Office of Personnel Management (OPM) is the central human resources agency for the Federal Government. Its mission is to “Recruit, Retain and Honor a World-Class Workforce to Serve the American People.” To carry out this mission, OPM provides human resource advice and leadership to Federal agencies, supports agencies with human resource policies, holds agencies accountable for their human resource practices, and upholds the merit system principles. Additionally, OPM delivers human resource products and services to agencies on a reimbursable basis, including personnel background investigations, leadership development and training, staffing and recruiting assistance, supporting organizational assessments, and training and management assistance. OPM also delivers services directly to Federal employees, those seeking Federal employment, and Federal retirees and their beneficiaries.

- **AWARENESS RAISING**
  - The OPM website ([www.opm.gov](http://www.opm.gov)) provides a trove of information and resources to stakeholders, including:
    - retirees and families ([http://www.opm.gov/retirees/](http://www.opm.gov/retirees/))
    - HR practitioners and agencies ([http://www.opm.gov/hr_practitioners/](http://www.opm.gov/hr_practitioners/))

**USAJOBS**

- **RELEVANT ARTICLE SECTIONS**
Article 7, Paras 1. and 1. (a) - recruitment, hiring based on principles of efficiency, transparency and objective criteria

ABOUT

USAJOBS (www.usajobs.gov) is the Federal Government’s central web-based employment portal that provides on-line worldwide job vacancy information, employment information, fact sheets, job applications, and integration with other Federal hiring systems. Most federal agencies are required by law and regulation to post job openings on USAJOBS and this public notice helps ensure open competition by informing job seekers when, where, and how to apply for these jobs.

AWARENESS RAISING

USAJOBS is updated daily and averages 12,000 listings at any given time covering worldwide job opportunities, handles more than 3 million applicant search requests daily, and processes millions of job applications each year. USAJOBS offers the applicants one central secure place to save their application documents like resumes and college transcripts, then leverage these saved documents towards multiple job applications across the Federal government. USAJOBS is built upon best practices using an open framework and ensures access for applicants with differing physical and technological capabilities. Additionally, the system sends applicants daily email alerts based on their personal saved search criteria keeping them up to date regarding new postings. USAJOBS is convenient, user friendly, and with the exception of scheduled maintenance, is available 24 hours a day, 7 days a week.

USAJOBSRecruit (www.usajobsrecruit.gov) is a companion website for Federal employees with recruiting responsibilities. It is designed to create a Federal recruitment community for sharing best-in-class recruiting practices, ideas, insights, lessons learned, and for creating recruiting solutions. USAJOBSRecruit provides tools (e.g., School Sorter, templates, checklists), job aids, learning modules, information on effective recruiting strategies, and webinars. Other special features include recruiting blogs and interactive forums with featured recruiting experts to further foster collaboration and communication among Federal employees with recruiting responsibilities.

Background Investigations

ABOUT

RELEVANT ARTICLE SECTIONS

Article 7, Para 1. (a) - recruitment, hiring based on principles of efficiency, transparency and objective criteria

Article 7, Para 1. (b) – selection and training of individuals for public positions considered especially vulnerable to corruption

ABOUT
The U.S. Government conducts background investigations to determine if applicants or employees meet the suitability or fitness requirements for employment, or are eligible for access to Federal facilities, automated systems, or classified information. The scope of a background investigation varies depending on the duties and access requirements for the position. Executive Order 10577 directs the U.S. Office of Personnel Management (OPM) to examine “suitability” for competitive Federal employment. Determinations of "suitability" are based on a person's character or conduct that may have an impact on the integrity or efficiency of the service. By Executive Order 13488, individuals in positions of public trust are reinvestigated periodically in order to ensure that they remain suitable for continued employment.

AWARENESS RAISING

On its website (http://www.opm.gov/investigate/investigations/index.aspx) the U.S. Office of Personnel Management (OPM) describes the purpose of background investigations, the authority through which OPM conducts investigations, the role each agency has in determining the level of the background check, and information on how an individual may request a copy of his/her background report.

Hiring Reform

RELEVANT ARTICLE SECTIONS

Article 7, Para 1. (a) - recruitment, hiring based on principles of efficiency, transparency and objective criteria

ABOUT

President Obama’s Memorandum of May 11, 2010, Improving the Federal Recruitment and Hiring Process, outlined the Administration’s comprehensive initiative to address major, long-standing impediments to recruit and hire the best and the brightest into the Federal civilian workforce. The U.S. Office of Personnel Management (OPM) is spearheading the Government-wide initiative to reform recruiting, hiring and retention policies and procedures. The reform effort will encompass multiple years and will require sweeping changes to streamline and improve the hiring process. OPM leads the effort to ensure Federal agencies acquire, assess, and retain employees with the specific competencies necessary to achieve agencies’ goals and missions.

AWARENESS RAISING

The OPM Hiring Reform website is a resource to human resources professionals and hiring managers implementing hiring reform. The site offers "bite-sized" training modules on the key areas related to hiring reform. The site can be found at www.opm.gov/hiringreform/. Webcasts on hiring reform can be found at http://www.opm.gov/HiringReform/MediaCenter/index.aspx.
Merit System Principles

o RELEVANT ARTICLE SECTIONS

- Article 7, Paras 1. and 1. (a) – systems for recruitment, hiring, retention, promotion and retirement based on principles of efficiency, transparency, and objective criteria such as merit, equity and aptitude

o ABOUT

- The Merit System Principles (http://www.mspb.gov/meritsystemsprinciples.htm) are nine basic standards governing the management of the executive branch workforce. The Merit Systems Protection Board (www.mspb.gov) is an independent, quasi-judicial agency in the executive branch that serves as the guardian of Federal merit systems. The Board's mission is to protect Federal merit systems and the rights of individuals within those systems. MSPB carries out its statutory responsibilities and authorities primarily by adjudicating individual employee appeals and by conducting merit systems studies. In addition, MSPB reviews the significant actions of the Office of Personnel Management (the agency responsible for recruiting, hiring, and setting benefits policies for Federal civilian employees) to assess the degree to which those actions may affect merit.

o AWARENESS-RAISING

- MSPB raises awareness through a wealth of information on its website including:
  - Database of MSPB decisions (http://www.mspb.gov/decisions/decisions.htm)
  - Studies on specific issues such as prohibited personnel practices (http://www.mspb.gov/studies/index.htm).
  - Newsletters (http://www.mspb.gov/studies/newsletters.htm)
  - Video interviews (http://www.mspb.gov/video.htm)
  - Radio interviews (http://www.mspb.gov/radio.htm)
  - Training videos (http://www.mspb.gov/training.htm)
  - Smartphone apps (http://www.mspb.gov/mobile.htm) that provide users with on-the-go access to the latest MSPB decisions, weekly case reports, studies, Issues of Merit newsletters, and press releases. The apps also allow users to search decisions, review the merit system principles, “like” or “favorite” documents for reference, share documents using social media like Twitter and Facebook, and follow MSPB’s Twitter feed (@USMSPB).
Ethics Training & Counseling

○ RELEVANT ARTICLE SECTIONS

□ Article 7, Para 1. (b) – training individuals for public positions vulnerable to corruption

□ Article 7, Para 1. (d) – education programs that enable non-elected public officials to meet the requirements for the correct, honorable and proper performance of public functions and specialized training to enhance awareness of the risk of corruption

□ Article 7, Para 4 – systems that promote transparency and prevent conflicts of interest

○ ABOUT

□ Each executive branch agency must have an ethics training program for all of its employees that promotes the understanding and application of ethics laws and rules and that informs employees of the availability of personal, on-demand ethics advice. Once an employee begins work for an agency, the agency must provide every employee an initial ethics orientation consisting of verbal training or at least one hour of official duty time to review the Standards of Ethical Conduct for Employees of the Executive Branch and any agency-specific supplemental standards (or summaries of each). In addition, employees who are in sensitive positions requiring that they file financial disclosures (whether public or confidential) are required to receive annual ethics training that must cover the Standards of Ethical Conduct for Employees of the Executive Branch, any agency supplemental standards, and the Federal conflict of interest statutes. The annual training must also include the contact information for agency ethics officials available to advise on ethics issues.

○ AWARENESS RAISING

□ As a good practice, several executive branch agencies require that all employees receive annual ethics training, regardless of whether they file financial disclosures.

□ Many agencies tailor the annual ethics training for at-risk employees such as procurement officials or for supervisory employees who are in positions to spot and address problems.

□ To encourage employees to seek ethics advice, agencies often hang posters in the workplace that provide the agency ethics official contact information.

□ Agencies create a variety of ethics training and counseling resources for their employees. For example, the U.S. Department of Agriculture (USDA) has online “self-help” guides that allow users to answer a series of yes/no questions to receive a tailored explanation of what ethics rules may apply under specific circumstances (http://usda-

The U.S. Office of Government Ethics offers several resources such as pamphlets, videos, crossword puzzles, and posters to raise awareness about ethics rules. Federal employees can use this information to supplement annual ethics training or to educate themselves on novel issues. This material is meant to complement the advice and counsel that agency ethics officials provide (http://www.oge.gov/Education/Education-Resources-for-Federal-Employees/Education-Resources-for-Federal-Employees/).

Ethics in the Acquisition Workforce

- Article 7, Para 1. (b) – training individuals for public positions vulnerable to corruption
- Article 7, Para 1. (d) – education programs that enable non-elected public officials to meet the requirements for the correct, honorable and proper performance of public functions and specialized training to enhance awareness of the risk of corruption
- Article 7, Para 4 – systems that promote transparency and prevent conflicts of interest

- Federal employees involved in the procurement and acquisition process play an important role in preserving the integrity of Government contracting and assuring fair treatment of bidders, offerors, and contractors. Like all executive branch employees, the acquisition workforce is subject to the criminal conflict of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. Further, acquisition officials are subject to additional prohibitions as defined in the Procurement Integrity Act.

- Government acquisition professionals also have specific responsibilities to identify and prevent conflicts of interest on the part of businesses and employees contracted by the Government: Contracting Officers are required to identify potential organizational conflicts of interest, i.e., when a contractor has an interest that may bias its judgment or the advice it provides the Government, and must ensure that contractors have procedures in place to screen certain employees for potential personal conflicts of interest. Contracting Officers must also be aware of regulations that require certain contractors to maintain business ethics compliance programs.
AWARENESS RAISING

□ The Office of Federal Procurement Policy has developed common certification programs that generally reflect a government-wide standard for education, training, and experience leading to the fulfillment of core competencies in a variety of acquisition-related disciplines (http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/fac_contracting_program.pdf and http://www.whitehouse.gov/sites/default/files/omb/procurement/revisions-to-the-federal-acquisition-certification-for-contracting-officers-representatives.pdf).

□ Both the Federal Acquisition Institute and the Defense Acquisition University have learning resources to assist Government agencies in ensuring the acquisition workforce is adequately trained on responsibilities and fundamental contract rules and regulations (www.dau.mil and www.fai.gov).

□ Typically, procurement officials are required by their agency to file confidential financial disclosures to ensure that contracting decisions are made free from bias (see below under “Financial Disclosure” for more information). These individuals are required to receive annual ethics training (see above under “Ethics Training & Counseling” for more information on annual ethics training requirements).

□ Through official memoranda, the Office of Federal Procurement Policy emphasizes the importance of compliance with laws, regulations, and standards that prescribe ethical conduct in acquisitions
I – Información solicitada a los Estados partes en relación con la integridad en las instituciones de justicia penal (arts. 7, 8 y 11)

1. Describa (cite y resuma) las medidas que haya adoptado su país, si procede, (o que tenga previsto adoptar, así como el plazo correspondiente) a fin de asegurar el pleno cumplimiento de estas disposiciones de la Convención, reforzar la integridad en las instituciones de justicia penal, incluido el poder judicial, las fiscalías, la policía, los servicios penitenciarios y el personal judicial, cuando proceda.

Con respecto a las medidas previstas en el artículo 7 de la Convención sobre la contratación de empleados en el sector público tenemos:

Tema de Debate

La integridad en las instituciones de justicia penal

1. Describa (cite y resuma) las medidas que haya adoptado su país, si procede, (o que tenga previsto adoptar, así como el plazo correspondiente) a fin de asegurar el pleno cumplimiento de estas disposiciones de la Convención, reforzar la integridad en las instituciones de justicia penal, incluido el poder judicial, las fiscalías, la policía, los servicios penitenciarios y el personal judicial, cuando proceda.

Con respecto a las medidas previstas en el artículo 7 de la Convención sobre la contratación de empleados en el sector público tenemos:

El Tribunal Supremo de Justicia (TSJ) dictó las Normas de Evaluación y Concurso de Oposición para el Ingreso y Ascenso de la Función Judicial. Las presentes normas tienen por objeto regular y organizar el ingreso, ascenso y permanencia en la carrera judicial, de los jueces y juezas, mediante los concursos de oposición públicos y las evaluaciones de desempeño, de conformidad con lo previsto en el artículo 255 de la Constitución de la República Bolivariana de Venezuela.

Artículo 11. Llamado al Concurso de oposición público

El Tribunal Supremo de Justicia, por órgano de la Comisión Judicial, llamará a concurso de oposición público, por circunscripción judicial y por materia,
mediante un aviso que se publicará en su portal de Internet, en la Gaceta Judicial y en un diario de circulación nacional.

En la convocatoria, se indicarán los cargos vacantes para proveer, circuito judicial del cual forma parte, los requisitos, lapsos correspondientes a cada fase y lugar para las inscripciones, los documentos que deben ser presentados y la forma de su consignación; así como cualquier otra información que la Comisión Judicial del Tribunal Supremo de Justicia considere necesario incluir.

La Sala Plena del Tribunal Supremo de Justicia a proposición de la Comisión Judicial conformará una lista nacional de jurados principales y suplentes para la evaluación de los respectivos concursos de oposición públicos y está contemplada la recusación del jurado evaluador que se describe en el artículo 17. “Las personas seleccionadas para integrar el Jurado Evaluador deberán inhibirse o podrían ser recusados cuando estén incursos en cualquier de las incompatibilidades previstas en la presente normativa, así como cuando exista cualquier otra condición que impida su imparcialidad.”

Entre los requisitos contemplados en el artículo 8 para el Ingreso a la Función Judicial se destacan:

a) Ser venezolano o venezolana.
b) Ser mayor de veinticinco años (25) años de edad.
c) Poseer título de abogado o abogada expedido por universidad venezolana o universidad extranjera, debidamente revalidado por la autoridad nacional correspondiente para el ejercicio cabal de la profesión, según el ordenamiento aplicable.
d) Estar inscrito o inscrita en el Colegio de Abogados respectivo, como en el Instituto de Previsión Social del Abogado.
f) Estar en el libre ejercicio de los derechos civiles y políticos, y no estar inhabilitado o inhabilitada para el ejercicio de la función pública,
g) Tener experiencia comprobable en el ejercicio de su profesión,
h) Tener conducta intachable y reconocida moralidad.
i) Abstenerse de realizar activismo político, partidista, sindical y gremial y no ser militante activo de un partido político.
REPÚBLICA BOLIVARIANA DE VENEZUELA
CONVENCION DE LAS NACIONES UNIDAS CONTRA LA CORRUPCIÓN
Grupo de Trabajo Intergubernamental de Composición Abierta sobre Prevención de la Corrupción
Viena, del 21 al 23 de agosto de 2017

i) Presentar la Declaración de Impuesto sobre la Renta del ejercicio económico del año anterior.

l) Aquellos que sean fijados por la Comisión Judicial para los jueces y juezas que ejerzan determinadas competencias e instancias específicas.

Entre las medidas que pretenden atender las dificultades en el país de no contar con jueces titulares sino la mayoría provisionales se destaca la disposición transitoria primera:

Disposiciones Transitorias.

Primera: Para regularizar progresivamente la situación de los jueces y juezas que de forma provisoria actualmente se encuentren en ejercicio de dichos cargos, con el carácter de no titulares, se establece el Concurso de Oposición Público a ser convocado en lo inmediato para los jueces y juezas activos, a los fines de su posible ingreso a la Carrera Judicial como jueces y juezas titulares, de acuerdo a las siguientes fases: (…)

Ahora bien, el régimen de incompatibilidades para los Magistrados se encuentra previsto en el artículo 39 de la Ley Orgánica del Tribunal Supremo de Justicia\(^2\), que establece:

Los Magistrados o Magistradas podrán ejercer cargos académicos y docentes siempre y cuando no sea a tiempo completo o no resulten incompatibles con el ejercicio de sus funciones, y ser miembros de comisiones codificadoras, redactoras o revisoras de leyes, ordenanzas y reglamentos que, según las disposiciones que las rijan, no constituyan destinos públicos remunerados.

No podrán ser designados simultáneamente Magistrados o Magistradas del Tribunal Supremo de Justicia, quienes estén unidos entre sí por matrimonio, unión estable de hecho, adopción o parentesco en línea recta o en línea colateral, dentro del cuarto grado de consanguinidad o segundo de afinidad.

En caso de que ocurriese este supuesto, la Asamblea Nacional revocará la última designación y procederá a una nueva selección, de conformidad con esta Ley.

\(^2\) Publicada en la Gaceta Oficial de la República Bolivariana de Venezuela N° 39 522, de fecha 1 de octubre de 2010.
Convención Colectiva de Empleados Dirección Ejecutiva de la Magistratura, suscrita en fecha 09 de Junio de 2005. Establece en su Cláusula 8: Estabilidad y Carrera de los Empleados amparados por esta Convención Colectiva, no clasificados como de confianza y/o de libre nombramiento y remoción, gozarán de estabilidad, en los términos y condiciones establecidos en las leyes, estatutos y reglamentos respectivos. El 29 de mayo cada año, el Empleador entregará una sola vez, a los empleados que corresponda, el Certificado de Carrera Judicial, y el 1º de septiembre de cada año, a los Empleados que laboren en la Dirección Ejecutiva de la Magistratura, el Certificado de Carrera Administrativa, si en ambos casos tuvieren tres (3) o más años de servicio.

Así mismo, se previó que a partir del primer semestre del año 2005 el Empleador entrega, por una sola vez, el Certificado respectivo a aquellos Empleados que, habiendo cumplido las condiciones de entrega, no lo recibieron durante la vigencia de la primera Convención Colectiva que se sustituyó. El Empleador se comprometió a dar cursos de formación y adiestramiento, a través de la Escuela Nacional de la Magistratura, Dirección General de Recursos Humanos correspondiente, y/u otras dependencias de similar carácter, a todos los Empleados de carrera, como parte de sus derechos a cualificarse.

El Estatuto de Personal del Ministerio Público, establece los parámetros para la selección del personal que ingresará como funcionario al Ministerio Público, y la directiva número 3 del artículo 7 los requisitos para ser funcionario o funcionaria del Ministerio Público, entre ellos aprobar el concurso público de credenciales y de oposición. Así, se señala en su artículo 9 que “Para ingresar a la carrera se requiere aprobar un concurso público de credenciales y de oposición, el cual se regirá por las normas que al efecto se contemplan en la Constitución de la República Bolivariana de Venezuela, la Ley Orgánica del Ministerio Público, las normas del presente Estatuto y en la normativa interna que al efecto dicte el o la Fiscal General de la República.”

El mencionado Estatuto es un instrumento legal aplicable a funcionarios y empleados del Ministerio Público y contempla normas relacionadas con aspectos administrativos, régimen disciplinario, entre otros. El Estatuto regula los aspectos concernientes al régimen laboral y es aplicable a todos los funcionarios y empleados del Ministerio Público. El personal obrero al servicio de la Institución se regirá por las disposiciones previstas en su correspondiente
contratación colectiva, por lo que queda excluido del ámbito de aplicación de dicho Estatuto.

En este instrumento están contenidas las normas relacionadas con aspectos importantes como las formas de ingreso a la Institución, nombramientos y juramentaciones de los fiscales, funcionarios y empleados. Además, del régimen disciplinario, la designación de los representantes del Ministerio Público, las reglas relativas a la oportunidad de celebración del concurso y la composición del jurado.

También regula las situaciones administrativas, los deberes, derechos, prohibiciones e incompatibilidades de los funcionarios. Se hace mención a beneficios como las primas de antigüedad y de profesionalización, lo relacionado con la salud, el régimen de vacaciones y los permisos.⁴

Convocatorias a los Concursos Públicos de Credenciales y de Oposición a los Ingresos a la Carrera Fiscal

- Resolución 224 mediante la cual se dicta las Normas del IV Concurso Público de Credenciales y de Oposición para el Ingreso a la Carrera Fiscal⁵. Para cargos fiscales del Área Metropolitana de Caracas.

- Resolución 2031 mediante la cual se dicta las Normas del V Concurso Público de Credenciales y de Oposición para el Ingreso a la Carrera Fiscal⁶. Para cargos fiscales del Área Metropolitana de Caracas.

- Temario del VI Concurso. Público de Credenciales y de Oposición para el Ingreso a la Carrera Fiscal⁷. El concurso tiene la finalidad de proveer cargos de fiscales de carrera en 14 dependencias fiscales Ministerio Público, ubicadas en los estados Lara, Miranda, Yaracuy y Trujillo, así como en el área metropolitana de Caracas.
El Presidente de la República emitió el Decreto N° 2.729, mediante el cual se dicta el Reglamento del Decreto con Rango, Valor y Fuerza de Ley del Estatuto de la Función Policial en Materia de Administración de Personal y Desarrollo de la Carrera Policial. Este Reglamento tiene por objeto desarrollar y regular las disposiciones contenidas en el Decreto con Rango, Valor y Fuerza de Ley del Estatuto de la Función Policial, relativas a la rectoría, dirección, gestión y ejecución de la función policial, así como todo lo relativo al desarrollo de la carrera policial, ingreso, evaluación de desempeño, ascenso, formación continua, reentrenamiento y el régimen de permisos y licencias de los funcionarios y funcionarias policiales. El Artículo 62 señala las fases del procedimiento de ingreso a los cargos de la carrera policial en los cuerpos de policía y, comprende las siguientes fases: 1. Inicio del procedimiento. 2. Convocatoria de Aspirantes. 3. Aceptación de Aspirantes. 4. Concurso de ingreso. 5. Decisión y nombramiento. 6. Periodo de prueba. 7. Juramentación. 8. Tramitación de credencial única.

El Ministerio del Poder Popular para Relaciones Interiores, Justicia y Paz dictó las Normas sobre la Rendición de Cuentas del Cuerpo de Investigaciones Científicas, Penales y Criminalísticas (CICPC). El artículo 11 referido a la participación comunitaria, establece que es una herramienta fundamental en el proceso de rendición de cuentas, para mejorar el desempeño y la productividad en la prestación del servicio, mediante la debida planificación de las actividades de investigación. El CICPC deberá suministrar a los comités ciudadanos de control policial, consejos comunitarios y demás organizaciones comunitarias estructuradas, la información que fuere requerida para el ejercicio de las competencias a que se refiere la Ley del Estatuto de la Función de Policía de Investigación.

Asimismo, el Ministerio del Poder Popular para Relaciones Interiores, Justicia y Paz emitió Normas para la Implementación del Sistema de Información Estratégica y Transparencia Policial (SIETPOL), el cual es un programa de información unificada orientado al registro de los indicadores de actuación de los cuerpos de policía en sus distintos niveles políticos territoriales, a los fines de permitir la emisión automática y