



UNITED NATIONS
Office on Drugs and Crime

UN GUIDE FOR ANTI-CORRUPTION POLICIES



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Global Programme against Corruption

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EQUIP YOURSELF

The **United Nations Guide on Anti-Corruption Policies**, which contains a general outline of the nature and scope of the problem of corruption and a description of the major elements of anti-corruption policies, suitable for use by political officials and senior policy-makers.

The **United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators** is part of a larger package of materials intended to provide information and resource materials for countries developing and implementing anti-corruption strategies at all levels, as well as for other elements of civil society with an interest in combating corruption. The package consists of the following major elements.

The **United Nations Anti-Corruption Toolkit**, which contains a detailed set of specific Tools intended for use by officials called upon to elaborate elements of a national anti-corruption strategy and to assemble these into an overall strategic framework, as well as by officials called upon to develop and implement each specific element.

The **Compendium of International Legal Instruments on Corruption**, in which all the major relevant global and regional international treaties, agreements, resolutions and other instruments are compiled for reference. These include both legally binding obligations and some "soft-law" or normative instruments intended to serve as non-binding standards.

An example of **Country Assessments**, as well as all four publications, is available on the Internet on the United Nations Office of Drug Control (UNODC) web page:

<http://www.unodc.org/corruption.html>

To assist users who do not have Internet access, individual publications will also be produced and updated as necessary.

FOREWORD

United Nations Guide on Anti-Corruption Policy

The United Nations Guide *Practical Measures against Corruption* was originally requested by the United Nations Economic and Social Council (ECOSOC) in 1990 and first published in 1992 by the United Nations Office on Drugs and Crime (UNODC), with the assistance of the United States Department of Justice. During the 1990s, issues relating to corruption were repeatedly raised within the United Nations and in other contexts and in 1995, ECOSOC requested that the Guide *be reviewed and expanded, with contributions from other relevant international organizations, to take account of new developments*. As the expansion of the Guide proceeded, further developments took place, and the Secretary General was requested to keep the issue of actions against corruption under ongoing review, and to reflect the new developments in the expanded Guide.

In order to respond to this request UNODC has developed three publications for anti corruption practitioners: (i) the Anti Corruption Tool Kit and (ii) a Handbook for Prosecutors and Investigators and (iii) International legal Instruments on Corruption. In order to help senior policy makers, UNODC has compiled this United Nations Guide on Anti Corruption Policies.

There is now increasing recognition throughout the public and private sector that corruption is a serious obstacle to effective government, economic growth and stability, and that anti-corruption policies and legislation are urgently required at the national and international level.

As a result of efforts on the part of the Council of Europe, OECD and OAS in recent years, the international community has embarked on the search for standards that are comprehensive in scope and global in application. These efforts will soon result into the United Nations Convention against Corruption, which is presently being negotiated in Vienna by an ad hoc committee, supported by my Office.

While such a global instrument was unthinkable only a few years ago, the negotiations are now under way on the basis of a consolidated text compiled from proposals submitted by more than 25 countries from all regions of the world. These proposals cover issues such as public and private corruption, preventive measures and asset recovery, as well as criminalization, international cooperation, technical assistance and monitoring of implementation.

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UNITED NATIONS OFFICE ON DRUGS AND CRIME

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The publication of this revised version of the Manual for Anti Corruption Policy would not have been possible without the invaluable support of Chris Ram, and Kathryn Platzer who was responsible for the final editing and layout.

UNITED NATIONS CONVENTION AGAINST CORRUPTION

Article 1*

Statement of purpose

The purposes of this Convention are:

- a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- c) To promote integrity, accountability and proper management of public affairs and public property.

* UN CONVENTION AGAINST CORRUPTION

Background

Member States of the United Nations have successfully finalised the United Nations Convention against Corruption. Negotiations were concluded in Vienna on 30 September 2003 after two years of deliberations. The Convention marks a major step forward in international cooperation against corruption has been included in the introductory part of this *Guide*. References to specific provisions of the Convention have been added throughout the *Guide on Anti-Corruption Policies* where appropriate.

The first session of the Ad Hoc Committee was held in January 2002. At its first and second sessions, the Committee concluded the first reading of the draft Convention. At the third and fourth sessions, the second reading was completed. At the fifth session, in March 2003, the Committee reached a preliminary agreement on a significant number of provisions.

The sixth session lasted a week longer than the previous five, including night sessions. After a debate lasting through to 3:50 a.m. on Saturday, 9 August 2003, delegates from the 128 Member States decided to continue working on the Convention on Corruption's final details in a short, three-day seventh session, which concluded on 1 October, 2003.

Substantive Highlights of the Convention include:

Prevention. Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public

procurement. Those who use public services must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it.

Article 6*

Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

* UN CONVENTION AGAINST CORRUPTION

Criminalization. The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and “laundering” of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

International cooperation. Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Chapter IV
International cooperation

Article 43*
International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.
2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

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Asset recovery. In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as “a fundamental principle of the Convention...” This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Reaching agreement on this chapter has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought. Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims. Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets.

Chapter V
Asset recovery

Article 51*
General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

* UN CONVENTION AGAINST CORRUPTION

Implementation mechanisms. The adoption of the Convention by the General Assembly in the weeks ahead will be followed by a period in which countries will develop legislative and administrative measures, and ratify the Convention. When the Convention has 30 ratifications, it will come into force. To promote and review implementation, a Conference of the States Parties is established. The Conference will meet regularly and serve as a forum for reviewing the implementation by States Parties and facilitating activities required by the Convention.

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I INTRODUCTION

A. Background

The United Nations Guide *Practical Measures against Corruption* was originally requested by the United Nations Economic and Social Council (ECOSOC) in 1990¹, and first published in 1992² by the United Nations Office on Drugs and Crime (UNODC), with the assistance of the United States Department of Justice. During the 1990s, issues relating to corruption were repeatedly raised within the United Nations and in other contexts,³ and in 1995, ECOSOC requested that the Guide be reviewed and expanded, with contributions from other relevant international organizations, to take account of new developments.⁴ As the expansion of the Guide proceeded, further developments took place, and the Secretary General was requested to keep the issue of actions against corruption under ongoing review, and to reflect the new developments in the expanded Guide.⁵

This process continues, and further developments can be expected after the expanded Guide is published. As a result of discussions in the eighth and ninth sessions of the United Nations Commission for Crime Prevention and Criminal Justice, several further resolutions dealing with corruption were adopted by the General Assembly. These include:

- (a) Resolution 51/59 of 12 December 1996, which adopted an International Code of Conduct for Public officials⁶ and requested a plan for its implementation;
- (b) Resolution 51/191 of 16 December 1996, which adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions;
- (c) Resolution 54/128 of 17 December 1999 which directed the Ad Hoc Committee for the elaboration of the United Nations Convention against Transnational Organized Crime to incorporate measures against corruption linked to organized crime into that Convention *and to explore*

¹ ECOSOC RES.1990/23, annex, recommendation #8.

² International Review of Criminal Policy, Special Issue, Nos. 41 and 42, New York 1993, ST/ESA/SER.M/41-42; United Nations Sales Publication, Sales No. E.93.IV.4.

³ See Report of the Secretary General to the tenth session of the Commission for Crime Prevention and Criminal Justice, "Existing international legal instruments, recommendations and other documents addressing corruption", E/CN.15/2001/3, Annexes I and II for a list of some instruments and documents.

⁴ ECOSOC RES. 1995/14, paragraph 6.

⁵ ECOSOC RES. 1996/8, paragraph 11 and 1998/16, paragraph 1. In A/RES/51/59 of 12 December 1996, paragraph 3, the General Assembly also requested the inclusion of the International Code of Conduct for Public Officials adopted by that resolution in the Guide. In its resolution 54/128 of 17 December 1999, subparagraph 8(a), the Assembly requested that the expanded Guide incorporate the recommendations of a 1998 Expert Group Meeting on Corruption and its Financial Channels and the conclusions of the First Global Forum on Fighting Corruption.

⁶ See Attachment 3; Code of conduct for Public Officials

*the feasibility of a further international instrument*⁷ specifically directed at corruption;

- (d) Resolution 55/61 of 4 December 2000, which recognized the desirability of a further international legal instrument, decided to begin the elaboration of such an instrument, requested the Secretary General to convene an open-ended intergovernmental expert group to prepare draft terms of reference for such an instrument and to submit them to the General Assembly;⁸
- (e) Resolution 55/188 of 20 December 2000, which called for increased international cooperation in preventing and addressing illegal transfers of funds and in the repatriation of such funds to the countries of origin, and invited the expert group established by its resolution 55/61 to examine this issue as part of its consideration of possible terms of reference and,
- (f) Resolution 56/260 of 31 January 2002, which, with reference to resolution 55/61, established indicative terms of reference for the negotiation of this instrument, and decided that the Ad Hoc Committee shall conduct the negotiations in no fewer than six two-week sessions to be held during 2002 and 2003, with at least three sessions in each year.⁹

This issue was further referred to in resolution 57/169, approved by the General Assembly on 18 December 2002.

The issue of corruption was also high in the agenda of different international fora. A workshop conducted at the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders dealt with the subject-matter of “Combating corruption”, and paragraph 16 of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, which was endorsed by the Congress reiterates the need for enhanced international action against corruption and the need for an effective international legal instrument.¹⁰ In taking note of the Vienna Declaration, the General Assembly called for the preparation of Plans of Action for the implementation and follow up of the commitments undertaken in the Declaration.¹¹ As part of a package, a draft plan of action against corruption was considered by the tenth session

⁷ See Attachment 2; Summary of International Legal Instruments on Corruption including the latest UN Convention against Corruption

⁸ A/RES/55/61 was based on the Report of the Seventh Session of Ad Hoc Committee for the Elaboration of a Convention against Transnational Organized Crime, which took up the matter as requested by General Assembly Resolution 54/128 (see A/AC.254/25, paragraphs 20-21), and on a draft resolution prepared by the ninth session of the Commission for Crime Prevention and Criminal Justice, which received the Report of the Ad Hoc Committee (see E/2000/30, Draft Resolution III “An effective international legal instrument against corruption”).

⁹ This resolution was produced by the expert group established by A/RES/55/61 in accordance with the mandate created by that resolution and resolution 55/188. The expert group also took into consideration a resolution of the tenth session of the Commission for Crime Prevention and Criminal Justice setting out possible terms of reference dealing with the transfer of funds of illicit origin derived from corruption and the return of such funds. See E/2001/30, Draft Resolution III, titled: “Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and returning such funds.”

¹⁰ A/CONF.187/15, paragraphs 152-160 (workshop report) and 1 (Vienna Declaration).

¹¹ A/RES/55/59 of 4 December 2000, endorsing the Vienna Declaration, and 55/60 requesting the Secretary General to prepare draft plans of action for consideration by the Commission for Crime Prevention and Criminal Justice at its tenth session.

of the Commission for Crime Prevention and Criminal Justice. This called upon countries to participate in and support the process of the negotiation of an international legal instrument, to take a series of national actions against domestic and transnational corruption, and called upon the Secretary General to take a series of steps to assist countries in their efforts, support the negotiations, and compile and disseminate information, including the revised and updated Guide on practical measures against corruption.¹² The tenth session of the Commission for Crime Prevention and Criminal Justice also discussed the illicit transfer of the proceeds of corruption and issues related to the tracing and return of such funds, producing possible terms of reference in this area for use in the negotiation of the international legal instrument.¹³

B. Purpose of the Guide

The original stated purpose of the Guide was to assist countries in reviewing and where appropriate, strengthening domestic institutions, laws, procedures and practices against various forms of corruption. These included criminal offences and procedures, administrative and regulatory mechanisms, investigative and prosecutory procedures; and economic measures, including the seizure and forfeiture of the proceeds of corruption.¹⁴

Article 5*

Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

* UN CONVENTION AGAINST CORRUPTION

As the previous section illustrates, thinking about corruption and strategies to combat it have evolved significantly since the original Guide was produced. It is now commonly accepted that corruption is pervasive, affecting developed and developing countries alike and unduly influencing a wide range of both

¹² [For draft action plans, see E/CN.15/2001/5 and E/CN.15/2001/14. The final text of the action plan was adopted by A/RES/56/26/ and is annexed to that resolution.56/26/31-01-02 update when resolution adopted – GA 56th (31-01-02)

¹³ E/2001/30, paragraphs 4-16 (general discussion) and 17-24 (recovery of proceeds), and Draft Resolution III.

¹⁴ United Nations Guide “Practical measures against corruption” International Review of Criminal Policy, Special Issue, Nos. 41 and 42, New York 1993, Introduction.

public- and private-sector activities. While corruption is still viewed by most as a crime problem, and criminal and penal measures remain central elements of anti-corruption strategies, we now recognize that it is often rooted in deeper social, cultural and economic factors, and that these also must be addressed if the fight against corruption is to succeed. We also recognize that the deleterious affects of corruption go far beyond harm to individual victims. They represent a serious obstacle to maintaining efficient economies where they exist and improving the lives of people in developing countries and those with societies and economies in transition. Development agencies have come to understand that corruption not only erodes the actual delivery of aid and assistance, but also undermines the fundamental goals of social and economic development itself.

This broader understanding of the nature of corruption has led those confronted with it to look for more broadly based strategies against it. Strategies should be holistic, addressing all of the factors which facilitate or contribute to corruption and all of the possible options for measures against it, and integrated, in the sense that, once identified, all of the elements of an anti-corruption strategy must be developed and implemented in mutually consistent and reinforcing ways, avoiding conflicts or inconsistencies. Reactive criminal justice measures are now supplemented by social and economic measures intended, not only to deter corruption, but also to prevent it by reducing the incentives to become involved in it. The recognition that public-sector and private-sector corruption are often simply two aspects of the same problem has led to strategies which involve not only public officials, but major domestic and multinational commercial enterprises, banks and financial institutions, other non-governmental entities and in many strategies, civil societies in general. To address the bribery of public officials, for example, efforts can be directed not only at deterring the paying and receipt of the bribe, but at reducing the incentives to offer it in the first place. This requires that key individuals and institutions be identified as stakeholders and linked, working together in strategic partnerships and groups.¹⁵ Generally, the Guide advocates anti-corruption strategies based on the following principles.

- *Strategies should be comprehensive and inclusive.* The principle of inclusiveness applies not only to the elements of anti-corruption strategies, which must address all significant aspects of the problem, but also to the participants and stakeholders in anti-corruption measures, and to elements of civil society and populations in general, whose vigilance and support for anti-corruption measures is critical for their success.
- *Strategies should be integrated.* Anti-corruption strategies which successfully bring together disparate elements and stakeholders into a single unit require internal integration to ensure that each part of the strategy and each party to it will work together harmoniously, avoiding inefficiencies and inconsistencies which could weaken the overall impact. It is also important that anti-corruption strategies be integrated with other

¹⁵ See Langseth, P., "Added value of partnership in the fight against corruption", presented at the Third Annual Meeting of the Anti-Corruption Network of Transition Economies in Europe, Istanbul, March 2001, available on line at: <http://www.odccp.org/adhoc/crime/gpacpublications/cicp11.pdf>.

major policy agendas of the countries involved, such as those for social and economic development and criminal justice.

- *Strategies should be transparent.* Transparency as a necessary element of public vigilance is widely advocated as a necessary condition for good governance and the rule of law and as an important element of the fight against corruption. It is important that anti-corruption strategies lead by example, and the incorporation of transparency as a basic principle also helps to protect anti-corruption measures from being themselves corrupted.
- *Strategies should be non-partisan.* The fight against corruption is an ongoing effort which will generally transcend the normal succession of political governments, and which therefore requires multi-partisan commitment and support. Since corruption invades the political structure of many countries, it is also important that partisan politicians considering their support for anti-corruption measures have assurances that their political adversaries also support such measures.
- *Strategies should be evidence-based.* The success and credibility of strategies will depend to a large degree on the ability of advocates to demonstrate concrete results, not only in reductions in corruption, but against social, political, economic and other criteria. This requires that strategies be based on concrete evidence, both in assessing the needs of each country and setting goals, and in assessing whether those goals have in fact been achieved.
- *Strategies should be impact-oriented.* Clear objectives should be set for overall strategies and their constituent elements, but the establishment of objective and measurable criteria against which progress can be tested are also essential. In many cases, these may need to be reviewed periodically in light of experience in the field.

The contents of the revised and expanded Guide are intended to advise and support such broader efforts against corruption. Where the previous edition described corruption exclusively in criminal law terms, for example, the expanded version contains a broader, open-ended description of elements or types of corruption which are intended to be relevant to countries with the widest possible range of social, cultural, legal and economic structures. Content has also been added to support efforts in other areas which are now seen as important in the fight against corruption. One such area is the need for effective measures against money-laundering and to obtain the repatriation of the proceeds of corruption, particularly in cases of large-scale political corruption – described in the Guide as “grand corruption” – both as an attack on the financial incentives for corruption and a means of minimizing the social and economic damage it causes. Another, frequently cited by authorities, is the need for effective mechanisms for monitoring the development of anti-corruption measures, both as a means of assessing what works and what does not, and as a countermeasure against the tendency of corruption to infiltrate and compromise the measures taken against it.

Perhaps most fundamentally, the recognition that the broad-spectrum reforms needed to effectively address corruption cannot hope to succeed without popular support has led to the drafting of the Guide in a style which, it is hoped, will be accessible to the media, interest groups and other elements of civil society, and to the inclusion of information to assist government policy-makers in demonstrating to their populations the true consequences of corruption and the importance of taking anti-corruption measures seriously.

C. Future developments

Much of the global activity against corruption, both within the United Nations and on the part of other intergovernmental and non-governmental organizations, remains ongoing. Within the United Nations, a Global Programme against Corruption has been established to take action (including the production of the expanded Guide) and assist Member States directly, and a process is underway which is expected to result in the adoption of an international legal instrument against corruption in the year 2004. The activities of the Global Programme also include the development and publication of the *Anti-Corruption Tool Kit*, which is intended as a companion to this Guide (see below), providing information about practical measures for officials directly confronted with the problem, based on the experiences of the United Nations, other agencies and the officials of member countries. In late 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime, several articles of which deal with corruption and related matters such as money laundering, which have yet to be implemented.¹⁶ This text reflects the state of developments as of 31/01/02 but it may well require further revision and expansion as the implementation of the Convention and other ongoing efforts proceed and as a further international legal instrument is developed.

The body of materials available for use in developing anti-corruption policies and programmes has increased significantly since 1993 and continues to expand. The Guide should be read and applied in conjunction with other materials, and in particular the United Nations Anti-Corruption Tool Kit, its operational counterpart.

¹⁶ The Convention was adopted November 15th, by A/RES/55/25, and signed by 123 countries and the European Union at Palermo, Italy, between 12-15 December 2000. By June 2001, two further countries had signed the Convention and one (Monaco) had ratified it. It will come into force on the 90th day after being ratified by the 40th country to do so. See Convention articles 6-9, 13 and 14. The major limitation of the instrument in its application to corruption is that it only applies where corruption, which is “transnational in nature”, involves the activities of an “organized criminal group”. See articles 2 and 3.

Where the primary focus of the Guide is the development and assessment of measures against corruption at the policy level and is directed at policy-makers, the focus of the Tool Kit is on operational actions against corruption and it is directed at those who implement policy and legal measures, such as law-enforcement and regulatory officials. The Guide has also sought to identify other important materials in this field and to provide access to them by summarising their content and indicating where they can be located.

II. WHAT IS “CORRUPTION”?

A. Introduction

In examining corruption, it quickly becomes apparent that corruption is a general phenomenon – or perhaps collection of phenomena – which are related in various ways, but that there is no single, clinical definition which encapsulates corruption. “No one has ever devised a universally satisfying ‘one-line’ definition of corruption...No more shall I...”¹⁷ In the words of the original Guide, “Corruption is a generic rather than a precise legal term.”¹⁸

Attempts to define or classify corruption for various purposes have been based on many different perspectives and criteria, including: moral criteria; descriptions of the conduct or behaviour involved; models involving conflicts of interest, breaches of trust or abuses of principal/agent/client relationships; economic, political and administrative models; distinctions based on whether the corruption involved public or private-sector actors or interests; and on factors such as whether the actors were engaged in organized crime or more *ad hoc* forms of corruption.¹⁹ Corruption may involve cash or economic benefits, power or influence, or even less-tangible interests, and occurs in both government and the private sectors, in free-market and closed economies and in democratic and non-democratic governments and societies.²⁰

Within the scope of these general definitions, there is also no universal consensus about what specific sorts of conduct should be included or excluded, particularly in developing criminal laws or other politically sensitive concepts of corruption. For example, the proposition²¹ that corruption

...is an abuse of public power for private gain that hampers the public interest...

raises issues about whether definitions of corruption should be limited to abuses of “public” power or harm to “public” interests, and if not, what sorts of private elements should also be included.

Definitions applied to corruption vary from country to country in accordance with cultural, legal or other factors and the nature of the problem as it appears in each country. Concepts may also vary from one time period to another, particularly in recent decades, which have seen much thinking and theorizing about corruption.

¹⁷ Johnston, M. “The search for definitions: the vitality of politics and the issue of corruption” UNESCO, 1996, p.322 and Philp, M., “Defining Corruption: An Analysis of the republican Tradition”, *International Political Science Association research roundtable on political finance and political corruption, Bellagio, Italy*, 1987, p.1. Johnston is reprinted in Williams, R., ed., *Explaining Corruption*, vol. 1 of *The Politics of Corruption*, Elgar Reference Collection, UK, 2000, pp. 281-335.

¹⁸ International Review of Criminal Policy, Special Issue, Nos. 41 and 42, New York 1993, paragraph 5.

¹⁹ See generally Williams, R., ed., *Explaining Corruption*, vol. 1 of *The Politics of Corruption*, Elgar Reference Collection, UK, 2000.

²⁰ Heymann, P., “Democracy and corruption”, [1997] 20 *Fordham L. Rev.* pp. 323-346 at 324-25.

²¹ UN’s Anti Corruption Tool Kit,(2001),

Definitions also vary depending on the background and perspective of the definer and the purpose for which a definition was constructed. Economic or commercial models may focus on trade issues or harm to economic stability. Legal models tend to focus on criminal offences or areas such as breach of trust. Political models tend to focus on the allocation and abuses of power or influence.²² All of these are useful definitions, but each describes only a portion of the overall problem of corruption.

Legal definitions differ from those applied by sociologists, aid agencies and international organizations.²³ This is particularly true for criminal law definitions, for which the highest standard of clarity and certainty is generally required. Most legislatures have chosen not to attempt to criminalise the general phenomenon, but to focus instead on specific types of conduct such as bribery, theft, fraud or unfair/insider trading which can be more clearly defined. This approach achieves the necessary degree of certainty for drafting offences and prosecuting offenders, but is too narrow and creates gaps which can be problematic for non-legal purposes. There is also uncertainty about whether some activities, such as money laundering, constitute “corruption” *per se* or merely activities which support it.

If corruption is understood as a collection of phenomena, it then follows that understanding corruption requires an understanding not only of the individual phenomena, but also how they are related, and that such a general understanding is critical to developing effective control strategies. Corrupt actions such as the bribery of officials do not usually occur in isolation but as part of a pattern. At the simplest level, a bribe paid usually entails the illicit reception of the bribe, and the carrying out of some act or omission by the bribed official, for example, but the pervasive corruption which confronts many societies is far more extensive and complex than this. Elements of this Guide are therefore intended to foster understanding how various elements within the general ambit of corruption are related to one another and to the surrounding context of legitimate social, cultural, legal and economic structures.

The purpose of this Guide is to advise policy-makers, some of whom will be called upon to decide what conduct should be considered as “corruption” in their respective societies and whether such conduct should be discouraged, prevented, or made subject to criminal sanctions or other controls. Rather than attempt to specifically define corruption or seek out a legal or clinical definition which is valid for all of the discussion it contains and the social, legal, cultural and economic contexts in which it will be used, the approach taken is to avoid narrow legal definitions and seek out broader, more inclusive concepts which may assist in understanding the fundamental problem of corruption, bridge gaps in the way it is understood in different societies, and form the basis of national anti-corruption strategies which are effective in context, and at the same time share common elements with those of other countries in support of a general international strategy.

²² See, for example, Shihata, I.F.I., “Corruption, a general review with emphasis on the World Bank”, [1997] 15 *Dickinson J. of Int'l Law*, pp.451-485 at 451-57.

²³ See, for example the 1997 opinion survey conducted by the New South Wales Independent Commission Against Corruption, which found sharp disagreements even among public sector employees within that part of Australia in Jeremy Pope, (1997), TI Sourcebook, Berlin, 1997.

Not everyone will agree that all types of questionable relationships and misconduct described constitute “corruption” in either the general or criminal senses. The point is to take into account as many voices and perspectives as possible. This approach will help nations to reassess what it is that they define as corrupt acts that should be prevented and sanctioned.

To provide a broad range of views, the approach taken in this Guide is empirical, examining the various contributing factors, elements and consequences of corruption, as they have been experienced in as many different countries and cultures as possible. It is also inclusive, canvassing activities that may be considered corruption by some experts or governments but not others, and conduct which may be seen as corrupt even if it is not necessarily illegal. The purpose is not necessarily to propose that specific elements be criminalised, although this may often be the conclusion of governments, but to identify acts which fall within the range of conduct described as “corrupt”, and which are intrinsically harmful to individuals or societies to the extent that efforts to prevent, combat or control them using criminal justice policies or other measures may be called for.

B. The nature of corruption

While there is no single, clinical “one-line” definition of corruption, there are common factors in the various conduct and consequences which bring each of the specific models within the general concept of “corruption”. Perhaps most commonly cited of these is the idea that some form of conflict of interest is either created or exploited by corruption:²⁴

“Corruption, like cancer, has many manifestations. In the same way that different types of cancer require different treatments, fighting corruption requires different initiatives, tools and institutions...

...Nonetheless, corruption’s multiple manifestations do share many commonalities. In principle, a conflict of interest underlies all acts of corruption.”²⁵

In this model, the focus is on a conflict between a normal obligation, course of action, or standard of practice, and some incentive to depart from this course of action. The obligation of an official to issue licenses, process documents or make administrative decisions in a fixed order of priority, for example, may come into conflict with more personal incentives to favour applicants who offer bribes or tender threats with speedier processing or more favourable outcomes. Similarly, the obligation of a private-sector employee to act in the interest of his employer may conflict with bribes, threats or other improper inducements to do otherwise.

²⁴ Naim, M., “The Corruption Eruption”, 1995 II Brown Journal of World Affairs, pp.245-61 at 248, reprinted in Williams, R., ed., *Explaining Corruption*, vol. 1 of *The Politics of Corruption*, Elgar Reference Collection, UK, 2000, pp. 264-78 at 266.

²⁵ Naim, M., “The Corruption Eruption”, 1995

In both cases, corruption may exist in both the *creation* of the conflict which does not exist, as is the case where a bribe is solicited or offered, or acting improperly on a conflict which already exists, as is the case where an official employs a friend or relative in preference over other, better qualified applicants. But even this model is by no means universal. There may well be conduct which is considered by some as “corruption” which does not fall within its scope.

Another common concept, the idea that corruption is the abuse of public power for private gain (previous section), can also be seen as a conflict between the obligation to exercise a public power in the public interest and the self-interest of an individual to use or exploit the power for private gain. It is narrower, however, being limited not only by the conduct involved, but the context in which it occurs or the consequences which result. Here the conflict must involve the abuse of a “public” power, which excludes purely private corruption. This model is sometimes expanded to include cases where some other public interest is threatened, usually by the seriousness of consequences. Most forms of corruption relating to trading in stocks or commodities fall into this category because they threaten the stability and credibility of markets. Further expansions extend this model to the misuse of purely private responsibilities, eliminating the “public” element entirely, resulting in the more general model based only on the creation or exploitation of a conflict of interest.

This illustrates the link between definitions and the purposes for which they are constructed: in many countries, the major reason for defining corruption has been to criminalize it, and the definitions therefore reflect public policy decisions about what should or should not be made a crime. Limiting the definition of corruption to conduct which involves elements of the public sector or major public interests reflects a public-policy decision about what to criminalize rather than an attempt to define or describe the conduct involved. Non-legal definitions, on the other hand, tend to focus on conduct rather than context or consequences, defining general patterns of conduct such as the seeking or exercise of undue influence as “corruption”, noting that only some corruption – that which takes place in circumstances raising a significant public interest – is criminalised.

Criminal law definitions in many countries also find it necessary to distinguish between the conduct of individual parties to a corrupt transaction, and to deal separately with incomplete transactions. Thus, soliciting, paying and accepting a bribe, as well as attempting any of these acts, tend to become distinct criminal offences. Transactions can be seen as originating with the person seeking to corrupt official action (bribery) or the corrupt official (extortion or solicitation), or as a more general product of circumstances. This compartmentalization is important to criminal law and related policies, but it should not be allowed to obscure more general definitions or concepts which can be valuable for formulating other policies.

In trying to reduce or eliminate structural or cultural incentives for corruption, for example, who bribed whom is only important insofar as it identifies general patterns of conduct. Generally, as corruption becomes more widespread and institutionalized, such determinations become more difficult and irrelevant, and more general models which lead to more comprehensive anti-corruption strategies, tend to prevail.

C. Consequences of corruption

Article 34*

Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

* UN CONVENTION AGAINST CORRUPTION

The idea that corruption can be defined without recourse to context or consequences (to the extent that it can be defined at all) does not mean that these are unimportant, however. Consideration of the context or circumstances in which various forms of corruption tend to occur is vital to the development of effective anti-corruption strategies. Indeed, a key lesson learned in recent years has been that simply criminalising corruption and punishing offenders does not work without some broader understanding of the social, cultural and economic factors which contribute to corruption and additional measures based on that understanding. This has led to measures such as efforts to improve the living-standards of public servants, which removes some of the incentives for them to solicit or accept bribes, while at the same time increasing deterrence by ensuring that they have more to lose if convicted of a corruption offence.

An understanding of the full consequences of corruption is also critical to rebutting the all-too-common belief that it is a victimless crime and mobilising public support for anti-corruption measures. It is important that corruption be understood not just as an economic crime, affecting those directly involved in individual cases, but in terms of the other harm it causes. Corruption is subversive of stable economic structures, good governance, just and predictable legal systems and other critical social structures because it replaces the normal rules which determine the outcomes of dealings between individuals, between individuals and the state and various commercial entities with less formal, less predictable *ad hoc* rules which may well change from case to case. Legal disputes are no longer resolved in accordance with pre-established laws and open proceedings, but by bribes paid – or threats made – to judges or other officials. The allocation of State resources or services is determined not in accordance with the needs of applicants, but by their ability and willingness to bribe the officials involved, and the employment of the officials who render the services may be contingent on factors other than their competence to do so.

Commercial dealings are no longer conducted in the best interests of the companies involved and their employees and shareholders, but in the individual interests of key decision-makers.²⁶

The complex nature of corruption and the many ways in which it operates in practice make assessing the harm caused a complicated task. Some forms of corruption may be seen as more harmful than others, but this is unlikely to be an absolute determination. The forms seen as most serious are likely to vary depending on the strengths and weaknesses of the society involved. For example, the corrupt use of substandard building materials may do more harm in a developing country than in a developed one, because the latter can afford greater redundancy and internal safeguards in its inspection and decision-making processes. The harm caused to both individuals and society as a whole must be considered. An act of bribery will usually directly affect a few people, such as unsuccessful bidders for a contract, but also has an effect on the general integrity of the bidding system and hence on many future contracts, for example. It is at this stage that distinctions between public sector and private-sector corruption often come into play: bribing public officials is almost always seen as more serious than private commercial misconduct. The seniority of those involved in corruption is also a factor, as is an assessment of whether corruption has become widespread and institutionalised or whether it occurs only in occasional cases.

In developing countries, corruption has hampered national, social, economic and political progress. Public resources are allocated inefficiently, competent and honest citizens feel frustrated, and the general population's level of distrust rises. As a consequence, productivity is lower, administrative efficiency is reduced and the legitimacy of political and economic order is undermined. The effectiveness of efforts on the part of developed countries to redress imbalances and foster development is also eroded: foreign aid disappears, projects are left incomplete, and ultimately donors lose enthusiasm. Corruption in developing countries also impairs economic development by transferring large sums of money in precisely the opposite direction to what is needed. Funds intended for aid and investment instead flow quickly back to the accounts of corrupt officials, which tend to be in banks in stable and developed countries, beyond the reach of official seizure and the random effects of the economic chaos generated by corruption at home. The reverse flow of capital leads in turn to political and economic instability, poor infrastructure, education, health and other services, and a general tendency to create or perpetuate low standards of living. Some of these effects can be found in industrialized countries, although here the ability of various infrastructures to withstand, and in some cases combat, corruption is greater.

²⁶ United Nations, "Working paper on promoting the rule of law and strengthening the criminal justice system" Secretariat Working Paper for the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Vienna, 10-17 April 2000, A/CONF.187/3, part VI. See also Buscaglia, E., and Ratliff, W., "Judicial Reform in Developing Countries: The Neglected Priority", (1997) *Annals of the American Academy of Political and Social Sciences*, pp. March 1997

As legitimate economic activities have globalised, the corruption imbedded in many such activities has done the same, making transnational corruption a serious problem. A key problem associated with transnational commerce and corruption is the speed with which corrupt values and practices can be spread, and the problem is so pervasive that it can be difficult – and also pointless – to determine who has corrupted whom. Companies seeking to do business in corrupt regions learn that undue influence is needed and how to exert it. Previously uncorrupt regions easily fall into corrupt practices when offered corrupt inducements by foreign companies. The pressure of competition operates on all of the actors: companies which do not offer bribes lose business to those which do, and officials who are not corrupt see those around them being enriched.

Some forms of otherwise-domestic corruption are also driven in part by transnational competition. Many countries have seen basic minimums in areas such as employment or labour standards, occupational safety, anti-pollution and other environmental standards compromised, either as a result of corruption on the part of legislators or administrators at home, or as a result of the need to compete with other jurisdictions where this has occurred.

The amounts of money involved in various forms of transnational corruption are so large that they affect not only the integrity of domestic economies but international financial systems as well. It was recently estimated that the amounts corruptly exported from Nigeria alone exceeded \$100 billion between the mid-1980s and 1999.²⁷ According to a United States Senate Investigation, more than \$1 Trillion in total illicit funds flows through the international financial system annually, about half of it through U.S. banks, although this includes proceeds from drug-trafficking and other crimes that might not be considered as corruption, depending on how it is defined.²⁸

The enormous amounts involved also form a further incentive to adopt practices which are corrupt or which further corruption in order to attract deposits and investments. Money-laundering and related practices become very lucrative, and the economies involved quickly become dependent on the substantial revenues generated. This tends to produce an atmosphere which has been described as “competitive deregulation”, in which jurisdictions which closely monitor transactions and which have relatively low thresholds of bank secrecy and other anti-money laundering measures find themselves unable to compete with jurisdictions which have lower standards.

Article 40*
Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

* UN CONVENTION AGAINST CORRUPTION

²⁷ Financial Times, July 7 1999, p.5

²⁸ International Herald Tribune Feb 7. 2001

Corruption is both created by and attractive to organized crime, both at the domestic and international levels. Apart from the obvious incentives for organised criminal groups to launder and conceal their assets, various forms of corruption allow such groups to minimise the risks and maximise the benefits of their various criminal enterprises. In the case of organized crime, corruption is even more dangerous because of the organization involved.

Officials can be bribed to overlook the smuggling of commodities ranging from narcotics to weapons to human beings, for example, and in cases where one element of a criminal justice system is not corrupt it can either be corrupted using more coercive means or another element can be corrupted in its place. Junior officials who will not accept bribes often find themselves threatened, and if a junior official takes action, such as seizing contraband or arresting smugglers, the attention of organized crime simply shifts to attempts to corrupt prosecutors, judges, jurors or others in a position to influence the case.

D. Types of Corruption

There is no single, comprehensive, universally accepted definition of corruption. Attempts to develop such a definition invariably encounter legal, criminological and, in many countries, political problems.

When the negotiations of the United Nations Convention against Corruption began in early 2002, one option under consideration was not to define corruption at all but to list specific types or acts of corruption. Moreover, proposals to require countries to criminalize corruption mainly covered specific offences or groups of offences that depended on what type of conduct was involved, whether those implicated were public officials, whether cross-border conduct or foreign officials were involved, and if the cases related to unlawful or improper enrichment. (1)

Issues relating to attempts to define corruption for purposes such as policy development and legislative drafting are discussed in more detail in the United Nations Manual on Anti-Corruption Policy, Part II.

Many specific forms of corruption are clearly defined and understood, and are the subject of numerous legal or academic definitions. Many are also criminal offences, although in some cases Governments consider that specific forms of corruption are better dealt with by regulatory or civil law controls. Some of the more commonly encountered forms of corruption are considered below:

1. “Grand” and “Petty” corruption

Grand corruption is corruption that pervades the highest levels of a national Government, leading to a broad erosion of confidence in good governance, the rule of law and economic stability. (2) Petty corruption can involve the exchange of very small amounts of money, the granting of minor favours by those seeking preferential treatment or the employment of friends and relatives in minor positions.

The most critical difference between grand corruption and petty corruption is that the former involves the distortion or corruption of the central functions of Government, while the latter develops and exists within the context of established governance and social frameworks.

2. *“Active” and “passive” corruption*

In discussions of transactional offences such as bribery, "active bribery" usually refers to the offering or paying of the bribe, while "passive bribery" refers to the receiving of the bribe. (3) This, the commonest usage, will be used in the Toolkit.

In criminal law terminology, the terms may be used to distinguish between a particular corrupt action and an attempted or incomplete offence. For example, "active" corruption would include all cases where payment and/or acceptance of a bribe had taken place. It would not include cases where a bribe was offered but not accepted, or solicited but not paid. In the formulation of comprehensive national anti-corruption strategies that combine criminal justice with other elements, such distinctions are less critical. Nevertheless, care should be taken to avoid confusion between the two concepts.

3. *Bribery*

Article 15*

Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

* UN CONVENTION AGAINST CORRUPTION

Bribery is the bestowing of a benefit in order to unduly influence an action or decision. It can be initiated by a person who seeks or solicits bribes or by a person who offers and then pays bribes. Bribery is probably the most common form of corruption known. Definitions or descriptions appear in several international instruments, in the domestic laws of most countries and in academic publications. (4)

The "benefit" in bribery can be virtually any inducement: money and valuables, company shares, inside information, sexual or other favours, entertainment, employment or, indeed, the mere promise of incentives. The benefit may be passed directly or indirectly to the person bribed, or to a third party, such as a friend, relative, associate, favourite charity, private business, political party or election campaign. The conduct for which the bribe is paid can be active: the exertion of administrative or political influence, or it can be passive: the overlooking of some offence or obligation. Bribes can be paid individually on a case-by-case basis or as part of a continuing relationship in which officials receive regular benefits in exchange for regular favours.

Once bribery has occurred, it can lead to other forms of corruption. By accepting a bribe, an official becomes much more susceptible to blackmail.

Most international and national legal definitions seek to criminalize bribery. Some definitions seek to limit criminalization to situations where the recipient is a public official or where the public interest is affected, leaving other cases of bribery to be resolved by non-criminal or non-judicial means.

In jurisdictions where criminal bribery necessarily involves a public official, the offence is often defined broadly to extend to private individuals offered bribes to influence their conduct in a public function, such as exercising electoral functions or carrying out jury duty. Public sector bribery can target any individual who has the power to make a decision or take an action affecting others and is willing to resort to bribery to influence the outcome. Politicians, regulators, law enforcement officials, judges, prosecutors and inspectors are all potential targets for public sector bribery. Specific types of bribery include:

- Influence-peddling or trading in influence,²⁹ in which public officials or political or Government insiders peddle privileges acquired exclusively through their public status that are usually unavailable to outsiders, for example access to or influence on Government decision-making. Influence peddling is distinct from legitimate political advocacy or lobbying.
- Offering or receiving improper gifts, gratuities, favours or commissions. In some countries, public officials commonly accept tips or gratuities in exchange for their services. As links always develop between payments and results, such payments become difficult to distinguish from bribery or extortion.
- Bribery to avoid liability for taxes or other costs. Officials of revenue collecting agencies, such as tax authorities or customs, are susceptible to bribery. They may be asked to reduce or eliminate amounts of tax or other revenues due; to conceal or overlook evidence of wrongdoing, including tax infractions or other crimes. They may be called upon to ignore illegal imports or exports or to conceal, ignore or facilitate illicit transactions for purposes such as money laundering.
- Bribery in support of fraud. Payroll officials may be bribed to participate in abuses such as listing and paying non-existent employees ("ghost workers").
- Bribery to avoid criminal liability. Law enforcement officers, prosecutors, judges or other officials may be bribed to ensure that criminal activities are not investigated or prosecuted or, if they are prosecuted, to ensure a favourable outcome.

²⁹ *Trading in influence* as defined in the Council of Europe Criminal Convention on Corruption and now being incorporated in the UN Convention against Corruption is especially important. According to Michael Defeo, the author of the Practical Measures in the fight against Corruption, this is a very useful mechanism, as it overcomes important evidentiary difficulties, and together with unlawful enrichment crimes is one of the few real substantive criminal law advance c developments in the field

- Bribery in support of unfair competition for benefits or resources. Public or private sector employees responsible for making contracts for goods or services may be bribed to ensure that contracts are made with the party that is paying the bribe and on favourable terms. In some cases, where the bribe is paid out of the contract proceeds themselves, this may also be described as a "kickback" or secret commission.
- Private sector bribery. Corrupt banking and finance officials are bribed to approve loans that do not meet basic security criteria and cannot later be collected, causing widespread economic damage to individuals, institutions and economies.
- Bribery to obtain confidential or "inside" information. Employees in the public and private sectors are often bribed to disclose valuable confidential information, undermining national security and disclosing industrial secrets. Inside information is used to trade unfairly in stocks or securities, in trade secrets and other commercially valuable information.

4. *Embezzlement, theft and fraud.*

In the context of corruption, embezzlement, theft and fraud all involve the taking or conversion of money, property or valuable items by an individual who is not entitled to them but, by virtue of his or her position or employment, has access to them (5). In the case of embezzlement and theft, the property is taken by someone to whom it was entrusted. Fraud, however, consists of the use of false or misleading information to induce the owner of the property to relinquish it voluntarily. For example, an official who takes and sells part of a relief donation or a shipment of food or medical supplies would be committing theft or embezzlement; an official who induces an aid agency to oversupply aid by misrepresenting the number of people in need of it is committing fraud.

As with bribery and other forms of corruption, many domestic and international legal definitions are intended to form the basis of criminal offences. Thus, they include only those situations involving a public official or where the public interest is crucially affected. "Theft", per se, goes far beyond the scope of corruption, including the taking of any property by a person with no right to it. Using the same example of the relief donation, an ordinary bystander who steals aid packages from a truck is committing theft but not corruption. That is why the term "embezzlement", which is essentially the theft of property by someone to whom it was entrusted, is commonly used in corruption cases. In some legal definitions "theft" is limited to the taking of tangible items, such as property or cash, but non-legal definitions tend to include the taking of anything of value, including intangibles such as valuable information. In the Toolkit, the broader meaning of "theft" is intended.

Examples of corrupt theft, fraud and embezzlement abound. Virtually anyone responsible for storing or handling cash, valuables or other tangible property is in a position to steal it or to assist others in stealing it, particularly if auditing or monitoring safeguards are inadequate or non-existent.

Employees or officials with access to company or Government operating accounts can make unauthorized withdrawals or pass to others the information required to do so. Elements of fraud are more complex. Officials may create artificial expenses; "ghost workers" may be added to payrolls or false bills submitted for goods, services, or travel expenses. The purchase or improvement of private real estate may be billed against public funds. Employment-related equipment, such as motor vehicles, may be used for private purposes. In one case, World Bank-funded vehicles were used for taking the children of officials to school, consuming about 25 per cent of their total use.

5. Extortion

Whereas bribery involves the use of payments or other positive incentives, extortion relies on coercion, such as the use or threat of violence or the exposure of damaging information, to induce cooperation. As with other forms of corruption, the "victim" can be the public interest or individuals adversely affected by a corrupt act or decision. In extortion cases, however, a further "victim" is created, namely the person who is coerced into cooperation.

While extortion can be committed by Government officials or insiders, such officials can also be victims of it. For example, an official can extort corrupt payments in exchange for a favour or a person seeking a favour can extort it from the official by making threats.

In some cases, extortion may differ from bribery only in the degree of coercion involved. A doctor may solicit a bribe for seeing a patient quickly but if an appointment is a matter of medical necessity, the "bribe" is more properly characterized as "extortion". In extreme cases, poor patients can suffer illness or even death if medical services are allocated through extortionate methods rather than legitimate medical prioritizing.

Officials in a position to initiate or conduct criminal prosecution or punishment often use the threat of prosecution or punishment as a basis for extortion. In many countries, people involved in minor incidents, such as traffic accidents, may be threatened with more serious charges unless they "pay up". Alternatively, officials who have committed acts of corruption or other wrongdoings may be threatened with exposure unless they themselves pay up. Low-level extortion, such as the payment of "speed money" to ensure timely consideration and decision-making of minor matters by officials, is widespread in many countries.

6. *Abuse of discretion*

Article 19*

Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

* UN CONVENTION AGAINST CORRUPTION

In some cases, corruption can involve the abuse of discretion, vested in an individual, for personal gain. For example, an official responsible for Government contracting may exercise the discretion to purchase goods or services from a company in which he or she holds a personal interest or propose real estate developments that will increase the value of personal property. Such abuse is often associated with bureaucracies where there is broad individual discretion and few oversight or accountability structures, or where decision-making rules are so complex that they neutralize the effectiveness of any accountability structures that do exist.

7. *Favouritism, nepotism and clientelism*

Generally, favouritism, nepotism and clientelism involve abuses of discretion. Such abuses, however, are governed not by the self-interest of an official but the interests of someone linked to him or her through membership of a family, political party, tribe, religious or other group. If an individual bribes an official to hire him or her, the official acts in self-interest. If a corrupt official hires a relative, he or she acts in exchange for the less tangible benefit of advancing the interests of family or the specific relative involved (nepotism). The favouring of, or discriminating against, individuals can be based on a wide range of group characteristics: race, religion, geographical factors, political or other affiliation, as well as personal or organizational relationships, such as friendship or membership of clubs or associations.

8. *Conduct creating or exploiting conflicting interests*

As noted in the United Nations Manual on Anti-corruption Policy, most forms of corruption involve the creation or exploitation of some conflict between the professional responsibilities of a corrupt individual and his or her private interests. The acceptance of a bribe creates such a conflict of interest. Most cases of embezzlement, theft or fraud involve an individual yielding to temptation and taking undue advantage of a conflict of interest that already exists. In both the public and private sector, employees and officials are routinely confronted with circumstances in which their personal interests conflict with those of their responsibility to act in the best interests of the State or their employer.

9. *Improper political contributions*

One of the most difficult challenges in developing anti-corruption measures is to make the distinction between legitimate contributions to political organizations and payments made in an attempt to unduly influence present or future activities by a party or its members once they are in power. A donation made because the donor supports the party and wishes to increase its chances of being elected is not corrupt; it may be an important part of the political system and, in some countries, is a basic right of expression or political activity protected by the constitution. A donation made with the intention or expectation that the party will, once in office, favour the interests of the donor over the interests of the public is tantamount to the payment of a bribe.

Regulating political contributions has proved difficult in practice. Donations may take the form of direct cash payments, low-interest loans, the giving of goods or services or intangible contributions that favour the interests of the political party involved. One common approach to combating the problem is to introduce measures that seek to ensure transparency by requiring disclosure of contributions, thus ensuring that both the donor and recipient are politically accountable. Another is to limit the size of contributions to prevent any one donor from having too much influence.

III DEVELOPING ANTI CORRUPTION STRATEGIES; AN INTEGRATED APPROACH

A. Introduction

As discussed in the previous segment, corruption is now understood to be a common phenomenon among countries. Within many countries it is now known to be sufficiently widespread and pervasive that it can only be effectively addressed using strategies which are comprehensive in nature and which successfully integrate reforms with one another and in the broader context of each country's social, legal, political and economic structures. At the international level, it is also understood that many transnational aspects of corruption exist which cannot be effectively dealt with by countries acting alone, and will instead require measures developed and implemented by the global community as a whole. As a result, the approach being taken by the United Nations now includes not only programmes to assist individual countries which request it, but also the development of a comprehensive international legal instrument against corruption, which is intended to bring about a high degree of global standardization and integration of anti-corruption measures.³⁰

Within individual countries other conditions may also be seen as desirable, and in many cases necessary to support successful strategies. These include:

- *Basic democratic standards.* Democratic reforms are often seen as necessary elements of development projects. In the context of anti-corruption efforts basic political accountability is seen as an important control on political corruption. Since such corruption usually involves putting individual interest ahead of the public interest, the reaction of voters made aware of such abuses deters them, and if they take place allows for the replacement of corrupt politicians in elections.
- *A strong civil society.* Generally this includes both the ability to obtain and assess information about areas susceptible to corruption (transparency), and the opportunity to exert influence against corruption where it is found. This includes fora such as free communications media, which in detecting and publicly-identifying corruption, create political pressures against it, and academic and other sources which can assess the problem of corruption, assist in developing countermeasures, and provide objective assessments of whether such measures are effective or not.

³⁰ General Assembly Resolutions 54/128 (17-12-99), 55/61 (4-12-2000), 55/188 (20-12-2000) and 56/260 (31/01/2002)

- *The rule of law.* As many of the controls on corruption are legally based, rule of law frameworks, including such things as effective and independent courts and legislatures are required, both to ensure the integrity with which laws are developed and enacted, and to ensure that they are applied without corruption. This is true for both criminal law controls on corruption and for civil proceedings, which are often used to seek redress in corruption cases.
- *Integration.* This includes integration between anti-corruption strategies and other major policy agendas in each country, and integration between the efforts of different countries and the international community as a whole. The legislative reinforcing anti-corruption offences, for example, should not conflict with other priorities on the part of the law enforcement, prosecutors and judges expected to enforce them.

B. Lessons learned and the construction of anti-corruption strategies

It has been suggested that the most significant achievement in governance during the 1990s was the shattering of the taboo that barred discussion of corruption, particularly in diplomatic circles and intergovernmental institutions (6). The topic is now out in the open, and the recognition that Governments alone cannot contain corruption has led to new and powerful coalitions of interest groups and other stakeholders. The Toolkit is based largely on what has been learned by the international community in its efforts against corruption during well over a decade. Perhaps the most important lesson is that corruption is a widespread and diverse phenomenon, and that anti-corruption measures must be carefully considered and tailored to the forms encountered and the societies and cultures within which they are expected to function.

Viable anti-corruption strategies have been constructed with varying degrees of success around the world. There is much to be learned both from success and failure. For the sake of clarity and brevity, the most important of those lessons are synopsized below.

1. Negative impact of corruption

Corruption tends to concentrate wealth, not only increasing the gap between rich and poor but also providing the wealthy with illicit means to protect their positions and interests. That, in turn, can contribute to social conditions that foster other forms of crime, social and political instability and even terrorism.

2. Conditions facilitating corruption

Without proper vigilance and effective countermeasures, corruption can occur anywhere. Recent corruption cases exposed in the World Bank, the United Nations and other multilateral and bilateral organizations have shown that any society or organization is susceptible, even where well established checks and balances are in place.

Combating corruption, building integrity and establishing credibility require time, determination and consistency. When anti-corruption strategies are first instituted, a long-term process begins, during which corrupt values and practices are gradually identified and eliminated. In most cases, a complex process of interrelated elements is involved: reforms to individual institutions take place in stages as problems are identified; countermeasures are developed and implemented; personnel are reoriented and retrained. Often, progress at one stage or in one area cannot be achieved until other elements of the strategy have come into effect. Generally speaking, training personnel to place the long-term interests of integrity before the more immediate benefits of corruption is a longer, more gradual process than direct measures such as criminal prosecutions or specific administrative reforms. Similarly, the establishment of a popular expectation that favours integrity over corruption, furthers credibility for the reforms and inspires public confidence in the integrity of the reformed institutions will always lag behind actual progress.

Systems with excessive individual discretion and overly complex rules on discretionary powers, as well as systems lacking structures to effectively monitor the exercise of discretion and hold decision-makers accountable, tend to be more susceptible to corruption than those that do not.

3. Conditions required to prevent corruption

Systems in which individual offices, departments or agencies operate in isolation from one another tend to be more susceptible to corruption. One reason may be that systems where individual elements operate in a coordinated fashion and communicate regularly with one another tend to carry out mutual “monitoring” both of activities and individuals.

Systems with operational transparency are less susceptible to corruption than those that operate in secrecy. Transparency is created by such elements as access to information policies and the activities of a healthy independent media. A free media is a powerful instrument, not only for exposing corruption and holding those responsible legally and politically accountable but also as for educating the public and instilling high expectations of integrity.

Public trust in Government, anti-corruption agencies and anti-corruption policies and measures is key when a country invites the public to take an active role in monitoring the performance of its Government. (6) It takes political will, institutional ability and integrity to execute reforms to fight corruption. Political will is required to develop, implement and sustain the strong measures needed to identify and eliminate corrupt values and behaviour. Institutional ability is required to ensure that political commitments are actually carried out, often in the face of entrenched informal organizations within public institutions intent on blocking or limiting reforms. Curbing systemic corruption is a challenge that will require stronger measures, more resources and a longer time frame than most politicians and “corruption fighters” will acknowledge or can afford.

Fundamental to all reforms, however, is integrity and the perception of integrity, especially at the highest levels of Government and in entities responsible for anti-corruption measures. Without integrity, any steps taken to

combat corruption will lack credibility, both as positive examples of how public officials and institutions should behave and as deterrents to corrupt behaviour.

Deterrence is a single but important element of anti-corruption strategies. By definition almost, corruption is a calculated and premeditated activity and can be deterred. Deterrence includes not only conventional prosecution and punishment but also administrative, regulatory, financial and economic deterrence. Where personal or corporate risks, uncertainties and punishments are minimal, corruption tends to increase. Conversely, reforms that increase uncertainties and the risk of criminal punishment or financial losses tend to reduce corruption. Generally, reforms must be broad-based and systemic, or corrupt conduct may simply be displaced into other areas or activities.

4. Involving all key stakeholders

The participation of civil society in assessing the problem of corruption and in formulating and implementing reforms is now seen as an important element of anti-corruption strategies. Anti-corruption measures and the commitment needed to make them work must be based on a full assessment of the extent of corruption and its harmful effects. The participation of civil society is vital to the assessment. Policies and practical measures are most likely to succeed if they enjoy the full support, participation and "ownership" of civil society. Finally, only a well-developed and aware civil society ultimately has the capacity to monitor anti-corruption efforts, expose and deter corrupt practices and, where measures have been successful, credibly establish that institutions are not corrupt.

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

Raising public awareness is an element of most anti-corruption strategies, but it must be accompanied by measures that visibly address the problem, otherwise the increased public awareness can lead to widespread cynicism and loss of hope that may, in some cases, contribute to further corruption.

5. The links between corruption and money-laundering

Identifying and recovering stolen assets is important, particularly in cases of "grand corruption", where the amounts are large and often needed by a new Government trying to remedy problems arising from past corruption. Very senior officials involved in corruption generally find it necessary to transfer looted proceeds abroad, making identification and recovery in most cases a multinational project (7). The legal and logistical difficulties of pursuing complex investigative and legal proceedings while rebuilding national institutions and infrastructures are great. Not only that, successor Governments usually have to establish their own international credibility and

integrity before obtaining the necessary legal assistance and cooperation from abroad.

There are important links between corruption and money-laundering. The ability to transfer and conceal funds is critical to the perpetrators of corruption, especially large-scale or "grand corruption". Moreover, public sector employees and those working in key private sector financial areas are especially vulnerable to bribes, intimidation or other incentives to conceal illicit financial activities. A high degree of coordination is thus required to combat both problems and to implement effective measures that impact on both areas.

C. Requirements for anti-corruption strategies

Lessons learned from countries where anti-corruption programmes have been pilot-tested suggest the key to reduced poverty is an approach to development which addresses quality growth, environmental issues, education, health and governance. The element of governance includes, if not low levels of corruption, then the willingness to develop and apply effective anti-corruption strategies. It has been argued that development strategies must be: *inclusive, comprehensive, integrated, evidence based, non-partisan, transparent and impact oriented*,³¹ and the same is true for anti-corruption strategies.

1. Inclusive and comprehensive

As previously discussed including as broad a range of participants or stakeholders as possible raises the expectations of all those involved and increases the likelihood of successful reform. This is true not only for senior officials, politicians and other policymakers, but also for general populations. Bringing otherwise-marginalised groups into the strategy empowers them by providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will have an effect on policy-making, and give a greater sense of ownership for the policies which are developed. In societies where corruption is endemic, it is these individuals who are most often affected by corruption, and who are most likely to be in a position to take action against it, both in their everyday lives, and by supporting political movements against it.³²

The establishment of strategic partnerships has also proven to be valuable, both in bringing key stakeholders into the process and developing direct relationships where they will be the most effective against specific forms of corruption or in implementing specific strategy elements. Examples include strategic partnerships between NGOs and international aid institutions, such as the partnership between the World Bank and Transparency International,

³¹ Petter Langseth, 2001, Helping Member States Build Integrity to Fight Corruption, Vienna, 2001

³² One example of this is Hong Kong's Independent Commission Against Corruption (ICAC). In 1998 ICAC organize workshops involving more than 1% of the population. This gives those consulted input, allows policy-makers to gather information, and generally raises popular awareness of the problem of corruption and what individuals can do about it.

which has resulted in excellent national and international anti-corruption awareness raising.

No single factor causes corruption, but a wide range of factors have been shown as supporting or contributing to it, and in many cases these factors are inter-related in such a way that if one is eliminated, increased activity in another may simply take its place. This requires that anti-corruption strategies be comprehensive, addressing as many different factors at the same time as possible. The bribery of public officials, for example, has been linked to low status and salaries, a lack of effective laws or law-enforcement, sub-cultural values that make it acceptable for applicants to offer bribes and for officials to take them, and a lack of effective transparency and monitoring with respect to the officials' duties and the way they carry them out. Acting against only one of these factors – increasing the severity of bribery offences, for example – is unlikely to produce results unless some or all of the other factors are also addressed.

2. Integrated

Corruption is a complex problem which requires complex responses, addressing as many aspects of corruption and as many of the different factors which contribute to it as possible. To be effective, however, these responses must also be integrated with one another into a single, unified anti-corruption strategy (internal integration). Strategies must also be integrated with other factors which are external, such as the broader efforts of each country to bring about such things as the rule of law, sustainable development, political or constitutional reforms, major economic reforms, or major criminal justice reforms. As many aspects of modern corruption have proven to be transnational in nature, external integration increasingly also includes the need for integration between anti-corruption strategies or strategic elements being implemented in different countries.

While the need for integration is manifest, the means of achieving it in practice are not as straightforward, and are likely to vary from country to country. A major requirement is the need for the broadest possible participation in identifying problems, developing strategies and strategic elements, and effective communications between those involved once the process of implementation begins. Broad participation in identifying needs can assist in identifying patterns or similarities in different social sectors which might all be addressed using the same approach. Broad participation in developing strategies ensures that the scope of each element is clearly defined, and the responsibility for implementing it is clearly established, but that each participant is also aware of what all of the others are doing and what problems they are likely to encounter.³³

³³ United Nations pilot projects have successfully used national integrity systems workshops for this purpose.

Plans to develop legislation, for example, should also give rise to plans to ensure that law enforcement and prosecutors are prepared to enforce the laws and that they will have the expertise and resources to do so when they are needed. Effective communications between the participants – using regular meetings for example – can then ensure that elements of the strategy are implemented consistently and on a coordinated schedule, and can deal with any unforeseen problems which arise during the process.

3. Transparent

Transparency in government is widely viewed as a necessary condition both to effectively control corruption, and more generally for good governance. Populations should generally have a right to know about the activities of their government to ensure that public opinion and decision-making (e.g., in elections) is well informed. Such information and understanding is also essential to public ownership of policies which are developed, and this is as true for anti-corruption policies as for any other area of public policy. A lack of transparency with respect to anti-corruption strategies is likely to result in public ignorance when in fact broad enthusiasm and participation is needed. It can also lead to a loss of credibility and the perception that the programmes involved are corrupt or that they do not address elements of government which may have succeeded in avoiding or opting out of any safeguards. In societies where corruption is endemic, this will generally be assumed, effectively creating a presumption against anti-corruption programmes which can only be rebutted by their being clearly free of corruption and by publicly demonstrating this fact. Where transparency does not exist, moreover, popular suspicions may well be justified.

4 Non-Partisan

The fight against corruption will generally be a long-term effort and is likely to span successive political administrations in most countries. This makes it critical that anti-corruption efforts remain politically neutral; both in their goals and in the way they are administered. Regardless of which political party or group is in power, reducing corruption and improving service delivery to the public should always be a priority. To the extent that anti-corruption efforts cannot be made politically neutral, it is important that transparency and information about the true nature and consequences of corruption are major factors in an anti-corruption strategy, because these generally operate to ensure that corruption is seen as a negative factor in domestic politics. Where corruption is endemic, the popular perception is that individual interests are best served by predicting which political party will hold power and therefore be in a position to reward supporters. A major focus of anti-corruption strategies must be the reversal of this attitude so that the perception is that any political faction which is exposed as corrupt is not acting in the public interest and is therefore unlikely to remain in power for long.

Multi-partisan support for anti-corruption efforts is also important because of the relationship between competition and corruption. Just as competition in the private sector leads companies to resort to bribery to gain advantages in seeking business, competition between political factions can lead participants to resort to political corruption in order obtain or maintain advantages, or to

offset real or perceived advantages on the part of other factions. Common problems in this area include the staffing of public-service positions with political supporters to reward them and ensure further support and to influence areas public administration in their favour. Critical public service positions in this context include senior law-enforcement, prosecutorial and judicial offices, senior positions in the military or security forces, and officials responsible for the conduct of elections. Similarly, supporters in the private sector may be rewarded (or opponents punished) using the allocation of government spending on goods or services. As noted in Part 1, a major challenge in this regard is distinguishing between legitimate political contributions from individuals or companies to parties or candidates whose policies they support, and contributions made in the belief or expectation that the contributor will obtain a reward or avoid retaliation if the recipient is elected.

5. Evidence based

It is important that strategies be based on concrete, valid evidence at all stages, including preliminary assessments of the extent of corruption and need for countermeasures, the setting and periodic reassessment of strategic objectives, and the assessment of whether objectives have been achieved or not. In countries where corruption is seen as endemic, the external gathering or validation of this evidence is often seen as an important factor in the credibility of the evidence, and hence the credibility of strategic plans based on that evidence as well as periodic assessment of progress against corruption. The United Nations Global Programme against Corruption has established a *comprehensive country assessment* to assist in this process, where such assistance is requested. This includes a review of all available information about relevant factors to establish information as a “base-line” for future comparison and an initial qualitative and quantitative assessment of the forms and general extent of corruption (see below).

Sources of information may vary, but will generally include opinion surveys, interviews with relevant individuals such as officials or members of companies which deal with the government, focus group discussions about the problem of corruption and aspects of the problem or measures against it which may be unique to the country involved, the preparation of case-studies, an assessment of anti-corruption laws and the agencies which are intended to monitor, prevent and/or prosecute corruption cases, and assessments of other key institutions. Also critical is a more general assessment of strengths and weaknesses in civil societies, national cultures or other areas which may be important in the development of a successful and effective anti-corruption strategy. Many factors will vary from country to country, which makes it important that comprehensive country assessments be custom-tailored to each country, and that much of the actual design be done domestically.

Country assessments and other sources of evidence should be used to assess corruption in both qualitative and quantitative terms, considering the full range of corruption-related activities, their effects, and how they operate in the circumstances of each country, the extent and relative prevalence of these activities, as well as the overall extent and impact of corruption in the country as a whole. At the policy-making level, the evidence should then form the

basis of the development of anti-corruption strategies and policies. At management levels, the knowledge that evidence will be objectively gathered and assessed should encourage result-oriented management, and a clear understanding of exactly what results are expected. At operational levels, service providers should gain an understanding of what corruption is, how it affects them and what is expected of them in terms of applying anti-corruption policies in their work. The users of the various services should have the same information, so that they come to expect corruption-free services and are prepared and equipped to speak out when this is not the case. The international element in country assessments should serve as a validation of the evidence, a source of objective and independent analysis and reporting, and form the basis for international comparison, the communication of information about problems encountered and solutions developed from one country to another, and the development of a coherent international or global strategy against corruption.

Once anti-corruption strategies are in place, further country assessments should review both actual progress made and the criteria by which progress is defined and assessed. In practical terms, this gives participants at all levels an opportunity to comment, providing valuable feedback about both results and policies, and helping to protect a general sense of ownership and support for the programme. The need for popular participation makes credibility or legitimacy a critical factor in controlling corruption. For this reason, further assessments should consider not only evidence about whether the programme is actually achieving its goals, but about the perceptions of key figures and the general population.

It is important that the process of gathering and assessing evidence be seen as an ongoing process and not a one-time event. One term used to describe this is “action research”, which has been described as embracing “principles of participation and reflection, and empowerment and emancipation of groups seeking to improve their social situation.”³⁴ Common among most is the concept of using dialogue between different groups to promote change through a cycle of evaluation, action and further evaluation

6. *Impact oriented*

As discussed above, it is critical that clear and realistic goals be set and that all participants in the national strategy be aware of these goals and the status of progress made in achieving them. The complexity of the corruption problem and the difficulty in gathering valid “baseline” and progress data make this difficult, but it is critical. Initial evidence is used to provide the basis for comparison and to set initial goals, while periodic assessments of what has been accomplished monitors progress, identifies areas which may need more attention or a different approach, and supports ongoing revision of the initial goals of the programme. Validated evidence can also play an important role in reforms in other areas.

³⁴ Kaye Seymour-Rolls and Ian Hughes, “Participatory Action Research: Getting the Job Done,” Action Research Electronic Reader, University of Sydney, 1995.

Evidence that corruption is being reduced supports confidence in national economies, for example, and evidence of the nature and consequences of political corruption will lend support to democratization and similar political reforms.

National anti-corruption strategies involve long-term and wide-ranging policies, and it is essential that planning and philosophy make allowances for periodic monitoring and assessment and for adjustments based on those assessments.³⁵ The need for such adjustments should not be seen as evidence of failure: indeed, changes are as likely to be triggered by elements which are more successful than expected or which succeed in unexpected ways as by the need to re-think elements which have fallen short of the desired or predicted results. Adjustments may also be triggered or advised by outside information or changes in external circumstances, such as successes achieved in other countries or the development of international agreements or instruments.

³⁵ See also Part 4.VIII, below, for detailed discussion on monitoring and assessment.

IV INSTITUTION BUILDING

A. Introduction

It is generally accepted that institutional changes will form an important part of most national anti-corruption strategies (9). As many factors related to institutional cultures and structures influence the levels and types of corruption that occur, institutional reforms may be used to try to counteract or reduce such influences. Reforms may include the introduction of elements of accountability into organizations, the de-layering or simplification of operations to reduce errors and opportunities to conceal corruption, as well as more fundamental reforms seeking to change the attitudes and beliefs of those who work in an institution. In some cases, institutions may be completely eliminated or restructured for a fresh start, or completely new institutions may be created.

In the past, institution building has focused on the creation or expansion of institutions and the technical skills needed to operate them. In many cases, results have fallen short of expectations because the attitudes and behaviour that supported or condoned corruption were carried forward into the new institutions. It is now accepted that reforms must deal not only with institutions but also with the individuals who work in them. There is also a need for results-based leadership that promotes and applies integrity, accountability, transparency, as well as a general acceptance of the mind-set, beliefs and customs that favour integrity over corruption.

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

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

Mechanisms for greater transparency in public administration are much more effective if accompanied by the development of an independent, vigilant media equipped with sufficient expertise and resources to review and assess the information available and ensure that it is disseminated among the population. Similarly, rule-of-law and legal accountability reforms require not only reforms to legislation and the institutional practices of government but

also the development of an independent and capable private legal profession to provide legal advice and conduct litigation.

The target group at which institution-building reforms are directed must also be widened to include all parts of society interested in creating and maintaining national integrity. The focus of donor attention has traditionally been public administration institutions. The new approach requires coordinated elements to address stakeholders extrinsic to those institutions but whose participation and support are nevertheless necessary if effective reforms are to take place. In constructing overall strategies, institutional reforms can be grouped into "pillars of integrity" (see Figure 2) that are mutually supportive and include elements from government and elements of civil society.

Key public-sector groups that must usually be included in such strategies are the executive and legislative branches of Government at the national, regional and local levels; the judicial branch and its supporting institutions; key "watchdog" agencies, such as auditors or inspectors; and law enforcement agencies and other elements of criminal justice systems.

From the private sector, there should also be inclusion of the media, relevant academic individuals and institutions, and other organizations, such as trade unions, professional associations and general or specific interest groups, who play a vital role in promoting integrity and ensuring transparency and accountability.

The final pillar is the general population itself; public awareness of reforms and expectations of the standards set by those reforms ultimately hold the reformers and the institutions accountable for the success or failure of programmes

The following diagram illustrates some of the key "pillars" that may need to be incorporated into institution-building projects (10).

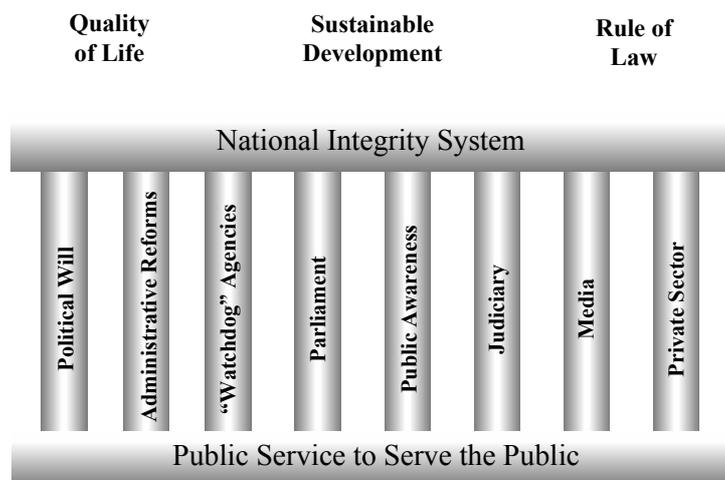


Figure: The Pillars of Integrity

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

Developing a successful anti-corruption structure requires an assessment of the demands made on each of the elements, of the strengths and weaknesses of each element, and of how these relate to the strengths and weaknesses of other elements. Attention may then be focused on setting priorities and addressing significant weaknesses. In the 15 countries that have so far embraced the reform efforts of the U.N. Global Programme against Corruption, inadequate rule-of-law elements have been seen as a critical area that has undermined the effectiveness of other reforms. Rule-of-law reforms are also viewed by most as a major priority because the necessary legal and judicial skills and expertise cannot simply be imported. They take time, in most cases 10 to 15 years, to produce.

B. The mechanics of institution building

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

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

Both statutes and delegated legislation are relatively amenable to anti-corruption reforms. It is important for legislatures and political party structures to be supportive of anti-corruption initiatives in general and educated with respect to the specific amendments proposed. Given the long-term nature of such initiatives, multi-partisan support is also important.

Delegated legislative authorities can be appointed to operate under the oversight of the legislature where more detailed technical knowledge of corruption is needed. Essentially, the legislature is called upon to decide to combat corruption, to set general principles, and to enact key provisions, such

as statutes creating anti-corruption authorities or establishing criminal offences and punishments. Delegated authorities are then called upon, in the context of each institution, to consider how best to implement reforms in each institution, to create the necessary rules and, periodically, to review and amend them.

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

It will also be important to ensure that any restructuring is kept as simple and straightforward as possible. Overly complex structures tend to create further opportunities for corruption. Complexity also makes new procedures more difficult to learn and may provoke resistance from officials who see them as an obstacle to the performance of their duties. Reforming institutional cultures also requires time as those accustomed to the old values come to understand and adopt new ones.

Reform programmes must seek to accomplish change as quickly as possible, and incorporate as many incentives for change as possible. Nevertheless, objectives and expectations must be reasonable. The pace of change should not be forced to the point where it triggers a backlash. Where anti-corruption reforms are developed in reaction to high-profile corruption, scandals or other major public events that generate political pressure to act quickly, a moderate pace of reform may conflict with political agendas.

C. Judicial Institutions

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

Article 11*

Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.
2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

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

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

Any strategy for the reform of judicial institutions in a specific country should be carefully considered in light of the state of judicial independence in that country and the specific constitutional, legal and conventional measures used to protect it. Before anti-corruption reforms are instituted, it may be necessary to ensure that basic judicial independence from other elements of the State are in place and operating effectively.³⁶ In many cases, the dominant

³⁶ Many sources have set out what are seen as requirements for judicial independence, and as this is generally seen as a matter for more general rule of law reforms than anti-corruption strategies, it is not discussed in detail here. See, for example, "Basic Principles on the Independence of the Judiciary", Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, A/CONF/121/22/rev.1, UN Sales # E.86.IV.1, Part I.D.2, reprinted in United Nations: *Compilation of International Instruments*, Vol.1 Part 1 and International Commission of Jurists, *Declaration of Delhi* (1959), reprinted in *The Rule of Law and Human Rights: Principles and Definitions* (I.C.J., Geneva, 1966). See also Nemetz, N.T., "The concept of an independent judiciary" (1986) 20 *U. of British Columbia L. Rev.* pp.285-96, Rosenn, K.S., "The protection of judicial independence in Latin America", (1983) 19 *U. Miami L. Rev.* pp.1-35, and Stevens, R. *Independence of*

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

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

D. Institution Building in Local and Regional Governments

In most countries, to be effective against corruption, reforms at different levels of government must be developed and integrated. Virtually all countries have separate structures for the administration of central government and local communities, and those with federal constitutional structures also have regional, provincial or state governments. Such governments have varying degrees of autonomy or even sovereignty with respect to the central government and, in many cases, are based on distinct formal or informal political structures. They can pose challenges for the development and implementation of anti-corruption strategies. "Top-down" reforms developed for central government institutions take longest to reach local governments. In many cases, however, it is the reform of local government institutions, delivering basic services, that will make the greatest difference for average people. Locally, political agendas may be quite different from those at central government level and may also vary from one community to the next. Such factors must be taken into account to secure local participation and cooperation. Adapting and promoting anti-corruption measures will often need to be done village-by-village, preferably with the participation of local people and taking local values into account.

The corruption of judicial institutions frustrates all those mechanisms, allowing judicial decisions to be based on improper influences and untested assertions. It also denies litigants' basic fairness and the right to equality before the law.

the Judiciary: The View From the Lord Chancellor's Office (1993), reprinted at (1993) see also (1988) 8 Oxford J. of Leg. Stud. Pp.222-48.

The ultimate result is inconsistent, ad hoc decision-making, a lack of public credibility and, in systems based on judge-made law, poor legal precedents.

Judicial corruption also greatly reduces the usefulness of judicial institutions in combating corruption itself. The courts are essential not only to the prosecution and punishment of corruption offenders, but also to other accountability structures, such as the civil litigation process (for unsuccessful contract or job applicants) , as well as the judicial review of anti-corruption measures and agencies themselves. All such elements are rendered ineffective, or even counter-productive, if the judges themselves or their supporting institutions are corrupt.

E. The establishment and independence of specialised anti-corruption institutions

Article 36*

Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

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1. *Should a specialised anti-corruption agency be established?*

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

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

The major disadvantages³⁷ include greater administrative costs, isolation, barriers and rivalries between the institution and those with which it will be called upon to cooperate, such as law enforcement and prosecution officials, auditors and inspectors; and the possible reduction in perceived status of existing structures excluded from the new institutions.

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

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

2. Ensuring the independence of specialised agencies

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

³⁷ The Independent Council provision in US law was, as an example of a member state not convinced by the utility of independent anti corruption agency over the value of integrated anti corruption units, and as a result the independent anti corruption agency was rejected by both political parties and abolished

something approaching accepted standards for the independence of judicial or prosecutorial functions may be required.³⁸

³⁸ Many sources have set out what are seen as requirements for judicial independence. See, for example, “Basic Principles on the Independence of the Judiciary”, Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, A/CONF/121/22/rev.1, UN Sales # E.86.IV.1, Part I.D.2, reprinted in United Nations: *Compilation of International Instruments*, Vol.1 Part 1 and International Commission of Jurists, *Declaration of Delhi* (1959), reprinted in *The Rule of Law and Human Rights: Principles and Definitions* (I.C.J., Geneva, 1966). Examples may also be found in the independence granted some other critical governance functions such as ombudsmen, electoral commissions and independent auditors or financial regulators.

These may include:

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

3. *Key components of specialised anti-corruption agencies*

If an independent agency is established, its size, composition and functions will vary to some degree in accordance with the problems and needs of the establishing government, but most such agencies will include the following components.

- A senior management element, which manages the agency, maintains internal accountability, makes or reviews critical decisions such as the allocation of resources, the setting of investigative priorities, and the decision of which course to follow (e.g., prosecute or pursue proactive or remedial action) in specific cases. Senior management will also itself be accountable to the government and will be responsible for explaining the work of the agency to the government and general population through such mechanisms as reports and the media.
- An investigative element, responsible for identifying cases and gathering sufficient information and evidence to support the making of a decision about which course of action or disposition to pursue and the pursuit of that disposition.
- A legal element, responsible for the prosecution of cases and the production of legal advice, both for internal use by the agency itself, and for reference to other bodies, such as legislatures considering anti-corruption legislation.
- A research element which accumulates and analyzes information in order to provide assessments of the overall nature and scope of corruption, identify trends, measure the effects of programmes and produce policy advice for the agency itself and for the government.
- A preventive element, which maps out strategies for preventing corruption and produces materials and programmes and trains personnel as needed to implement these strategies.
- An educational element, which produces and disseminates material providing information about the nature, scope and effects of corruption, as well as materials intended for use in combating corruption, such as codes of ethics or conduct.

4. *Incorporating anti-corruption elements into other agencies*

Whether independent institutions are included as part of an overall anti-corruption strategy or not, reforms to many existing departments and agencies will often be needed. If there are independent agencies, these will have to include rules governing the relationships between such agencies and other areas of public administration. A clear definition of “corruption” will be required, for example, to assist in the determination of whether a criminal case falls within the jurisdiction of the anti-corruption agency or the regular law enforcement agency concerned. Rules will also be required for cooperation in joint cases. Many organized crime investigations will disclose evidence of corruption, for example, and *vice versa*.

Anti-corruption programmes may be adopted as part of ongoing, routine reforms of public administration, either on the initiative of the country involved, or in response to pressures from institutions such as the World Bank, International Monetary Fund or national development agencies. In many cases, however, they are the result of political pressures generated by major scandals or the public exposure of high-level or widespread corruption. During the 1970’s, for example, the Hong Kong Independent Commission against Corruption (ICAC) was established in response to the exposure of police corruption, and the statutory powers to appoint special Independent Counsel in the United States arose from the “Watergate” political scandal of 1972-1974.

V. PREVENTION

A. Introduction

The prevention, as presented in this guide, focus on the “situational prevention” of corruption in situations that tend to involve public institutions, public functions or other significant public interests. Many measures can, however, be applied to the private sector with relatively minor adaptations or modifications. For the purposes of this guide, prevention measures have been classified as either "situational" or "social". In "situational" prevention, outlined in the current section, anti-corruption measures are directed at the specific situations in which corruption problems occur. In "social" prevention, which we decided to call awareness raising and public participation in this guide; presented in Chapter VII, anti-corruption measures are directed at more general social or economic factors with the aim of creating conditions that are less likely to produce or support corrupt practices.

Most social prevention measures are concerned with raising awareness of corruption and mobilizing the population: (a) to refrain from corrupt practices themselves; and (b) to expect integrity on the part of those who provide services, particularly in the public sector. Thus, many of the social elements of anti-corruption programmes can also be considered as "empowerment" measures, in the sense that they provide the power and the incentives for the public to take appropriate action. Such measures are very general in nature and thus difficult to classify and describe in detail; yet, arguably, they are highly potent instruments because of the impact they can achieve.

Good governance and the rule of law require a careful balance to be struck between efficiency and accountability. A balanced system will allow Government officials sufficient discretion to function effectively, while ensuring that discretion is regulated and structured to avoid arbitrary and unaccountable decision-making. Accountability structures must operate effectively on an everyday basis if corruption is to be controlled.

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

As accountability for decision-making is reduced, so the scope of administrative discretion increases, and various forms of corruption become easier to commit, more widespread and more prevalent. Conversely, corruption can be deterred or prevented by the establishment of clear, stable and coherent criteria for the interpretation and enforcement of legal rules within a public service culture that supports the transparent, objective and accountable application of such rules. Such factors reduce the opportunities for improper actions on the part of officials and increase the probability that

any officials involved in corrupt practices will be held legally or politically accountable. In any case, in a well-regulated system, an official with the discretion to award Government contracts is unlikely to have unfettered discretion. He/she will normally have only the discretion to determine which bidder offers the terms most advantageous to the public interest and, in most cases, will possess objective criteria against which to assess competing bids. Moreover, the official is less likely to abuse his/her discretion if the terms offered will later be the subject of comparison and comment in the media, or if unsuccessful bidders are permitted to make their own comparisons and to mount a challenge, through judicial or administrative appeal, if they see an abuse of discretion.

B. Key areas for institutional reform

1. Regulating official discretion

The development of rules, practices and cultural values that regulate the use of official discretion should be based on a wide range of criteria, some general and some that may be specific to the country or particular public function involved. Factors such as cost-effectiveness, for example, are important, particularly in developing countries. The aim, in regulating official discretion, is to reduce conditions in which corruption may flourish without imposing elaborate or unwieldy controls that impede the transaction of public affairs. One reason why openness and transparency are popular strategic elements is the relative inexpensiveness of making information available through pre-existing media with pre-existing structures and working to pre-existing rules.

Objective criteria for assessing whether conditions exist that may foster abuse of discretion and, if so, what measures should be applied to reduce them, can be developed by sampling and reviewing case files and other relevant materials.

2. Reducing Procedural Complexity

One factor that can erode the effectiveness of accountability structures is excessive complexity in the decision-making process. Overly complex procedures increase the potential for corruption; they impede the functioning of internal discretion structuring; of control factors, such as audits; and of external structures, such as transparency. Bureaucracies with too many layers, too complex rules or unclear lines for reporting, responsibility and accountability create environments in which the demarcation between appropriate and corrupt conduct may be unclear. Such a situation contributes to cultures that are permissive of corrupt practices and may even condone them. Such environments also shield corruption from official and public scrutiny and, in cases where the presence of corruption itself is apparent, they erode the effectiveness of disciplinary and criminal justice controls by making individual responsibility difficult to apportion. The problem of complexity is often aggravated by other factors, such as the lack of training and resources that often plague the bureaucracies of developing countries. In such cases, complexities make it more expensive and time-consuming to hold officials accountable.

The lack of adequate financial and human resources on the part of accountability structures, such as public auditors, law enforcement agencies and the civil and criminal courts, only increases the difficulty still further.

Such problems may be addressed by assessing and reducing complexity to levels consistent with the basic bureaucratic functions involved. De-layering and other restructuring procedures, especially in "service-delivery" areas involving extensive contact with private individuals, companies and other elements of civil society, not only reduce the potential for corruption but increase the cost-effectiveness of the bureaucracies themselves. That is a particularly significant advantage in developing countries. Such reforms could be adapted from "best practices" that have been found to work in other countries or in other areas of the national Government in question; or they could be formulated as part of the process of overall strategy development for good governance reforms or the control of corruption. The use of mechanisms, such as workshops or focused discussion groups incorporating bureaucrats and members of civil society who use a given service, is important to ensure the development of viable reforms and the "ownership" of the reforms by those most concerned with them.

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

3. Increasing transparency in the allocation of public resources

Another factor strongly associated with legal and political accountability is transparency. Transparency in the structures and procedures for spending public funds and granting benefits helps prevent corruption by reducing the opportunities for corrupt officials and transactions to remain undetected. Where public scrutiny does disclose corruption, various deterrence and control factors, such as criminal, civil and disciplinary liability and loss of political support, come into play.

Transparency may also prevent corruption in less direct ways. Public scrutiny may, for example, generate political pressure to reform overly complex and inefficient bureaucracies, leading to changes that reduce the opportunities for corruption. More generally, the establishment of transparency as an ongoing, general principle of public administration serves to educate the population, developing popular expectations of high standards and triggering a negative response when those expectations are not met or when transparency is withdrawn in an attempt to cover up malfeasance.

Transparency structures in the public sector may be internal, as in internal audit systems, or external, as, for instance, where public accounts or public resources are subject to open debate in legislative bodies or to review by the media. Transparency not only requires the relevant information to be disclosed and accessible, it also requires information to be gathered and

produced in an authoritative and easily understood format. Internally, that requires the establishment of effective budgeting and auditing systems with access to Government information that is accurate and sufficiently independent or autonomous. The systems must be capable of analysing information, both in the detailed context of specific Government functions or agencies, and in the more general approach of integrating Government-wide data. Externally, transparency requires the existence of motivated, competent, adequately resourced and independent elements of civil society to scrutinize the public administration and make observations and conclusions available in a form accessible to the public. That includes not only popular print and broadcast media, but also more specialized commentaries from academic institutions, trade unions and professional associations that report on specific subject areas to defined groupings.

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

Consistency and clarity in the principles governing the allocation of resources is also an important element of transparency. Establishing basic principles for accountability through, for example, a requirement to keep records and for independent auditing or review of those records, develops a public expectation that such controls will be applied, and an official expectation that the public will be looking for them to be applied. Media and other commentators become knowledgeable about the functioning of such controls, ensuring that any abuses identified, or any attempt to depart from basic principles, whether by an individual official or the Government itself, will be reported. It is important for such principles to become established at all levels of Government as administrative practices and cultural values. In many cases, countries that have vigorous scrutiny of public administration only at the central or federal Government level are plagued by corruption.

4. Employee culture and motivation, and the creation of positive incentives

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

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

Ultimately, corruption tends to be associated with how the corrupt officials perceive their situation, which itself depends, to some degree, on the actual conditions in which they find themselves. Often an official will compare his/her own situation with the conditions enjoyed by others, for example private-sector workers with apparently equivalent duties, or those employed in positions commonly encountered by the officials in the course of their duties. If a wide gap is perceived, officials are tempted to migrate to the higher-paying careers, thus leaving the public service, or to engage in corrupt practices to raise their own standard of living and status to "more acceptable" levels. Examples of that phenomenon abound in the area of narcotics enforcement, where even relatively well paid officials are sometimes tempted by the affluence and ostentatious lifestyles of the major offenders they encounter.

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

It is unlikely that any affordable salary increase will match the potential incomes from corrupt practices, particularly in developing countries where resources are in short supply. In such cases, educating officials about the importance of the work they do can also help to increase professional status,

support non-financial incentives for ethical public service and encourage realistic assessments of disparities between themselves and "equivalent" employees in the private sector. Education can also be directed at more fundamental issues. Corruption offers the possibility of great individual enrichment, but only at the cost of erosions in the overall social conditions in which the officials involved and their families must still live. Officials tempted to compromise on safety standards, for example, can be reminded that such compromises may endanger themselves, friends and family members. It is also absolutely essential that any notions that public sector salaries are low and can be supplemented by corrupt income should be dispelled.

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

5. Results- and facts-based management

The internal accountability of officials can also be strengthened by the use of management styles in which merit and, hence promotion, is assessed on the basis of measurable results. To provide a coherent accountability framework, many Governments and organizations, have adopted results-based management, also known as facts-based management and performance management. Such systems are also used to ensure appropriate accountability in decentralized structures. Decentralization, in which greater autonomy is given to officials closer to the decision-making process, offers the possibility of greater efficiency and more responsive decision-making. On the other hand, it can also make relatively junior officials less accountable and increase the potential for corruption unless accountability is instituted in other ways.

6. Internal reporting procedures

Most of the preventive measures set out in the previous sections have elements that operate through internal Government processes and through external relationships between officials and the private sector or population. Once the basic measures are in place, their effects can often be greatly amplified by the adoption of additional elements on a purely internal basis. Such elements are effective because, being specific to the organization involved, they can be specifically tailored to the types of people working in the organization, the functions that the organization performs and how it is organized, formally and informally. For example, functions such as the keeping of formal records, audits, and the instruction and discipline of officials,

are common to most if not all bureaucracies, but would operate quite differently in a paramilitary police force than in an organization administering public health-care or transportation infrastructures.

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

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

7. *Elimination of conflicts of interest*

While it is desirable for public officials to be completely independent of the decisions they must make, it is not always possible. Officials must live in society. Their children attend schools, they invest their wages, buy and sell personal property, use health-care systems and many other services that can create a conflict of interest with their duty to carry out independent decision-making. Having a personal interest that conflicts is not corrupt or improper *per se*; the impropriety lies in not disclosing a conflict of interest or where the private interest is allowed to unduly influence the exercise of the public interest. To address such problems, many Governments have adopted systems requiring officials to identify personal interests that may conflict and thus ensure that action be taken to eliminate the conflict. The official can be required either to dispose of the interest or divest himself or herself of it when a conflict arises or, more proactively, eliminate the private interest as a condition of employment. Alternatively, removing such an official from any position of influence could protect the public interest.

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

If conflicts of interest are to be managed in that way, appropriate organizational structures will be required. Such structures must be sufficiently decentralized to ensure that, should some officials be excluded, enough independent officials will remain to make the necessary decisions in a manner consistent with the public interest and visibly free of corruption.

Monitoring and other precautions are also needed to ensure that:

- Corrupt officials are not able to conceal their true interests;
- The ultimate decision-maker is kept independent of any colleagues who may have conflicts; and
- Inside information is not simply transferred to a third party for corrupt use to the indirect benefit of the official. Indeed, many codes of conduct or employment contracts specify that information should not be disclosed, and extend other anti-conflict measures to third parties close to the official, such as former employers, business associates or close family members (52).

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

9. Codes of conduct

The development of written codes of conduct assist in instilling bureaucratic values which curb corruption, as well as providing concrete standards which clarify what is expected of public officials and which practices are forbidden as corrupt.³⁹ Anti-corruption measures are usually central to such codes, but other basic standards of performance are also incorporated, governing areas such as fairness, impartiality, independence, integrity, loyalty towards the organization, diligence, propriety of personal conduct, transparency, accountability, responsible use of the organization's resources and, where appropriate, standards of conduct towards the public. Codes, which support disciplinary structures, also set out sanctions for non-compliance. As with other anti-corruption measures, the code of conduct for a particular bureaucracy or organization should combine the fundamental principles common to the entire government with more specific applications of those principles to the circumstances and functions of the organization itself.

The Committee of Ministers of the Council of Europe adopted on 11 May 2000 a recommendation on codes of conduct for public officials, which includes, in the appendix, a Model Code of Conduct for Public Officials. The Model Code of Conduct gives suggestions on how to deal with real situations frequently confronting public officials, such as gifts, use of public resources, dealing with former public officials, etc. The Code stresses the importance of the integrity of public officials and the accountability of hierarchical superiors. It comprises three objectives: to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials.

³⁹ Two international ethical codes have been promulgated in recent years: the Council of Europe's *Model Code of Conduct for Public Officials* (2000); the UN *International Code of Conduct for Public Officials* (1996). Moreover, the Global Forum's *Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials* (1999). Principles 2, 3 and 7 address various ethical codes States may wish to consider promulgating. See also, Global Coalition for Africa, *Principles to Combat Corruption in African Countries* (1999) (Art. 17). For a more detailed analysis of these instruments, see UN document E/CN.15/2001/3 (Report of the Secretary General on Existing International Legal Instruments Addressing Corruption)

Furthermore, it contains a series of general principles addressing, for example, the conflict of interests, incompatible outside activities, how to react when confronted with problems such as offers of undue advantages, susceptibility to the influence of others, misuse of official position, use of official information and public resources for private purposes and the rules to follow when leaving the public service.

Distributing a Code of Conduct across the public service is in most cases not enough to change the performance and/or the behavior of civil servants. Experience has taught us that the issuing of a Code of Conduct is 10% of the entire job needed to improve the performance of public servants. In order to succeed you need to have an integrated approach including actions and new institutions in the following areas:

1. **Ethics training** to make all civil servants aware of the new performance standards and also about the consequences when not complying
2. **Public awareness campaign** to make the public aware of their rights and where to complain if they are not served according to the standards prescribed in the code of conducts
3. Implement a credible and responsive Public **Complaints System** known to and trusted by the public at large
4. Independent and credible **Disciplinary Mechanism** with the necessary mandate to enforce the Code of Conduct.

Article 8*

Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.
2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.
4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.
5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.
5. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

* UN CONVENTION AGAINST CORRUPTION

10. *Disclosure of Assets*

Requiring officials, particularly those in senior positions, to disclose their assets, either publicly or to internal government anti-corruption agencies, prevents corruption in two major ways.

The disclosure of assets and interests assists both the official concerned and the Government in determining whether conflicting interests exist that may require either divestment of the private interest or the reassignment of the public interest to another official, not in a conflict position.

More generally, requiring officials to fully disclose their wealth and specific assets at various stages of their careers provides a baseline and means for comparison to identify assets that may have been acquired through corruption. An official who has acquired significant wealth while in office might reasonably be required to explain where the wealth came from.

To support the first function, public officials may be required to list their major interests and assets on assuming office and to ensure that the list is kept up to date while in office. That permits others to consider whether a conflict of interest exists and, if so, to call for appropriate action. Some systems go further, placing the onus on the official involved to formally indicate that a conflict of interest may exist whenever this appears to be the case.

To support the second function, the listing of assets must, at an absolute minimum, take place when the official assumes and leaves office. Most systems, however, require more regular assessments. While such systems may be based on self-reporting, corrupt officials will not incriminate themselves. Formal and independent reviews and record-keeping functions will be required, accompanied by sanctions for officials who fail to report or misrepresent information. Such sanctions could be of a criminal, monetary or disciplinary nature, but should be serious enough to provide an adequate deterrent. As with the disqualification of officials, the vigorous application of such sanctions can be a powerful instrument against corruption, as officials can be removed simply for failing to meet reporting obligations, even if actual corruption cannot be proven.⁴⁰

11. *Disclosure of political contributions*

The principle of disclosure can also be effectively applied to the making of political contributions. Disclosure ensures that such contributions are legitimate attempts to support a particular political faction and not attempts to bribe or buy influence with politicians who are already in government or may later assume power. In such cases, disclosure requirements can be used to assist in the enforcement of legal requirements, such as bans on large single donations or the anonymity of donors, particularly if both the donor and recipient are required to make the necessary disclosures. Since the public function involved is, by definition, political in nature, the transparency created by disclosure requirements also supports basic political accountability.

⁴⁰ It is important to take into consideration that without the dedication of substantive resources to at least a rudimentary verification of asset disclosure statements, they have only minimal deterrent value, and become relevant only when other circumstances have already revealed possible wrongdoing

Officials who are publicly known to have received large donations from identified individuals, companies or other interests will find it politically difficult improperly to favour those interests once in office.

It would be difficult in a court of law to distinguish between cases where the donor simply supports the political faction that he or she expects to follow a particular policy or course of action in the future and cases where the donation is intended to actually influence or bring about a certain course of action. Public disclosure requirements, however, address the problem by effectively transferring the issue to the court of public opinion. Where disclosure requirements are imposed, it is usually important that timely disclosure be required. Unless information about contributions, which may affect the outcome of an election, is made public before the election, any real political accountability is deferred until the next election.

VI. AWARENESS RAISING AND PUBLIC PARTICIPATION

Article 13*

Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

* UN CONVENTION AGAINST CORRUPTION

A. Introduction

Ultimately, the success or failure of any national anti-corruption strategy will depend to a very large degree on the extent to which it mobilises popular concern about the true costs associated with corruption. In the vast majority of cases, it is society as a whole which bears the costs of corruption rather than individuals, and it is the tolerance or apathy of populations which allow corruption to flourish. In most cases, accountability for corruption also ultimately vests in the population at large. While specific institutions or individuals may be held to account for specific cases or specific corruption problems, those who hold them accountable are themselves in turn accountable to the people. Mobilizing public opinion in support of strong anti-corruption measures also entails mobilising popular support for high standards of integrity and performance in public and private administration and opposition to corrupt practices wherever they occur. If this is done, anti-corruption strategies are unlikely to fail. If it is not, they are unlikely to succeed.

B. Public education and information campaigns

No two societies are the same, and the identification of both messages and target audiences will vary to some degree. Generally, however, the focus should be on educating people about the true nature and consequences of corruption in order to ensure that it is recognized when it occurs and to mobilize general opposition to it, and ensuring that the population is kept informed with respect to specific cases, new developments and trends, and the efforts to combat corruption. Within general populations, many specific groups can be targeted with more specific messages, or by means of specific media, in accordance with their positions. The private citizens who use a particular government bureaucracy might receive information about the standards of ethical conduct expected of it, for example, while the bureaucrats employed in it would receive the same materials, supplemented with deterrence information about such things as audit controls, surveillance or criminal or other sanctions which may apply. General messages about corruption might be published or broadcast in the general public news media, while more intensive measures such as seminars or more targeted materials can be directed at those directly involved in processes seen as vulnerable to corruption, using media appropriate for this purpose.⁴¹ The following segments will examine the range of media which could be used, the messages to be disseminated by those media, and key sectors, or target audiences, for these messages.

1. The means of delivering anti-corruption messages

Once basic principles have been formulated, education and awareness raising can be implemented through a variety of activities. As with the substantive content, the means of communicating will vary to some degree depending on the target audience. A strong national anti-corruption programme will incorporate a number of possible options, and a flexible approach to developing or modifying communications plans should the need arise. Means such as surveys of the officials involved and members of the public with whom they deal should also be employed to provide feedback information to help planners assess which methods are effective and which require modification or replacement. Some communications options include the following.

- Media of broad or general distribution, such as radio, television and print media can be used to reach the general population. Information can be disseminated not only using advertising and public service announcements, but also news coverage. Officials who provide information to the media should not manipulate or distort the information, but should ensure that the media are well briefed about both successes and failures in the fight against corruption. In reaching general populations, factors such as literacy, formulation of materials in appropriate linguistic and cultural

⁴¹ A major success story is that of Hong Kong's Independent Anti-Corruption Commission (ICAC), which annually conducts 2,780 (1998) training sessions to strengthen partnership between anti-corruption agencies and the private and public sectors. These workshops directly involved more than 1% of the total population in 1998 alone. See Langseth, Petter, (1999) *Prevention: An Effective Tool to Reduce Corruption*, ISPAC 1999 Conference on Responding to the Challenge of Corruption, Milan, 19-20 November 1999.

formats, and the access of target populations to appropriate technical facilities (e.g., telephones, radio or television receivers etc.) must also be considered.

- Where available, the Internet and other computer or communications networks can be used, both to disseminate messages about corruption and as a possible means of encouraging and facilitating reports by those who encounter it. A major advantage is the flexibility of computers in formulating, storing and disseminating information. Major disadvantages include a lack of access to computers and networks among some countries and population groups, and the need for basic standards of technical proficiency and literacy, although available evidence suggests that these factors are being overcome.
- Seminars, meetings or workshops can be conducted, in which specific stakeholders are invited to discuss problems and suggest actions. This format is costly and time-consuming, but offers the advantages of a detailed examination of any materials offered and two-way communication with participants. Meetings can be used not only to brief audiences about such things as anti-corruption projects, but to seek out their views as to what should be done and how best to explain it. They may also provide a valuable opportunity for specific groups to explore ethical issues and develop ethical principles for themselves.
- Public inquiries or hearings can be conducted into corruption in general or to examine specific corruption problems or cases. This is not an efficient method of examining corruption on a case-by-case basis, but can provide a detailed and transparent examination of problem areas, drawing conclusions which may be relevant to other areas as well. In many countries, such inquiries are limited to some degree by the possibility or presence of criminal proceedings and the procedural rights of accused persons in such proceedings. The State may have to choose between prosecution and an inquiry, or delay any inquiry until all relevant criminal proceedings have been exhausted in some cases.
- Surveys can be used to gather, analyze and make public information about such things as the actual rates or frequency of corruption, public perceptions of corruption, the effectiveness of anti-corruption measures, and the general overall performance of public administration or integrity in such administration. They tend to measure subjective perceptions of corruption rather than an objective measure of its actual nature and extent, but in most strategies, both objective and subjective assessments will be important requirements.

- The criminal law is often overlooked as a communications medium, but as noted above, the development, enactment and publication of criminal offences and procedures concerning corruption set absolute minimum legal, and in many cases moral, standards of behaviour. The fact that the legislature resorts to the criminal law also sends a powerful message, making it difficult for those engaged in corruption to retain any rationalisations or moral justifications for their behaviour.
- The publication of information about investigations, prosecutions and other (e.g. disciplinary) proceedings in corruption cases can also send a strong deterrence message, as well as providing the media with an opportunity to explore the nature and costs of corruption in the context of actual cases, which tends to attract greater public interest than if the same materials are published in the abstract.
- The production and dissemination of a national strategies for integrity and anti-corruption measures can also be used to send a message both to the general public and to the specific groups to which the measures will apply. It is important that the materials actually disseminated are in a format which is likely to interest and be understood by the target audience.
- The publication of more detailed materials in specialised media, such as public affairs programming using broadcast media, and academic or professional journals, provides an opportunity for a more in-depth exploration of critical issues. Materials directed at academic and professional groups, as well as the media itself should be formulated not only to educate members of the group in question, but also with a view to assisting them in educating others. It is important that academic experts participate in national strategies, both as a source of policy advice and analysis and as a competent external review of government proposals, and such participation should be supported and encouraged, both with resources and access to information.

Many existing materials produced by governments, as well as intergovernmental and non-governmental organisations, can also be used effectively, either by disseminating them *verbatim*, or as sources of information for other more closely targeted materials. Examples include this Guide, Transparency International's *Source book on Corruption*, the United Nations Anti-Corruption Tool Kit, and international instruments such as the OECD and OAS Conventions against corruption. Many academic and professional articles also provide useful research and policy analysis. These represent an important means of transferring expertise and experience from one country to another.

2. *The messages to be delivered*

Depending on specifics of the target audience, the following general points will generally be covered in anti-corruption campaigns. As noted above, these will usually be supplemented by more detailed comments and additional messages for specific target audiences.

- *The nature of corruption.* As discussed in Part II of this Guide. International discussions have illustrated a wide range of attitudes about what constitutes “corruption”. At the national level, it is important that policy-makers have a clear concept, and that this be effectively communicated to various target audiences. Opposition to corruption and support for measures against it cannot be mobilised until people have a clear understanding of what it is.
- *The direct costs of corruption.* The other major prerequisite for enlisting public support is establishing that corruption is harmful, both to societies and the individuals who live in them. Direct costs include such things as unfair or irrational procedures for allocating public resources. Those who do business with government can be told of the additional costs and uncertainties of corrupt bidding processes. More general audiences can be told of the overall increases in costs and decreases in benefits. Essential services such as medical treatment may be unavailable in general because the planning and allocation of priority to health care was based on corrupt criteria, for example, and medical services may be unavailable in individual cases because a sick individual could not afford the necessary bribes.
- *The general or indirect costs of corruption.* These include such things as the general failure of internal and external development projects and the corruption of essential institutions such as the courts and political bodies. Populations should be shown that corruption enables a few individuals to gain, but at a far greater cost to general populations resulting from inadequate public administration and institutions which fail to function properly, if they function at all.
- *Reasonable standards expected in public administration.* Basic standards should be announced both for general application in all areas of public administration, and in the context of specific institutions or functions. Standards of conduct can, where appropriate, also be promulgated in the private sector, particularly in areas where it does business with the public sector. The proposal of standards of conduct is likely to spur public discussion and debate about what is appropriate, which is useful in raising awareness, refining the proposed standards, and creating a sense of public ownership and support for the standards. The absolute minimum standards will generally be set by the criminal law, which defines conduct that will attract prosecution and punishment, but in many cases a higher standard will be expected as a condition of employment or a matter of professional ethics.

One important message for officials is that the failure of the legislature to criminalise conduct should not be taken as permission to engage in it, and that the legal judgment of legislatures and courts should not replace individual or professional judgment of right and wrong.

- *The importance of vigilance and public accountability.* Ultimately each member of the population should be encouraged to watch for corruption and take action when it is detected. Public support for mechanisms and institutions which increase accountability, such as requirements that State agencies make their proceedings as public as possible, and the presence of an objective public media to report and comment on those proceedings, should also be encouraged.
- *Information about anti-corruption programmes.* In order to enlist cooperation and support for both proactive and reactive programmes, those whose cooperation is called for require both general information about what the programmes are intended to accomplish and why they should be supported, and more specific information about what cooperation is sought and how it can be given. For example, public servants must be convinced that combating corruption is in their interests, and then given specific information, such as addresses or telephone numbers, to which reports can be made. As noted in Part II.A of this Guide, convincing informants that they will be allowed to remain anonymous or otherwise protected from retaliation is also important.
- *Specific messages for specific audiences.* The foregoing elements will usually apply across a broad range of public service target audiences. The message that taking bribes causes individual and social harm and may subject the recipient to criminal liability, for example, should apply to almost any audience. The specific application of general anti-corruption principles may be different, however, depending on the nature of the duties being performed and the fact situations commonly encountered by those who perform them. One common approach to developing audience-specific principles or variations is the development of fact situations which raise the critical issues in a manner relevant to the audience. Scenarios developed in consultation with groups such as law-enforcement officials, aid-workers, banking or financial officials or health-care workers will ensure that the message is communicated in a meaningful way and that the participants have a sense of commitment to the standards, principles and practices they will be expected to apply.

3. *Target audiences for anti-corruption messages and measures*

The messages to be communicated, their intended recipients and the measures to be actually employed against corruption can all be divided into several basic categories, which tend to classify both the groups who will be urged to apply specific policies or measures and the actual measures they are called upon to apply.⁴²

⁴² This classification was developed in collaboration with Transparency International.

a. Political and legislative measures and audiences

While many measures can be implemented without laws, many major or fundamental changes require a basis in national constitutions or statute law. These include basic judicial independence and separation-of-powers safeguards; basic human rights such as the freedoms of association and expression; where necessary, rules to protect the independence of key groups such as the media; and the creation of independent anti-corruption institutions. The immediate target audiences for issues are legislators, policy-makers in government and academic institutions, and in some cases the judiciary. Given the nature of these groups, they will also in many cases be the sources of elements of the message. Since reforms of this kind are inherently political in nature, however, part of the message must also usually be directed at general populations in order to generate the necessary political support. As noted in Part 3.B.4, above, multi-partisan support for anti-corruption efforts is needed, so it will be important to formulate and direct information in ways which address the broadest possible range of national political beliefs.

b. Public sector measures and audiences

Public sector measures advocated by anti-corruption programmes may include the following. These will be directed at public servants in general, in some cases including those in judicial and political positions, and in many cases specific groups will be targeted with materials appropriate to their functions positions and levels of seniority.

- Greater transparency in critical government functions by ensuring that operations are open to popular, media, legal and academic scrutiny.
- Greater public participation in critical programmes, both in the form of opportunities to comment on policies and their implementation, and in some cases through actual participation on boards, committees and other decision-making bodies.
- The development and dissemination of standards of conduct.
- The development of complaint, comment, review and similar functions.
- The regular assessment of public confidence in anti-corruption institutions, judicial, law enforcement and other critical functions.
- The creation and administration of access to information systems.
- Where necessary, the creation of independent anti-corruption commissions or similar bodies.

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.
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.
3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.
4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

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c. Private sector measures and audiences

Private sector individuals and institutions could be targeted with materials and information intended to educate, aid and empower them to avoid involvement in corrupt practices. This may include the dissemination of ethical standards, codes of conduct, and similar materials. Private sector elements of a national strategy may be limited to transactions or dealings between the private and public sectors or could also address purely private-sector interests.

d. Civil society measures and audiences

Civil society measures should include the following. Messages developed could be addressed to civil society either generally or to specific elements, such as non-governmental organisations or academics concerned with specific issues. For some elements, combatting corruption is a central policy or *raison d'être*, while for others it is only one problem to be resolved in the course of pursuing other objectives, such as the effective delivery of aid, health-care or public services. In many cases, elements of civil society are also an important source of anti-corruption content, which should result in a two-way dialogue.

- The general identification, education, awareness and involvement of civil society and its organisations, including the media, non-governmental organisations, professional associations, and research or academic institutes, to research and monitor good governance and the status of corruption and the progress made in combating corruption.
- The creation and strengthening of networks of non-governmental organisations to share information on local, regional and national anti-corruption initiatives.
- Strengthening, equipping and encouraging civil society to demand integrity and fairness in government and business transactions.
- Developing databases and networks for ensuring analysis and monitoring of corruption trends and cases, as well as information exchange among the different agencies called upon to deal with corruption.

e. The media as a target audience

The importance of the media as an audience for anti-corruption messages and as a means of widely disseminating those messages among the population warrant special attention here. The critical role of the media require not only careful structuring of the relationship between anti-corruption officials, but also in many cases efforts to develop or enhance the capabilities of the media to ensure that they are able to function effectively as recipients of information about corruption, as autonomous assessors of that information, and in formulating and disseminating further messages based on that information for dissemination to the general population. Some of the critical issues in government-media relations are as follows.

- The autonomy of the media is essential, both to its ability to assess government information critically and objectively and to the credibility with which its reports are received by the population, which makes it important that contacts with the media are transparent, and do not compromise this essential autonomy, either in practice or in the perception of the public. Also critical to autonomy and objectivity is the separation of media ownership from government or political factions, or if this is not possible, ensuring that diverse media represent a full range of political opinion. Similarly, the staffing of individual media outlets should be multi-partisan, if possible.
- The role of the media in critically assessing anti-corruption efforts requires that it possess sufficient technical, legal, economic and other expertise to enable it to do so independently. In many cases other sources of expertise, such as retained professionals or academic experts can supplement the knowledge of general media reporters. Training, awareness-raising and technical briefing of media personnel in anti-corruption efforts may also be useful.
- The media should be encouraged to develop and enforce adequate standards of conduct regarding both professional competence and objectivity.

- Media presentations should clearly distinguish between factual and fictional presentations or programming and between news reporting, which reports on matters of fact, and analysis or editorial content, which comments on facts.
- The basic capacity of the media should be sufficient to ensure that they can reach as much of the population as possible. Where this involves the use of public resources (e.g., to enable coverage of remote areas), controls should be in place to ensure that the transfer of resources is not allowed to become an instrument whereby the government can exert influence on the media.

VII. DOMESTIC LEGAL ELEMENTS: THE USE OF NATIONAL LAWS AGAINST CORRUPTION

A. Relationship between legal and non-legal elements of domestic anti-corruption strategies

While international instruments can provide valuable guidance, standardisation, political motivation and in some cases impose legally binding requirements, ultimately the responsibility for developing anti-corruption strategies and for ensuring that they are implemented vests in domestic national, regional and local governments.

Before discussing the range of legal options at the disposal of these governments, it must be noted that there are almost always other, non-legal options which may serve as alternatives or supplements to the legal measures discussed in this segment. Many of the non-legal options have already been covered in other segments and will not be discussed in detail here, but it is important to bear in mind that while domestic law and the rule of law itself are major elements of any anti-corruption strategy, no such strategy can rely on these elements alone.

Governments generally have at their disposal three major means of implementing desired policies. Laws may be enacted or adopted by legislatures, and in some systems, created by judges. These employ a positive and negative incentives ranging from criminal offences to the regulation of otherwise-private behaviours to reward those seen as desirable and deter or punish those seen as undesirable. Financial or economic measures may also be employed to deter or reward specific actions or general behaviour. Among the more common are measures such as the direct or indirect subsidization of desirable behaviour and the taxation of corrupt behaviour. Governments might give preference to companies certified as free of corruption in awarding contracts, for example, or ensure that income from corruption is taxed, while also ensuring that corruption-related expenditures are not used as tax-deductions.⁴³

The third major means of inducing populations to implement or comply with anti-corruption programmes is more general and difficult to describe, but it is nonetheless critical to the effectiveness of anti-corruption strategies. It consists of the promotion of values which resist corruption and support measures against it. Populations often place other considerations ahead of their individual financial or material interests, and laws do not work unless the vast majority of the population comply with them voluntarily. Ultimately, the underlying support of the people for anti-corruption measures must be aroused by appealing to broader, more general interests and beliefs. Specific appeals will vary from one country or culture to another, but may include the following elements to varying degrees.

⁴³ Ensuring that corruption-related expenses, such as money used for bribes, is the subject of the OECD recommendation discussed in Part 4.V.C.3, above. Regarding the taxation of corrupt income, countries take a range of approaches. In some, such income would be considered subject to outright confiscation as the proceeds of crime. In others, it would also be considered as taxable income regardless of its origin, and in cases where its criminal origin could not be proved.

Appeals to moral values. In some societies moral values are considered absolute, deeply rooted in national history, culture or religious beliefs, while in others, they embody a more utilitarian, social concept. In one case, it will be important to persuade people that corruption, both in general and in its specific forms and manifestations, is wrong. In the other, it will be important to persuade them that it is bad for society as a whole, and in consequence, for them as individuals.

- Appeals to patriotism or nationalism. Those who support their countries for these reasons will generally oppose corruption and support anti-corruption measures if the real and potential harm corruption causes can be demonstrated.
- Appeals to culture. Cultural values form the basic standards and norms, which govern the behaviour of people who live in groups, whether these consist of small, remote groups or large metropolitan cities. They tend to be constantly evolving, and in environments where corruption is endemic, they may well actually support corruption or help its practitioners to rationalize their behaviour. Ultimately, cultural values which suppress corruption must be encouraged, and those which may favour or support it must be confronted.
- Utilitarian appeals. Ultimately, the support of many populations will depend on the ability of their governments and others campaigning against corruption to convince them that the benefits of eradicating corruption far exceed those which they might derive from corruption itself.⁴⁴ A major challenge in this regard is that the benefits of corruption are generally directly and immediately apparent, whereas many of the costs are often hidden or remote. It is particularly problematic in dealing with those who profit directly from corruption, who derive the benefits directly while the associated costs are borne by others. It is nonetheless both possible and important. Where corruption is pervasive, everyone suffers, even the corrupt themselves. This is one reason why those involved in “grand corruption” cases usually seek to move their proceeds and ultimately themselves to countries which do not have the effects of such corruption.

⁴⁴ Regarding the messages and arguments, see Part 4.IV.B.2, above.

B. Criminal Law

1. *Criminal offences and punishments*

Article 30*

Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.
3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.
6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.
7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:
 - (a) Holding public office; and
 - (b) Holding office in an enterprise owned in whole or in part by the State.
8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.
9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.
10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

* UN CONVENTION AGAINST CORRUPTION

As noted in Part 2 of this Guide, there is no universal agreement as to all of the various forms of conduct which may constitute “corruption”, and the range of conduct under discussion is far too broad to permit the adoption of a single criminal offence of corruption. There is, however, broad consensus internationally and within the criminal justice systems of most countries that many specific forms of conduct are corruption and that they should be made

the subject of criminal offences. Common examples of this include passive and active bribery, some forms of fraud, extortion and embezzlement.

In some cases conduct may be considered as “corruption” but not criminalised, or be criminalised but not seen as corruption. Some countries do not consider private-sector activities such as the collusion of competitors to fix prices, embezzlement, or bribery which does not seek to influence public administration or functions to raise a sufficient degree of public interest to warrant enacting a criminal offence. Others, which consider corruption a public-sector problem only, might criminalise these activities, but not see them as falling within the national anti-corruption strategy.

The definition of “criminal law” is also somewhat elastic. In many countries, classes of administrative or regulatory offences have evolved which employ the basic mechanism of the criminal law, but with a much lower level of moral culpability and stigma, and with far less harsh punishments. Federal constitutions which allocate the power to enact criminal law between levels of government and other constitutional constraints such as human rights protections and procedural safeguards also exert an influence on the subject-matter of the national criminal law. In its most general sense, however, the criminal law includes any legal framework in which offences and punishments are used to secure compliance with public policy, and any related procedural law, and for the sake of universality, it is this understanding of “criminal law” which is employed in this section. In some cases, the inclusion of relatively minor offences and penalties overlaps with disciplinary proceedings, such as sanctions imposed by professional bodies or dismissal for failing to meet ethical standards imposed by employment contracts. These will be dealt with separately under civil law controls. While legislation is not always needed to implement crime-prevention policies, such legislation will also be considered as “criminal law” where it exists.

Criminal law policy initiatives may come from many sources, and few if any countries will be starting from a complete absence of criminal law in beginning anti-corruption strategies. One major source of offences is international law as set out in the instruments of the preceding section, many of which require the criminalisation of conduct such as passive and active bribery. Other international instruments and documents do not compel the adoption of offences, but make useful recommendations as to what forms of conduct can be criminalised and in the case of model legislation, how offences and related provisions could be drafted. Further input can be found in legislation of other countries, by consulting the governments and their experts, or under the auspices of intergovernmental, international or regional organisations such as the OAS or OECD. The major advantages of international or foreign sources include access to the experiences of other countries in drafting, enactment and criminal precedents or case law, and international consistency, which is often important to support extradition, mutual legal assistance and other forms of cooperation in transnational corruption cases.

Within each country, technical expertise is needed to formulate each offence in a way which is clear and certain enough to support investigation and prosecution and withstand the criminal appeal process. More fundamentally,

offences must be created and defined in a manner which is clearly understood by the population, who will be presumed to know the law and expected to comply with it.⁴⁵ In many cases, this may require not only clarity of language, but the use of concepts which link the anti-corruption elements of offences to established cultural values and legal norms.

Taken as a whole, anti-corruption offences should cover the entire range of corrupt activities, and may also include related conduct such as aiding, abetting, conspiracy, attempts and related offences such as those related to money-laundering. In many cases, related concepts will have to be developed and refined to a degree of certainty sufficient to support the criminal law. Offences of failing to meet standards of public service conduct, for example, must be supported by clear and concrete standards set out in a legal format and disseminated to public servants. Offences of failing to disclose income or assets must be supported by comprehensive disclosure schemes and means of identifying and assessing non-compliance.

A package of anti-corruption offences must also fit within the overall framework of a country's criminal law, and those responsible for developing amendments should bear in mind the possibility that existing offences may already address some forms of corruption, requiring only adequate enforcement. Fraud offences which apply to abuses of public office should be consistent with more general fraud offences, for example. As a general rule, specific anti-corruption offences should be considered only where existing legislation is inadequate: the creation of additional, redundant offences may add unnecessary complexity, only confusing populations and legal practitioners and eroding compliance. As noted above, consistency with the laws of other countries is also an advantage, particularly in dealing with cases of transnational corruption.

In many criminal justice systems the principle that the State has the burden of proving guilt and the establishment of a standard of proof which is stricter than that applied to non-criminal matters are regarded as fundamental safeguards against wrongful conviction. Anti-corruption measures recently adopted in some countries have eroded this principle, creating offences relating to "unexplained wealth" on the part of public officials or former officials. Supplemented by mandatory disclosure requirements, these attach criminal liability to the presence of unaccounted-for wealth, effectively presuming that corruption offences were committed and placing the burden on the official involved to prove that they were not committed by proving that the assets came from lawful origins.⁴⁶ These are without doubt effective as deterrence measures and in removing corrupt officials, but they also raise significant risks of wrongful conviction and the harm caused by the initiation of criminal proceedings in cases where they would not otherwise have been sustainable and where the official in question proves subsequently to be innocent.

⁴⁵ *Ignorantia legis neminem excusat*: "Ignorance of the law excuses no one".

⁴⁶ For example, Hong Kong Prevention of Bribery Ordinance Section 10; Botswana Corruption and Economic Crime Act, Art. 34; Organization of American States, Inter-American Convention against Corruption, Art. IX; National Law of the Republic of Indonesia on combating the criminal act of corruption No. 31/1999, Art. 37

As civil law and common law courts are dealing with the issue of illicit enrichment there is a need for this guide to describe the unjust or illicit enrichment mechanism accurately.

Article 20*
Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

* UN CONVENTION AGAINST CORRUPTION

There is disagreement among the member states regarding to what extent the unexplained wealth measures have eroded the principles that the state have to prove the accused guilty. In some member states this statement could not be made unless a law says that upon being charged, the defendant has the burden of proving innocence. Some member states would require that a trial the defendant would begin the proceedings by offering proof that he or she has lawful sources for all of his/her wealth. Some member states would think that this could never happen and for that reason they think this issue should not be included in this guide.

In evidentiary terms what such statues do is to define the Government's burden of proof of the crime of unlawful enrichment (not of specific act of bribery, extortion or embezzlement) as consisting in serving in public office, having a certain lawful salary or reporting a certain of lawful incompatible with the lawful or reported income. That is the Government's burden of proof and a trial will in most member states being with the prosecution offering the documents and witnesses necessary to satisfy it. Normally an element of the these type of offences, which are the standard way tax evasion is proved in many countries, or a tactical choice by the prosecution, will also be to show a probable source of such wealth, for example that there were suspicious issuance of licenses, a missing number of passport or visa forms, an unexplained inventory loss of valuables under the defendant's supervision.

Legally the issue is not that the burden of proof is being reversed, because constitutionally it could not be reversed and in an evidentiary sense that is not being done. What is happening is simply that different elements are being established in a new offence with which some people are uncomfortable. Whether or not such an offence is "fair" depends on legal technicalities, not on an erroneous claim that the burden of proof is being reversed. Those legal technicalities depend on issues such as whether the Government's burden of proof is required by statute or judicial interpretation to include a prima facie case of negating other lawful sources of income such as loans and inheritances, whether there is statutory language or interpretation expressly requiring the defendant to forfeit the right to silence and to personally explain the increase in wealth or whether the explanation can come from other sources, which would be the way almost any judge would interpret such a law,

and whether the conclusion which is drawn from unexplained wealth is stated as a permissible inference (the safest and most conservative legal approach),, a presumption (which factually is probably the most accurate interpretation but legally riskier), or a conclusive, irrefutable presumption (which would be unconstitutional and/or a violation of the rule of law in many member states, but is not a real risk, since these laws always permit the possibility of an explanation).

It is important is to get past the simplistic equation that the burden of proof is being reversed simply because the elements of a crime have been defined so that a defendant will probably be convicted if he or she does not explain incriminating circumstances. A bank robber who is arrested outside the bank in possession of the mask, robbery note, gun and marked bank money will be convicted if the defense does not find some deficiency in the prosecution's proof or come up with an explanation sufficient to raise a reasonable doubt of guilt, but no one says that the burden of proof has been reversed in those circumstances. Public official are regularly convicted of tax offences based upon unexplained wealth, and no one seriously complains about a reversal of the burden of proof.

Two options may be open to legislators across all the different legal system seeking a balance between these two extremes. The *first* is to place the burden of proof on the official, but to require a relatively low standard of proof, effectively transferring some of the evidentiary burden back to the state. Thus in common-law systems where the State must usually prove guilt beyond a reasonable doubt, for example, the official in such cases might be required only to raise a reasonable doubt as to the origins of the assets rather than having the complete burden of proving their lawful origin. The *second* is to maintain the full burden of proof on the official, but not to apply the full force of the criminal law or the full severity and moral stigma of criminal punishments. Thus officials who acquire unexplained wealth might face consequences such as civil proceedings to confiscate the assets, discharge or disciplinary measures, prohibition from future office, or ineligibility for government contracts, for example.⁴⁷

The actual range of substantive criminal offences which may be adopted includes the forms of corruption set out in Part 2.II of this Guide, as well as those established by or listed in the international instruments and documents set out in Part 4.V, and any offences which may be developed nationally to deal with specific domestic problems.

Offences to address specific forms of corruption may include:

- Passive and active bribery and similar conduct;
- Extortion, the solicitation of bribes or other rewards, and similar conduct;
- Some forms of fraud, particularly those which exploit public positions or offices;

⁴⁷ For example, Italian Law No. 575/ 1965.

- Improper practices in the allocation of public resources, including public employment;
- Misuse of public property or information for private gain, advantage or other purposes;
- Improper political contributions; and,
- Private-sector malfeasance such as price-fixing and insider trading.

Offences which address other conduct associated with corruption may include:

- Illicit transfers, conversion, concealment or “laundering” of the proceeds of corruption;
- General failure to comply with codes of conduct or ethical standards established by law;
- The use of improper accounting practices, such as the creation or maintenance of “slush funds” which can be used for corrupt purposes without creating records of this;
- Falsification of or failure to disclose income or assets as required by law;
- Failure to accurately disclose political contributions as required by law; and,
- Failure to disclose potential conflicts of interest or failure to avoid or address such conflicts as required by law.
- Offences which protect or support the criminal justice process in corruption cases include:⁴⁸
- Offences relating to the improper disclosure of information such as the nature or existence of investigations or the identities or statements of informants;
- Offences relating to the obstruction of justice or corruption of the criminal justice system, such as the bribery or intimidation of officials; and,
- Offences relating to the falsification of records, failure to keep adequate records or failure to make records available to auditors, inspectors or law enforcement personnel as required by law.

Regarding punishment, little need be said apart from the fact that sanctions developed by legislatures and imposed by the courts should be proportionate to the criminal offences involved, which in the case of corruption range from

⁴⁸ Many of these offences are redundant with general corruption offences or other offences already established in the criminal legislation of most countries, and as noted, the enactment of redundant offences should generally be avoided. Where the conduct is already a crime, consideration might be given to aggravate sentencing requirements. Bribing a judge may attract a more severe sentence than bribing a minor official, for example.

relatively minor infractions to the massive “grand corruption” cases termed “economic plunder” by some countries. In minor cases, sentencing should generally take account of policies such as rehabilitation in addition to retribution, and in major cases it is important that the need to consider the full costs of the corruption be considered. In many cases, this will involve not only monetary calculations but also the human costs associated with poor or dysfunctional social, economic, legal and other systems.

The fact that many corruption cases involve corporations or other forms of legal person also raises punishment issues, and many of the international legal instruments examined in section V of this Part contain articles intended to ensure that legal persons do not escape liability. Generally corporate liability must focus either on the economic interests of the company and its owners or shareholders, or on the extension of individual liability, and individual punishments, to those who have control of or responsibility for the actions of the company. Apart from fines and the forfeiture of proceeds, most of the sanctions which can be applied against legal persons are more commonly associated with civil proceedings. These could include such things as court orders excluding the company from specific or general dealings with government, the rescission of legal contracts, and orders excluding the company’s shares from trading on stock exchanges. Punishment of individuals can include the same options as for any criminal offenders. The most common are fines or imprisonment, but more specific orders, such as conditions of probation, banning individuals from participating in certain activities, excluding them from employment at the company, or prohibiting them from associating with other individuals are also options.

The other major sanction which may be imposed in corruption cases, whether the offender is a natural or legal person, is the confiscation of proceeds or other property or assets which are derived from proceeds. Legislation in this area often straddles the boundaries between civil and criminal law and between criminal sanctions and procedures. Legislative frameworks commonly include elements of substantive criminal law in setting out sanctions, criminal powers and procedures for tracing, freezing, seizing and recovering assets, and elements of civil litigation, in that victims may play a role in the proceedings and have an interest in compensation for damages the repayment of direct losses.

Article 35*

Compensation for damage*

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

* UN CONVENTION AGAINST CORRUPTION

Issues and options for dealing with the proceeds of corruption will be discussed in more detail in a specific section, below.

2. *Criminal procedure: investigative and prosecutorial powers*

The various techniques which may prove useful in investigating and prosecuting corruption cases have been described in Part 4.II.A and will not be reviewed in detail here. From a legislative standpoint, legal powers must be in place to enable investigators to employ appropriate means to detect criminal corruption, in cases where it is suspected to gather evidence against suspects, and to present that evidence effectively in court. This requires powers which will generally not be different from those employed by criminal investigators in general: powers of arrest, search and seizure, powers to conduct undercover operations such as “integrity testing”, and powers to conduct electronic surveillance. As noted above (Part 4.II.A.2-3) provisions encouraging victims, witnesses and even offenders to cooperate with law enforcement in corruption cases and protecting their security, anonymity or other threatened interests are also important.

To deal with transnational cases, additional legal provisions and administrative structures must be in place to generate mutual legal assistance and extradition requests, and to be in a position to respond to similar requests from other countries. In this area, it is important that international standards be considered: a significant problem identified in major transnational corruption cases is that supporting information furnished by requesting countries does not meet the legal standards required by the requested country before it can provide the assistance requested.⁴⁹

As noted, these legal powers will not generally be different from those established to deal with other forms of crime, but some areas of existing law may require amendment or adjustment to ensure that they will be effective in corruption cases. Intrusive law enforcement powers are usually accompanied by procedural safeguards and human rights protections to minimize the possibility of harm to those not actually involved in corruption, and the balance between safeguards and effective powers must be a major consideration in developing amendments. As noted above, for example, any reversal of the presumption of innocence raises such concerns. Another area is raised by requirements that public officials disclose personal information or allow inspections or audits of personal finances in the absence of specific information linking them to corruption or other crimes, which may have to be reconciled with individual rights against self-incrimination or unwarranted search and seizure. The nature of major corruption investigations may also require some review of legislation to ensure that such things as financial records, bank accounts, and computer communications and storage media can be searched effectively, and that evidence obtained from them can be verified and admitted as evidence in the criminal courts.

⁴⁹ In this area, reference to the United Nations Convention against Transnational Organized Crime, A/RES/55/25, annex, which contains detailed provisions dealing with extradition, mutual legal assistance and other forms of cooperation may be useful. In some corruption cases, these rules will actually apply, since article 9 of the Convention establishes corruption as a Convention offence.

3. *Confiscation of the proceeds of corruption*

Article 31*

Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:
 - (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
 - (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.
2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.
4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.
9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.
10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

* UN CONVENTION AGAINST CORRUPTION

Legislation which provides for the tracing, freezing, seizing and forfeiture of funds or other assets which are derived from the proceeds of corruption are a powerful weapon in anti-corruption strategies because they target the essential motivation of corruption, economic gain. As noted above, legislative schemes often combine elements of criminal law, criminal procedure and civil or administrative law, which create options flexible enough to deal with a range of corruption scenarios. If there is sufficient evidence to prove that corruption has occurred and that particular assets are derived from it, for example, it may be possible to target the proceeds even where it is not possible to prosecute offenders. Some national frameworks also allow for proceeds to be targeted either by victims or the State in civil proceedings,

which may carry a lower burden of proof than those required to apply criminal prosecutions and punishments.⁵⁰

Some countries have also enacted legislation allowing for confiscation of assets in the possession of a public official which cannot be accounted for as having come from legitimate sources of pre-existing wealth or present legitimate income.⁵¹ A less-drastic but similar policy is to impose an onus to establish lawful origin or to create a reasonable doubt as to illicit origin, an approach taken by the recently adopted United Nations Convention against Transnational Organized Crime.⁵² In policy terms, it is argued that it is the official who is in the best position to account for the assets, but in legal terms the same concerns exist as for the presumption of criminal guilt (above) in such cases. To the extent that confiscation of assets by the State is considered a criminal penalty, the concerns about infringement of legal rights and the need for appropriate procedural safeguards must be taken into account. Where adequate safeguards are in place, however, a reversal of onus or partial reversal of onus represents an effective measure. The Convention, for example, contemplates preliminary steps to ensure that the assets in question are "...liable to confiscation..." in some way and that the person being obliged to demonstrate their lawful origin is "an offender". One option in such cases is to allow for a *partially reversed burden of proof or a reduced burden on the State* only where an offender has been convicted of the offence which generated the original proceeds.⁵³ Some member states will these kind of statements by the simple rule - who puts on the prima facie case to open the trial, the prosecution or the defendant? If the prosecution has the burden of proving conduct which is recognizably harmful to society and intentional, and the defendant can contest that evidence by reliance on deficiencies in the Government's case, by cross-examination, by presenting documents, witnesses or his or her own testimony, then the criticism is not that there is a reversal of the burden of proof, but that a crime has been legislatively defined which some people do not think ought to be penalized.

⁵⁰ In the United States, some statutes allow for confiscation on a civil basis, which entails a lower burden of proof, effectively placing an onus on the owner to establish legitimacy once the State has established probable cause or a probability that the property is the proceeds of crime (see 31 USC §5316), but this has also been strongly criticized as violating rights of property and the presumption of innocence. Italy allows for special administrative procedures for forfeiture and confiscation of assets independently of criminal conviction. There, property owned by any person suspected of participating in Mafia-type associations can be confiscated if it cannot be accounted for from legitimate sources or if it can be established by evidence that it derives from illicit sources, if the owner cannot establish legitimate origin (see Law #575 of 31 May 1965, article 2^{ter}).

⁵¹ German Criminal Code Art. 73d, Singapore, Corruption Confiscation of Benefits Act, Art. 5; Art. 34a Norwegian General Civil Penal Code

⁵² A/RES/55/25, annex. Article 12, paragraph 7 provides that "States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation..." to the extent consistent with domestic law and the nature of the proceedings.

⁵³ This is the framework applied by Canada, for example. See Criminal Code of Canada, R.S., c. C-34, sections 462.37 (forfeiture on balance of probabilities where offender convicted) and 462.38 (*in rem* forfeiture requiring proof beyond a reasonable doubt where offender not convicted and unavailable).

4. *Money laundering laws*

Money laundering does not fall within the ambit of corruption *per se*, but measures which make it difficult to transfer or conceal the proceeds of corruption, usually with a view to preventing their confiscation (above) also have obvious potential as an element of anti-corruption strategies. Anti-money-laundering laws generally target practices which are used or intended for use in concealment, create investigative powers to trace, identify, freeze, seize and ultimately confiscate money or assets which are the proceeds of crime or are derived from the proceeds of crime. In many countries, assets which are “instrumentalities” – used in some way in the commission of crime – may also be targeted. Generally, money-laundering powers and provisions require the establishment of a crime or “predicate offence” with which the targeted funds, assets or property must be linked in order to invoke them. In countries where these are listed, it is important that the full range of corruption-related offences, such as bribery, extortion, fraud and theft, be included on this list. Since the provisions are generally linked to the proceeds of crime, they will not apply to forms of corruption which are not criminalised in the country concerned, and may not apply in transnational cases involving such countries. Specific provisions against money laundering may include the following.

- Criminal offences related to the transfer, conversion or concealment of proceeds. These usually require either some intention to conceal or deceive, or knowledge on the part of the offender that the assets involved were derived from crime.
- Investigative powers to trace, search for, seize, freeze and confiscate proceeds.
- Criminal punishments in which fines equal to the proceeds may be imposed as an alternative to confiscation.
- Provisions intended to ensure transparency in financial dealings, such as reporting of suspicious transactions, “know your customer” requirements and limits or exceptions to bank-secrecy or anonymity provisions.
- Regulations requiring certain transactions to be structured in ways which ensure proper identification of the parties and the keeping of records. Actual requirements may depend on the type of transaction involved. Examples of problem transactions often involve electronic media that allow transactions to be conducted anonymously or the purchase and sale of high-value commodities such as precious metals or gemstones which can be easily smuggled and which are difficult to trace.

C. Civil law and civil litigation provisions

Civil law, in which those who suffer economic or other damages from corruption are permitted, encouraged or authorised to seek compensation in the form of civil damages from offenders or others found to be at fault may also be a viable element of national anti-corruption strategies. This is the central policy of at least one international instrument, The Council of Europe’s Civil Law Convention on Corruption (discussed in Part 4.V.D.2, above). Civil litigation has the advantages of a reduced burden of proof, and the fact that it

is generally self-enforcing. There is some loss of control on the part of government agencies, however, and from a policy standpoint civil remedies lack the deterrent effect and moral stigmatisation of criminal laws in general and the prosecution of criminal charges against specific individuals in specific cases. Other problems include the potential for conflict or inconsistencies between private civil proceedings and State criminal prosecutions and the fact that many victims of corruption are targeted because they are vulnerable, and are therefore not usually in a position to retain legal counsel and sue corrupt officials. Civil litigation may be useful in areas where this is less likely to be the case, such as high-level or corporate corruption cases.

The nature of civil proceedings makes a State role in bringing or maintaining proceedings relatively unlikely, but governments may choose to enact legislation establishing civil causes of action or grounds to sue, setting out any specific rules of evidence or procedure which might be needed for corruption cases, and legal rules for the calculation of damages. Damages might be calculated and awarded on the basis of the profits of the corruption, or for greater economic deterrence, on the basis of the harm suffered by the victim(s), which may be considerably greater, or even on a punitive basis. In some systems, provisions allowing for class actions, in which many victims of corruption can pursue their claims in a single action, may also prove useful.

D. Other laws

1. *Administrative laws*

Administrative law requirements such as fairness and natural justice requirements can often be useful against corruption because they provide an additional opportunity for victims to challenge abuses and obtain remedies. They resemble civil litigation in that most cases arise from and are driven by victim complaints, but where civil courts are often limited to the remedies associated with civil damages, administrative rulings can go further, reversing corrupt decisions, and in some cases imposing anti-corruption remedies which go beyond the case actually before the tribunal or court. The actual nature of administrative law and the nature and scope of remedies available depend on the nature of the legal system in which they arise, and where determined by the legislature, by enacted legislation. In this sense, anti-corruption strategies may well choose to include legal elements ensuring that judges have powers to review the decisions of officials on specific and general grounds, and providing the substantive and procedural basis for administrative actions by victims of corruption. In many specific areas, non-judicial or quasi-judicial tribunals can also be established to hear and adjudicate claims. More generally, rule of law initiatives may be needed to ensure that a competent and independent legal and judicial infrastructure is in place to support these mechanisms.

2. *Access to information laws*

As noted throughout this Guide, one of the most powerful instruments for combating all forms of corruption is transparency. As part of broader transparency initiatives, many countries have now adopted freedom-of-information laws, which give those in the private sector a right to obtain and

review information held by governments and their agencies.⁵⁴ If drafted carefully and implemented properly, such requirements provide those claiming to be victims of corruption with an important opportunity to obtain the evidence needed to pursue civil or administrative claims. More generally, the knowledge that most government-held information cannot be concealed is a powerful deterrent for many forms of corruption, because these cannot be committed without creating incriminating records. Even if a corrupt official manages to falsify or omit a record which would show that he or she made a corrupt decision in a particular case, for example, a review of all of the decisions made by that official might very well show a pattern suggestive of corruption. Non-governmental organisations concerned with corruption and other subjects which involve close scrutiny of government initiatives, the media, opposition political factions and others often develop considerable expertise in identifying and claiming access to critical information, a powerful instrument for ensuring that such scrutiny takes place.

There are some cautions in developing such laws, however. Most governments consider information relating to vital security, economic and other interests as confidential, and citizens could suffer harm if such information was made public. Organised criminal groups and others who pose a threat may seek to use information requirements to obtain such information, and structuring provisions which set out the types of information which may be obtained and those which may not can be a difficult exercise. The administration of systems to identify and provide requested information can also prove unexpectedly complex and costly, drawing scarce public service resources away from the actual provision of substantive services.

Access to Information Laws may embody the following basic elements.

- Requirements that government agencies publish annual reports or similar documents providing basic background information on such things as mandates, powers, functions, budgets and actual activities undertaken.
- A legally enforceable right to obtain any information held by the government or its agencies, enforceable either in the courts or in an administrative tribunal from which an appeal to the courts can be made.
- A list of categories of information which the government can refuse to disclose and a procedure for doing so. Common categories include such things as defence or national-security related information, sensitive economic information, information provided to the government on the condition it not be disclosed, privileged information such as political or legal advice, and private personal information.
- Powers for individuals to access information about them personally, and to challenge and alter inaccuracies in that information.

⁵⁴ See, for example, Australia, New South Wales, Freedom of Information Act 1989; Canada Access to Information Act, R.S. 1985 c. A-1, Ireland, Access to Information Act, 1997; Sweden, The Freedom of the Press Act; Uganda, Right of Access to Information, Article 41 of the Constitution of Uganda, 1995; United States of America, Freedom of Information Act, Part 552 of Title 5 (U.S. Code).

- The establishment of independent bodies to provide for reviews of the adequacy of disclosure, appeals against refusals to provide access and other matters.
- Mechanisms intended to ensure and monitor compliance on the part of public officials. These may range from major or minor offences to disciplinary powers, judicial powers to order independent reviews of records and disclosure, and periodic review by independent commissions, legislative or other bodies. One safeguard against partisan political biases is to ensure that public reports are made directly to legislatures or legislative committees in which all political factions are represented.

VIII. DEALING WITH THE ILLICIT TRANSFER OF PROCEEDS

A. Introduction

In many cases, the problems of tracing, freezing, seizing and confiscating the proceeds of crime are complicated in major corruption cases because the proceeds of corruption are transferred out of the country where the corruption has occurred. This is particularly true in “grand corruption” cases, where officials at the highest levels may be involved and total proceeds are often counted in the billions of dollars.⁵⁵ One of the effects of such corruption is to make local economies too unstable and insecure even for investment by corrupt officials. The amounts involved are also often too large to conceal in one place, and are vulnerable to seizure in the country where the corruption took place if the official involved or the government itself are replaced. For these reasons, corrupt senior officials usually seek to export substantial amounts to “safe havens” where they can be concealed and shielded from attempts to recover them and to use the proceeds and related records as evidence in criminal prosecutions. They may also seek to disperse the proceeds among many countries and investments, both for security and because the amounts are too large to conceal in any other way.

While some aspects of such cases resemble more common forms of corruption except in scale, other aspects raise unique issues which require examination in this Guide. To some extent any consideration here must be of a preliminary and general nature: in the year 2001, a number of cases are ongoing, many critical problems remain unsolved, and efforts in the international community to address the problem in a more systematic manner remain ongoing. The unique nature of the cases also means that while commonly arising problems can be identified here, the solutions to those problems will often have to be arrived at differently in each case. In December 2000, the United Nations General Assembly called for increased international cooperation in preventing and addressing illegal funds transfers and the repatriation of illegally transferred funds to their countries of origin. The Assembly also called for consideration of this problem as part of the process of developing the proposed United Nations Convention Against Corruption.⁵⁶ The following section contains a general overview of some of the major problems frequently encountered, and which investigators and others involved in such cases should be prepared to deal with.

⁵⁵ Between 1995-2001, Haiti, Iran, Nigeria, Pakistan, the Philippines, Peru, and the Ukraine have claimed losses ranging from \$500 million - \$35 billion due to the corruption of former leaders or senior officials.

⁵⁶ A/RES/55/188 of 20 December 2000. See also A/RES/55/61, calling for the negotiation of the Convention itself. As called for in resolution 188, an open-ended intergovernmental group of experts met in Vienna to consider terms of reference for the instrument, which terms include consideration of the problems of recovering illicitly transferred assets. See the Report of the expert group, A/AC.260/2.

B. The investigation of “grand corruption” cases and the tracing, confiscation and return of assets derived from such cases

Generally, asset-recovery cases of this nature involve several major stages. The proceeds must actually be located and identified by tracing them to the countries in which they are hidden and the forms, such as real estate or other investments, to which they have been converted. Once identified, a series of legal proceedings in those countries will be needed to “freeze” the assets to prevent dissipation, further concealment or transfer to a further “safe haven”, and to seek their confiscation. Obtaining these remedies, which can have serious consequences for the owners of the assets, generally requires that their criminal origin be established and that the funds be linked to that origin. Once criminal origin has been proved, further legal proceedings or negotiations may be needed to secure the return of the assets. A number of major obstacles must be surmounted in order to achieve these results.

The first obstacle which confronts those called upon to investigate these cases is their enormous size and complexity. Mounting an effective investigation requires a sustained effort from a team including experts in a number of key areas. Investigators will often require support from experts in forensic accounting, money-laundering, and the civil and criminal laws of a number of different countries. Coordinating the work will require effective management skills, and good communications between teams of individuals working on different aspects of the case or in different countries.

A second, related problem, is the high cost of successfully completing such cases. Apart from the retainer of the necessary experts, most such cases will require the carrying out of investigations and the prosecution of civil or criminal proceedings in a number of foreign countries, and costs associated with the transfer of evidence, such as language translation and the travel of witnesses. Some costs may be mitigated by other countries from whom assistance is requested, or in the form of technical or legal assistance from other countries, but even with assistance, costs are likely to be substantial, and the actual recovery of the proceeds is never certain.

A third issue may arise from political considerations both within the country seeking to recover the proceeds and in the countries from which various forms of assistance are sought. The country seeking recovery may face internal political obstacles to gathering the evidence needed to establish criminality on the part of former leaders or senior officials, while in most cases international cooperation is contingent on criminal proceedings or a criminal conviction. The assets sought can only be recovered as the proceeds of a crime if a crime can be proved. The countries from whom cooperation is sought may also have concerns about the political or legal legitimacy of the requesting government, whether proceedings are being pursued for legal or political purposes or about whether the corruption which generated the proceeds may still be continuing. Countries preparing such requests should be prepared to address such concerns. In some cases, legislative and judicial reforms may be needed to ensure a valid basis for the domestic legal proceedings on which requests for foreign assistance are based.

A fourth and related issue which must often be addressed by investigators or legal counsel in such cases is the relationship between civil and criminal proceedings. Governments must generally consider whether the fundamental objective is to prosecute and punish corruption offenders or to recover the proceeds, or some combination of both. Civil proceedings offer a lower burden of proof in most countries, but can only lead to recovery, and in many cases evidence gathered and used in a civil case may not meet the higher standards needed for a criminal prosecution or the extradition of offenders. A related factor, as noted above, is that, while the requesting country can usually retain counsel and sue in a foreign court if it wishes, most forms of cooperation on the part of foreign governments are limited to criminal proceedings.

A fifth issue is the need to coordinate and reconcile legal proceedings which may be ongoing in a number of different countries simultaneously or in sequence. At the investigative stages, simultaneous actions to search for and seize evidence and to freeze assets may be required in order to ensure that action taken in one country does not alert the offenders, giving them an opportunity to move or conceal assets in other countries before action can be taken there. In later stages, civil and criminal recovery efforts in different countries may require coordination to avoid unnecessary duplication and ensure that evidence obtained in one country will be admissible in the proceedings expected in other countries where it will be needed. As noted, one common problem is that evidence obtained by civil means may not be admissible in criminal proceedings in some countries. This will usually require close coordination between legal experts in each of the jurisdictions in which the case is ongoing, and the rapid addition of new experts as new jurisdictions are identified during the investigation.

Even if criminality is clearly established, electronic surveillance and other intrusive investigative methods may not be available in some countries, or may not be available for use in response to foreign assistance requests. In some cases, legislation protecting privacy and bank or financial secrecy may also be an obstacle. Increasingly, countries are recognising the need for these powers in dealing with major transnational cases, and law reforms in these areas will be needed to deal effectively with major corruption cases as well.⁵⁷

⁵⁷ Exceptions to bank secrecy are found in most of the major international instruments against corruption. The United Nations Convention against Transnational Organized Crime also calls for the use of special investigative techniques in transnational organised crime cases. See article xxxx.

IX. THE MONITORING AND EVALUATION OF ANTI-CORRUPTION STRATEGIES

A. Introduction

It is important that national anti-corruption strategies make provision for monitoring and evaluation. The establishment of a regular monitoring process is important as a means of identifying, deterring and taking account of non-compliance. It is also essential as a means of making periodic assessments of the overall strategy and of specific elements so that adjustments can be made. Properly conducted, assessments should serve not only to identify areas where adjustment is needed, but also to provide essential information for the substantive design of new strategic elements and the modification of existing ones as necessary.

As noted,⁵⁸ national anti-corruption strategies should be developed and implemented with a view to ensuring effective monitoring and with a philosophy which supports the reassessment and modification of elements of the strategy as suggested by the results obtained. In a comprehensive strategy, some strategic elements will usually be developed on the assumption that they will be implemented on a permanent and ongoing basis. Examples include such things as criminal offences and ongoing codes of conduct for officials. Other elements of the strategy, such as the initial development of codes of conduct and initial training of officials, will be primarily temporary or transitional in nature.

Assessments of the ongoing effects of these elements will be important for the modification of both types, and for making decisions about when and how to switch from short-term to long-term elements. Codes of conduct, for example, might evolve through three stages: their initial development in consultation with public servants; intensive programmes for their initial publication, dissemination and training among all public officials, many of whom may be unfamiliar with the basic concepts involved; and later programmes which seek to maintain understanding and support for the codes among public servants and which focus more intensive efforts on the training of new employees.

Specific monitoring or review mechanisms range from the regional or global structures established by many of the international legal instruments to national or local ones. They may address anti-corruption measures in general or be targeted at specific areas of particular concern such as government contracting or employment. In many cases, structures set up as more general safeguards, such as courts or administrative tribunals, find themselves monitoring corruption as part of a broader mandate. The decisions of criminal courts in corruption cases function in part as a check on the effectiveness of criminal offences, for example, highlighting legislation which may require amendment and often suggesting specific amendment options. Monitoring mechanisms may also be governmental in nature or independent of government, such as those of the non-governmental organisation Transparency International or corruption-watch programmes established by the broadcast or print media in some countries.

⁵⁸ Part 3.B, above.

Methodologies can also vary widely, ranging from purely *ad-hoc* compiling of cases reported to the monitor, to systematic surveys of those who use a particular service, those who provide it, or both, to more intrusive audits, inspections or criminal investigations and the general system for gathering and disseminating criminal statistics. To gain an accurate assessment of the overall profile of corruption, it will generally be important to employ several different methods, so that statistical or sampling biases or other errors inherent in any one method will be corrected by the others. Public awareness and discussion of the results of assessments is also important, on a pluralistic and informed basis. Independent commentators from sources such as the academic and media sectors often play an important role in this process. Sudden increases in the volumes of corruption cases, for example, could indicate an actual increase in corruption, an increase in vigilance and therefore the reporting of existing levels of corruption, or changes in the way corruption is defined and the statistics are compiled and published.

B. The measurement and quantification of corruption

Quantifying corruption represents a difficult challenge in most cases for several reasons. Gathering accurate information is made difficult by the covert nature of the activities involved and the fact that both parties to a corrupt act usually have a motive to conceal it. Both the gathering and assessment of information are also made difficult by the breadth of the subject-area and the lack of a single comprehensive definition. Where information is tabulated on the basis of more specific definitions, such as the legal definitions of criminal offences, gaps and areas of overlap occur, and statistics may vary depending on whether cases were reported, prosecuted and whether a conviction resulted.

It is important that efforts be made to quantify corruption, however. Overall assessments of the extent of corruption and its true costs to society are important in developing public support for anti-corruption reforms and developing popular cultures and expectations which demand corruption-free public administration and which trigger fast and effective action when corruption occurs. At a more detailed level, comparisons of quantitative data provide assessments of the relative seriousness of particular forms of corruption or corruption in particular areas of public administration or the private sector, which assists in setting priorities for both proactive and reactive countermeasures. The periodic gathering and assessment of quantitative data are also important for establishing early “base-line” information against which later progress can be compared, both in the general implementation of strategies and with respect to specific areas.

C. The use of surveys and the “service delivery survey” model

In many strategies a key element for gathering data will be the surveying of key groups. Surveys may be targeted at groups of public officials, specific users of public services, or at the population in general, and in many cases, survey strategies will target different groups in order to identify apparent inconsistencies or inaccuracies due to problems with sampling or reporting. The same groups may also be re-surveyed over time. Asked about the same transactions, for example, corrupt officials may deny or conceal cases of

corruption for fear of liability, and users of a particular service may under-report, either due to intimidation or because they are not aware that what has occurred is a form of corruption. Service-users who are aware of anti-corruption efforts and of protections against intimidation or retaliation, on the other hand, are generally more likely to report cases when surveyed, generating different results as anti-corruption strategies are gradually implemented and understood. Surveys are generally active in nature, identifying specific sample groups and the attempting to obtain information from all individuals in the designated group. Passive, or self-reporting surveys tend to over-estimate corruption, since those who have not encountered it are generally not motivated to submit a report.

One tested and successful survey method is the technique known as the “service delivery survey”, which has been used in over 40 countries over the past decade to gather essential information in many different areas.⁵⁹ It has been used to measure the distribution, impact and costs of land mines, the effects of such things as economic sanctions, environmental actions, urban transport developments, agricultural developments, availability of health services, and the effects of restructuring in the judiciary and other institutions. It has also proved useful in generating community-designed strategies to combat corruption in the public services in several countries. Major benefits include the accuracy of information obtained, the short time frames needed, and the low costs in terms of financial and human resources.

The survey process begins with the selection of a representative sample of communities across the country or within a particular region or district. Local interviewers are trained to carry out the survey, knocking on doors to ask occupants a limited number of well-focused questions about the extent to which they use specified services, and their overall levels of satisfaction. More detailed questions are then used to elicit information about whether corruption is present and if so, which forms of corruption, how frequently they are encountered, and the respondent’s opinions about what should be done about the problem. The use of local interviewers is critical in gaining the confidence of respondents, minimising costs, and ensuring local support for and “ownership” of the results. It is important, however, that interviewers and other local personnel be properly trained with respect to elements of the methodology for which they are responsible. Training should cover such things as the importance of randomness in selecting respondents if interviewers play a role in this; the importance of reassuring respondents about the protection of their privacy and anonymity; and the importance of asking questions in a standard format, to avoid any chance of bias in the responses. Survey questions and methods must also be responsive to local factors such as language, custom or cultural factors, however, which makes it important that local interviewers are consulted before these elements are finalised. Essentially the process involves deciding which questions to ask, consulting local interviewers, finalising the questions and other methods in

⁵⁹ Service delivery surveys originate from a community-based action-research process developed in Latin America in the mid-1980s, known as “Sentinel Community Surveillance”. Since then, similar programmes have been implemented with World Bank support in Nicaragua, Mali, Tanzania, Uganda and Bosnia. With the help of UNICEF and UNDP, they have also been used in Pakistan, Nepal, Burkina Faso, Costa Rica and Bolivia.

accordance with their advice, and then ensuring that all interviewers apply the same questions and methods.

The information is then compiled and analysed from both qualitative and quantitative standpoints. The qualitative analysis might generate a list of the various forms of corruption encountered, and possibly some detailed descriptions of typical examples illustrating, for example, who commonly bribes whom, for what reasons, with what effects and by what methods. The quantitative process then measures the overall numbers of responses to the survey, the overall extent of corruption, and the relative extent of the various forms identified. The establishment of overall responses is essential to provide a basis for the comparison of the data gathered. Knowing that 10 cases of bribery have occurred, for example is not particularly helpful. Being able to establish that 10 of the 20 respondents to the survey, or 50% reported bribery, or that bribery occurred in 50% of all of the cases handled by the service provider being studied., on the other hand provides a valuable assessment of the scope and seriousness of the problem, and a valuable “base-line” for the comparison of data from later surveys taken after anti-corruption programmes have been commenced. Generally, each survey cycle should take from 4-6 weeks, and cycles can be repeated as necessary to monitor the progress of particular measures or to focus on particular areas of public or private-sector activity, bearing in mind that too many surveys of the same population may effectively “contaminate” one another by injecting unintended biases.

Interaction with the communities being surveyed is also important. Feeding information generated by the surveys back to the communities raises awareness of corruption, contributes to higher expectations about the delivery of services, and stimulates dialogue about corruption within households, within communities, and between communities and local authorities. In local communities, where many residents will have been surveyed, a sense of ownership and empowerment is also generated, and with it stronger commitment to anti-corruption measures in everyday life.

Some specific effects associated with past service delivery surveys include the following.

- To the extent that corruption is seen as separating those who deliver services from those who use them, universal surveys bridge the gap. Not only are populations made aware of the nature and extent of corruption, service providers are made aware of the opinions and expectations of those they serve.
- Surveys gather data from all segments of the population, whether they use public services or the particular public services in question, or not. This is particularly important in assessing public opinions about corruption issues, and in drawing all segments of the population into the anti-corruption process.
- Feeding results back into the community which generated them in the first place establishes ownership and commitment to the anti-corruption process, and often generates further information and assessment at the local level.

- The sense of ownership and commitment can be further reinforced by further reporting back to the community about reforms and other measures being undertaken as a result of the survey. In some cases, this has been done using a series of local “change management workshops” to obtain local feedback at each stage of the development process. The result is both high interest and strong support for overall anti-corruption strategies developed in this way.
- Early surveys set a precedent for later stages of the anti-corruption process, in which they will be used to assess progress, fostering support for what this Guide describes as evidence-based and impact-oriented strategies.

Two major types of international monitoring mechanisms are currently in use: those based on international instruments, and those of a more general nature. The major advantage of mechanisms based on international instruments is that they are based on a clear legal framework which usually sets out requirements to comply and delineates the nature, scope and exact methodology of the monitoring required. Such monitoring tends to be confined to the overall scope of the parent instrument (e.g., bribery and related conduct in the case of most of the European instruments), and to the implementation of specific elements of the instrument in question rather than corruption in general. Since the parent instrument cannot easily be amended, the monitoring it requires is generally not flexible enough to evolve with changes in corruption or the perception of corruption, although some texts are more general and adaptable than others. Monitoring provisions are found in most of the international instruments surveyed in this Guide, and such a provision is called for as part of the indicative list of subject matter called for in the proposed United Nations Convention against Corruption.⁶⁰ Actual structure of the monitoring mechanisms varies. The United Nations Convention against Transnational Organised Crime, for example, establishes a Conference of States Parties with a general mandate to periodically review implementation and recommend improvements.⁶¹ The OECD instrument delegates the power to set a monitoring mechanism to the OECD Working Group on Bribery in International Business Transactions, which has established a practice which combines bilateral and communal structures in which the Parties monitor one another and results are reviewed and reported by the OECD as a whole.⁶²

Non-legal international monitoring mechanisms vary more widely and are harder to describe or analyse. Since there are no legal requirements, they can be established and tailored to meet the needs of any individual situation. Examples include requirements imposed as conditions of aid or assistance by bodies such as the World Bank, International Monetary Fund, or national aid agencies. These can employ almost any methodology and can be directed at corruption as a general problem in society or more specific forms of corruption as a problem with specific projects or programmes. Some, such as the work

⁶⁰ Draft resolution produced by the Intergovernmental open-ended expert group to prepare draft terms of reference for the negotiation of the Convention, document A/AC.260/L.1/Add.1/Rev.1 and A/AC/260/2/Corr.1, paragraph 3.

⁶¹ UN-TOC Convention, A/RES/55/25, annex, article 32.

⁶² OECD Convention, DAFFE/IME/BR97(20), Article 12.

of Transparency International, are based on non-governmental efforts. Many other non-governmental organisations monitor corruption problems in the context of specific subjects of interest to them, such as the sale or transfer of armaments or the delivery and distribution of food and other forms of emergency assistance. Intergovernmental organisations such as the United Nations also monitor corruption in general and specific subject-areas.

A number of problems have been identified with international monitoring efforts.⁶³

- The ad hoc nature of international monitoring results in a general lack of standardisation of data and monitoring practices. The extent of monitoring differs widely from region to region, and the differing methods whereby information is gathered and analysed makes comparisons difficult and methodologically risky. Some regions are under-monitored, while there is duplication of effort in others.
- There is no central agency to gather the necessary resources, develop the necessary expertise and apply them to analysing global data and using it to develop appropriate measures.
- There are generally inadequate links between monitoring efforts and users of the information. Information gathered for a specific purpose, such as assessing compliance with an international instrument, may not be very useful for other purposes, and more general needs, such as the development and deployment of technical assistance in anti-corruption efforts, tends to be under-informed as a result.
- Data gathered for international uses may also not be very helpful for domestic use in the countries where it was gathered.

⁶³ One methodology developed to deal with some of these problems by the United Nations Global Programme against Corruption, is discussed in Part 3.D. of this Guide.

X. ATTACHMENTS

A GLOBAL FORUM ON CORRUPTION

1. Conclusions; Global Forum I, Washington, 1999; DECLARATION

For the past three days, we participants from 90 governments, gathered here in Washington D.C. at the invitation of U.S. Vice President Al Gore, have worked intensely to examine the causes of corruption and practices that are effective to prevent or fight it. Elected officials, ministers responsible for security and justice, experts in public ethics and anti-corruption from every region of the world were joined by distinguished academics and lay and clerical figures from many of the world's great religions.

We are on the eve of a new millennium. As never before, the world's people need officials of their governments to serve them with unquestioned integrity. Corruption of justice and security officials betrays their trust. Corruption cannot long co-exist with democracy and the rule of law. Corruption misallocates resources, hurts the poor, and weakens economies and societies. After three days of serious, searching work, we emerge persuaded that corruption is not inevitable. It is made by actions of men and women. Governments and their peoples can act and can succeed in our struggle against it, if only we have the will and the determination to do so.

We have considered and shared with one another many practices that help control or punish corruption in public office. We are conscious of the efforts being undertaken in many regional bodies, such as the Organization of American States, the Council of Europe, the Organization of Economic Cooperation and Development, the European Union, and the Global Coalition for Africa. We call on all of our governments to cooperate in appropriate regional and global bodies to rededicate themselves to adopt effective anti-corruption principles and practices, and to create ways to assist each other through mutual evaluation.

We feel a common urgency to act. We also continue the dialogue we have begun in this forum. We will gather again in a second Global Forum on Fighting Corruption, to be held next in the Netherlands, and we propose thereafter an annual Global Ministerial forum on fighting corruption. Protecting our citizens from corruption among their justice and security officials must be one of the most basic responsibilities of our governments and of us as individual officials of our governments.

We are one in our personal commitment to this end.

GUIDING PRINCIPLES FOR FIGHTING CORRUPTION AND SAFEGUARDING INTEGRITY AMONG JUSTICE AND SECURITY OFFICIALS

NOTE: Annotated Version. In this document, each of the practices is followed by a parenthetical letter or letters indicating from which source or sources the statement of the practice was derived, including agreements, documents and other sources in existing international literature or experience regarding corruption, public integrity or related matters of crime. Sources are identified in the listing at the end of this document.

Corruption, dishonesty and unethical behavior among public officials represent serious threats to the basic principles and values of government, undermining public confidence in democracy and threatening to erode the rule of law. The aim of these Guiding Principles is to promote public trust in the integrity of officials within the public sector by preventing, detecting, and prosecuting or sanctioning official corruption and unlawful dishonest, or unethical behavior.

It is anticipated that these guiding principles will be implemented by each government in a manner appropriately tailored to the political, legal, economic and cultural circumstances of the country. Due to the different functions and missions of different judicial, justice, and security officials, not all effective practices are applicable in all categories. This document does not prescribe a specific solution to corruption among justice and security officials, but rather offers a list of potentially effective corruption-fighting practices for consideration. The list of practices, which may apply to other sectors of government in addition to justice and security officials, is intended to help guide and assist governments in developing effective and appropriate means to best achieve their specific public integrity ends.

1. Establish and maintain systems of government hiring of justice and security officials that assure openness, equity and efficiency and promote hiring of individuals of the highest levels of competence and integrity

Effective practices include:

- Systems for equitable compensation adequate to sustain appropriate livelihood without corruption
- Systems for open and merit based hiring and promotion with objective standards
- Systems which provide assurance of a dignified retirement without recourse to corruption
- Systems for thorough screening of all employees for sensitive positions
- Systems for probationary periods after initial hiring
- Systems which integrate principles of human rights with effective measures for preventing and detecting corruption.

2. Adopt public management measures that affirmatively promote and uphold the integrity of justice and security officials.

Effective practices include:

- An impartial and specialized institution of government to administer ethical codes of conduct
- Training and counseling of officials to ensure proper understanding of their responsibilities and the ethical rules governing their activities as well as their own professionalism and competence;
- Training addressed to issues of brutality and other civil rights violations that often correlate with corrupt activity among justice and security officials
- Managerial mechanisms that enforce ethical and administrative standards of conduct;

- Systems for recognizing employees who exhibit high personal integrity or contribute to the anti-corruption objectives of their institution;
- Personnel systems that include regular rotation of assignments to reduce insularity that fosters corruption;
- Systems to provide appropriate oversight of discretionary decisions and of personnel with authority to make discretionary decisions;
- Systems that hold supervisors accountable for corruption control ;
- Positive leadership which actively practices and promotes the highest standards of integrity and demonstrates a commitment to prevent and detect corruption, dishonesty and unethical behavior ;
- Systems for promoting the understanding and application of ethical values and the standards of conduct required ;
- Mechanisms to support officials in the public sector where there is evidence that they have been unfairly or falsely accused.

3. Establish ethical and administrative codes of conduct that proscribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity.

Effective practices include:

- Prohibitions or restrictions governing officials participating in official matters in which they have a substantial direct or indirect financial interest ;
- Prohibitions or restrictions against officials participating in matters in which persons or entities with whom they are negotiating for employment have a financial interest;
- Limitations on activities of former officials in representing private or personal interests before their former governmental agency or department, such as prohibiting the involvement of such officials in cases for which former officials were personally responsible, representing private interests by their improper use of influence upon their former governmental agency or department, or using confidential knowledge or information gained during their previous employment as an official in the public sector;
- Prohibitions and limitations on the receipt of gifts or other advantages;
- Prohibitions on improper personal use of government property and resources.

4. Establish criminal laws and sanctions effectively prohibiting bribery, misuse of public property, and other improper uses of public office for private gain.

Effective practices include:

- Laws criminalizing the giving, offer or promise by any party ("active") and the receipt or solicitation by any official ("passive") of a bribe, and criminalizing or sanctioning the giving or receiving of an improper gratuity or improper gift.
- Laws criminalizing or sanctioning the illegal use by officials of government information
- Laws affirming that all justice and security officials have a duty to provide honest services to the public and criminalizing or sanctioning breaches of that duty;.
- Laws criminalizing improper use of official power or position, either to the detriment of the government or for personal enrichment.

5. Adopt laws, management practices and auditing procedures that make corruption more visible and thereby promote the detection and reporting of corrupt activity.

Effective practices include:

- Systems to promote transparency, such as through disclosing the circumstances of senior officials;
- Measures and systems to ensure that officials report acts of corruption, and to protect the safety, livelihood and professional situation of those who do, including protection of their identities to the extent possible under the law;
- Measures and systems that protect private citizens who, in good faith, report acts of official corruption;
- Government revenue collection systems that deter corruption, in particular by denying tax deductibility for bribes or other expenses linked to corruption offenses;
- Bodies responsible for preventing, detecting, and eradicating corruption, and for punishing or disciplining corrupt officials, such as independent ombudsmen, inspectors general, or other bodies responsible for receiving and investigating allegations of corruption;
- Appropriate auditing procedures applicable to public administration and the public sector;
- Appropriately transparent procedures for public procurement that promote fair competition and deter corrupt activities.
- Systems for conducting regular threat assessments on corrupt activity;

6. Provide criminal investigators and prosecutors sufficient and appropriate powers and resources to effectively uncover and prosecute corruption crimes.

Effective practices include:

- Empowering courts or other competent authorities to order that bank, financial or commercial records be made available or be seized, and that bank secrecy not prevent such availability or seizure;
- Authorizing use under accountable legal supervision of wiretaps or other interception of electronic communication, or recording devices, in investigation of corruption offenses);
- Authorizing, where appropriate, the admissibility of electronic or other recorded evidence in criminal proceedings relating to corruption offenses
- Employing where appropriate systems whereby persons charged with corruption or other corruption-related criminal offenses may secure more advantageous treatment in recognition of assisting in the disclosure and prosecution of corruption offenses;
- The development of appropriate information gathering mechanisms to prevent, detect and deter official corruption and dishonesty.

7. Ensure that investigators, prosecutors and judicial personnel are sufficiently impartial to fairly and effectively enforce laws against corruption.

Effective practices include:

- Personnel systems to attract and retain high quality corruption investigators;
- Systems to promote the specialization and professionalization of persons and organizations in charge of fighting corruption;
- Establishment of an independent mechanism within judicial and security agencies with the duty to investigate corruption allegations, and with the power to compel statements and obtain documents from all agency personnel;

- Codes of conduct or other measures that require corruption investigators, prosecutors, and judges to recuse themselves from any case in which their political, financial or personal interests might reasonably raise questions about their ability to be impartial;
- Systems that allow for the appointment, where appropriate, of special authorities or commissions to handle or oversee corruption investigations and prosecutions;
- Standards governing the initiation of corruption investigations to ensure that public officials are not targeted for investigation for political reasons (N).

8. Ensure that criminal and civil law provide for sanctions and remedies that are sufficient to effectively and appropriately deter corrupt activity.

Effective practices include:

- Laws providing substantial criminal penalties for the laundering of the proceeds of public corruption violations;
- Laws providing for substantial incarceration and appropriate forfeiture of assets as a potential penalty for serious corruption offenses;
- Provisions to support and protect whistleblowers and aggrieved private parties;

9. Ensure that the general public and the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society.

Effective practices include:

- Establishing public reporting requirements for justice and security agencies that include disclosure about efforts to promote integrity and combat corruption;
- Enacting laws or other measures providing a meaningful public right of access to information about corrupt activity and corruption control activities;

10. Develop to the widest extent possible international cooperation in all areas of the fight against corruption.

Effective practices include:

- Systems for swift and effective extradition so that corrupt public officials can face judicial process;
- Systems to enhance international legal assistance to governments seeking to investigate and prosecute corruption violations;
- Systems to facilitate and accelerate international seizure and repatriation of forfeitable assets associated with corruption violations;
- Inclusion of provisions on combating corruption in appropriate bilateral and multilateral instruments.

11. Promote, encourage and support continued research and public discussion in all aspects of the issue of upholding integrity and preventing corruption among justice and security officials and other public officials whose responsibilities relate to upholding the rule of law.

Effective practices include:

- Appointment of independent commissions or other bodies to study and report on the effectiveness of efforts to combat corruption in particular agencies involved in justice and security matters;
- Supporting the efforts of multilateral and non-governmental organizations to promote public integrity and prevent corruption;

- Promoting efforts to educate the public about the dangers of corruption and the importance of general public involvement in government efforts to control corrupt activity.

12. Encourage activities of regional and other multilateral organizations in anti-corruption efforts.

Effective practices include:

- Becoming parties, as appropriate, to applicable multilateral legal instruments containing provisions to address corruption;
- Cooperating in carrying out programs of systematic follow-up to monitor and promote the full implementation of appropriate measures to combat corruption, through mutual assessment by governments of their legal and practical measures to combat corruption, as established by pertinent international agreements. (A, E, L, M);
- Participating actively in future international conferences on promoting integrity and combating corruption among justice and security officials.

2. Conclusions; Global Forum II; The Hague, 2001; final declaration

Defeating Corruption Through Integrity, Transparency and Accountability

We, Ministers and government representatives, have met in The Hague at the Global Forum II on 31 May 2001 with the aim of preventing and combating corruption and promoting integrity in government and in society.

We are all deeply concerned about the spread of corruption, which is a virus capable of crippling government, discrediting public institutions and private corporations and having a devastating impact on the human rights of populations, and thus undermining society and its development, affecting in particular the poor.

We are determined to prevent and combat all forms of corruption.

We are convinced that examples should be set: by governments in ensuring the integrity of their officials; by political parties in promoting transparency in their financing; and by the private sector in applying high standards of accountability.

We are convinced that safeguarding integrity is not only a matter of enacting correct laws and establishing an independent, effective and efficient judiciary, but may also require in some cases changes in attitude and in long-standing practices.

We are aware that corruption cannot prosper in the full light of openness. Transparency and impartial forms of public control as well as cooperation by the private sector are of the utmost importance. Independent and investigative media have a vital role to play.

We recognize our responsibility to adopt policies aimed at reducing or eradicating corrupt practices at the national and international level.

We welcome the United Nations General Assembly's decision to begin the elaboration of an effective international legal instrument against corruption. This will support our national efforts against corruption and strengthen our ability to co-operate in the fight against corruption at the international level.

We have adopted the following report of the deliberations at the Global Forum II:

General issues

1. For four days participants at the Global Forum on Fighting Corruption and Safeguarding Integrity II have explored the best ways of realizing their commonly held objectives, i.e. putting an end to corruptive practices and further developing systems based on good governance and integrity. Participants included Ministers of a number of different Departments and senior officials as well as representatives of other state bodies, representing 142 countries. A number of intergovernmental and non-governmental organizations were also present.

2. In their search for common solutions, participants greatly benefited from the results of the Global Forum I, hosted by the United States of America and held in Washington DC on 24-26 February 1999. The "Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials" proved to be a source of inspiration. Participants have also taken note with interest of the results reached during the regional preparatory conferences of Central and East European Countries on Fighting Corruption, held in Bucharest on 30-31 March 2000 and on 29-30 March 2001, the meeting of the Legal Sector of the Southern African Development Community held in Lusaka on 28 July 2000 and the Conference of ECOWAS Ministers of Justice on "Collaborating against Corruption" held in Accra on 21-22 May 2001 as well as of the work of the tenth session of the United Nations Commission on Crime Prevention and Criminal Justice held in Vienna from 8-17 May 2001.

3. Participants have not attempted to prescribe specific solutions to corruption, but envisage offering one another guidance and assistance in developing effective and appropriate national and international means to best achieve specific public integrity ends, respecting the national sovereignty of every country.

4. The multi disciplinary approach of Global Forum II was welcomed by participants: it reflects the many-faceted nature of corruption as a dangerous phenomenon and therefore the need for

involvement of society at large.

Workshops

5. Participants have taken note of the chairpersons' reports on each of the five workshops, i.e. on Integrity and Governance, on Law Enforcement, on Customs, on Corruption, Transition and Development and on Government and the Business Sector, as summarized by them in paragraphs 6, 7, 8, 9 and 10. The reports, as annexed for information to this Declaration, offer valuable contributions to the study and exchange of 'best practices' in the fight against corruption and safeguarding of integrity.

6. The chairperson of the workshop on Governance and Integrity summarized the discussions held under his guidance as follows. Integrity in administration is crucial to the achievement of good governance and demands the continuing commitment of leadership at the political and at all official levels. It is considered important that Governments adopt and sustain integrated programs to promote integrity in public administration. Raising confidence in anticorruption measures can be achieved by involving citizens, business and the independent media in their formulation and implementation. A legal framework is necessary to obtain the rule of law in administrations, in order to guarantee disclosure and transparency and also to prescribe the conditions for political financing. The establishment of independent bodies to oversee, to control and to enforce the integrity of public administration and to ensure the systematic reporting and auditing of political funds should be considered.

7. The chairperson of the workshop on Law Enforcement summarized the discussions held under his guidance as follows. Law enforcement institutions are crucial for the struggle against public and private corruption; at the same time the integrity of these institutions is essential for the credibility of that struggle. International instruments such as a United Nations Convention against corruption are important for bridging the gaps between national legal systems, particularly if existing frameworks and experience are taken into account. An international system for returning the funds derived from corruption is important. Technical support is needed to help countries enact legislation and build institutions. No national integrity system is applicable in all countries, but the success of institutions always depends upon the political support and the availability of sufficient resources. Important elements of national and international law enforcement strategies are the combination of adequate criminalization, sufficient powers of investigation, special police units, an independent judiciary and the availability of instruments like selective integrity testing. More national and international research and monitoring on the effectiveness of those strategies and methods are needed.

8. The chairperson of the workshop on Customs summarized the discussions held under his guidance as follows. Due to the strategic role Customs plays in trade and its facilitation, as well as in the collection of government revenue and community protection, participants commit themselves to supporting Customs in its fight against corruption. They acknowledge the fact that national Customs Administrations are taking positive steps to deal with the issue, but that additional government commitment and investment are required to implement comprehensive integrity measures. In this respect, the participants recognize the shared responsibility between Customs and the private sector in addressing the issue of corruption. Therefore they urge the World Customs Organization, regional Customs organizations, national Customs Administrations and the private sector to consider in their future work the various conclusions drawn by the Customs Workshop.

9. The chairperson of the workshop on Corruption, Transition and Development summarized the discussions held under her guidance as follows. Poverty reduction strategies will never be effective when corruption is rampant. Therefore fighting corruption is crucial for reaching development objectives. Anti-corruption efforts must always be an integral part of promoting good governance, including a sound financial system. The opportunities for diminishing corruption were highlighted. A legislative framework to prevent and combat corruption is an essential condition, but implementation capacity and funds are also needed. Fighting corruption requires co-operation and commitment at all levels, from global to local, and at all levels of government and from non-governmental organizations. In addition, nongovernmental organizations were invited to be more transparent about their goals, results and about their sources of income and expenditure. Public authorities; civil society and the private sector should complement and reinforce one another in making public resource flows more transparent and making data available and trustworthy. Raising awareness of the negative impact of corruption is an important contribution, in which the press can play a major role. Educating youth to make them more aware enables their future involvement.

10. The chairperson of the workshop on Government and the Business sector summarized the discussions held under his guidance as follows. The importance was stressed of support by Governments for voluntary codes of conduct, anti-bribery compliance programs by individual companies, including measures to enable the reporting of corruption. The importance of an appropriate legal framework for proper accounting and auditing standards was also stressed. It was further considered of great importance, since corruption is greatly facilitated by money laundering, to have legislation providing for effective preventive measures to be applied to financial institutions and other intermediaries, including making bribery a predicate offense for money laundering. Effective international co-operation, including with offshore centers, resulting in the return of funds derived from corruption to the country of origin, is considered crucial in combating corruption.

Transparency, integrity policies and other preventive measures

11. The highest possible degree of transparency in all aspects of government is essential to promote integrity and to fight corruption. The media, civil society and the private sector are indispensable partners for government in this endeavor. Governments should adopt, widely publicize and enforce legislation and procedures that provide the public and the media in the best possible way an optimum degree of access to information relevant to fighting corruption.

12. It is evident that national parliaments and local administrations have an important role to play in ensuring high standards of integrity. Financing election activities and political parties should be transparent so as to prevent corruption.

13. Government organization and procedures should be designed in a manner that reduces opportunities for corruption and creates incentives for public integrity. This could be stimulated through the establishment of a comprehensive public sector integrity policy that envisages the management of public services through a merit-based, professional and impartial civil service, with appropriate recruitment and retention systems and codes of conduct governing ethical behavior. Further measures that effectively promote integrity and prevent corruption among public officials can be strategically selected from a broad array of integrity practices.

14. Parallel to the foregoing, the adoption of a private sector integrity policy is necessary. This policy should envisage, in particular, effective measures that discourage the misuse of legal persons for purposes of corruption and related offences. In this respect participants consider appropriate the further exploration of the ability of governments to exclude legal persons convicted of corruption offences from entitlement to public benefits or aid, and the ability to identify persons convicted of corruption offences and disqualify them from acting as directors of legal persons.

15. Finally, participants endorse efforts to create a supportive and safe environment for citizens, civil servants and employees who report corrupt practices, and to establish, where appropriate, reliable and impartial institutions to handle these reports.

Criminal law and enforcement

16. Participants stress the need for including in national criminal law clear definitions of conduct that is to be considered to constitute corruption offences, as well as a precise description of a public official. They expect the comprehensive report of the Secretary General of the United Nations on "Existing international legal instruments, recommendations and other documents addressing corruption" (E/CN.15/2001/3) to be an inspiration for national legislators and others.

17. Furthermore participants deem it essential to provide for a broad scope of corruption offences in national legislation, including, as necessary, foreign and international corruption.

18. Participants recognize the need for governments to make available adequate resources for investigation and prosecution of corruption offences as well as for international cooperation in corruption cases.

Assistance and cooperation

19. Participants are convinced that rendering one another assistance through the exchange of their experiences and best practices will improve the effectiveness of anti-corruption strategies, both national and international. Participants also note the importance of support to civil society organizations in their fight against corruption.

20. Participants commend the quality of the surveys made available by the United Nations Center for International Crime Prevention in Vienna within the framework of the Global Program against

Corruption.

21. Participants consider improvement of law enforcement cooperation and mutual legal assistance necessary. Possible avenues are intensifying existing exchange of operational information and rendering technical and other types of assistance, identifying lacunae and developing new methods and techniques. Where necessary, creating an adequate legal basis for new activities should be considered. Consideration could be given also to ways and means to facilitate the matching of requests for and offers of expertise.

22. They are deeply conscious of the need to improve cooperation relating to the returning of funds derived from acts of corruption. They welcome the relevant recommendations forwarded by the United Nations Commission on Crime Prevention and Criminal Justice at its Tenth Session, held in Vienna from 8-17 May 2001.

Monitoring

23. Participants recognize the importance of monitoring mechanisms. They pay tribute to the efforts undertaken in the context of the OECD, the Council of Europe/GRECO, the European Union, the Baltic Sea States' Task Force on Organized Crime, and the Stability Pact Anti-Corruption Initiative. The value of other regional, sub-regional or national mechanisms is recognized. States of the regions concerned, which do not yet participate in such mechanisms, are invited to consider joining these.

24. Participants welcome the announcements made by the Pan African Ministers of Civil Service and the Global Coalition for Africa concerning the development of an additional monitoring mechanism and by the World Customs Organization concerning the development of a peer review and monitoring process. Participants also welcome the information that the States Parties to the Inter-American Convention against Corruption plan shortly to approve a follow-up mechanism to analyze their progress in implementing that Convention.

25. Furthermore, participants take note with appreciation of the initiative of Romania, Lithuania and Poland mutually to evaluate the effectiveness of their anti-corruption strategies.

26. Further improvement could be reached when the secretariats of the existing monitoring mechanisms would seek more ways for effective co-operation.

The way forward

27. Global Forum II welcomes the initiative of the Republic of Korea to host Global Forum III in 2003, which will provide continuity to the exchange of views world-wide, based on the principle of the equality of States.

28. Global Forum II emphasizes the importance of the decision taken by the General Assembly of the United Nations, embodied in Resolution 55/61 of 4 December 2000, to start the elaboration of an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime. Global Forum II invites participants in these negotiations to take into account the results of the Global Forum process.

29. Global Forum II reiterates the need for involvement of civil society, the private sector and the media in developing and implementing effective national and international anti-corruption strategies. It recognizes the unique nature of the International Anti-Corruption Conference (IACC), which brings together individuals from all segments of society. The Xth IACC, to be held in Prague, in October 2001, will provide an opportunity for civil society, the private sector and government officials to develop a wider set of recommendations for action. The XIth IACC will be held in the Republic of Korea in 2003.

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3. Conclusions; Global Forum III; Seoul, 2003; Final Declaration

1. For three days, government Ministers, parliamentarians, and officials from 123 countries, representatives of intergovernmental organizations, and experts have come together in Seoul to the Global Forum III on Fighting Corruption and Safeguarding Integrity (GFIII), under the theme of “Ongoing Challenges, Shared Responsibilities”, to continue the discussion on the challenges of corruption, and to find the best ways to effectively prevent and combat corruption, including its root causes, and to safeguard integrity.

2. Participants appreciated that GF III, building upon the accomplishments of the previous Forums⁶⁴, gave particular emphasis to the practicality of the various measures against corruption. Participants have taken note of the annexed chairperson’s reports on the four Ministerial Roundtables (Ministerial Vision Statement), and on the five Workshops (Workshop Report), with due regard to the workshop outcomes of the Second Global Forum and developments thereafter. Discussions in the Roundtables and Workshops centered upon “Law Enforcement I: Legal Instruments”, “Law Enforcement II: International Cooperation”, “Transparency and Integrity”, “Democracy, Economic Development, and Culture”, and “IT & Media”.

A. Current status and issues

3. Participants express their solidarity and support to the anti-corruption efforts, including safeguarding integrity, undertaken within the framework of the United Nations, and take note with appreciation of the various regional and other efforts undertaken.⁶⁵

4. In their common pursuit of integrity, economic growth, and sustainable development, participants also reaffirm the call by government leaders at international fora such as the Doha Development Agenda Ministerial, the Monterrey UN Conference on Financing for Development, the Johannesburg World Summit on Sustainable Development, and the Second Ministerial Conference of the Community of Democracies held in Seoul, for national commitments and actions toward transparency in government processes and budgetary processes, implementation of good governance practices, the promotion of integrity and ethics, and enforcement of anticorruption measures.

5. Having noted with profound concern the current challenges in the fight against corruption, participants pay special attention to, *inter alia*, transnational corruption buttressed by funds of illicit nature, and are seriously concerned about links between corruption and transnational crimes. Participants urge further that sustained action be taken on corruption issues in general.

6. Participants also express concern with corruption in the private sector, which seriously undermines public faith in the accountability and integrity of the sector. Participants hereby concur on the urgent need to promote organizational integrity firmly based on good corporate governance, and take note of actions taken by governments to address these problems.

⁶⁴ Global Forum on Fighting Corruption was launched by the US government and held in Washington D.C., in 1999. The Second Global Forum was held in 2001, at The Hague, Netherlands, hosted by the Government of The Netherlands.

⁶⁵ These may, among others, include the efforts being made in the context of the G-8, the World Bank, World Customs Organization (WCO), the Global Organisation of Parliamentarians Against Corruption (GOPAC), the Inter-Parliamentary Union (IPU), the Organisation of Economic Cooperation and Development (OECD), the Asian Development Bank/OECD Anticorruption Initiative for the Asia-Pacific Region, the Asian African Legal Consultative Organization (AALCO), the European Union, The Council of Europe and its Group of States Against Corruption (GRECO), the Stability Pact Anticorruption Initiative (SPAI), the Council of Baltic Sea States (CBSS), the Organization of American States (OAS), the Central American Integration System (SICA), the African Union, the Global Coalition for Africa (GCA), the League of Arab States, and the Middle East and North African Group.

C. Plan of action

1. General Principles

7. Convinced that corruption should be condemned and eradicated for the sake of the universally held value of integrity, participants declare that cultural and historical particularity should not be used as a pretext for justifying corruption, or conversely, for labeling certain societies as corrupt. At the same time, anti-corruption measures tailored to the specific circumstances of a particular society should be devised in order effectively to deliver practical solutions.

8. Recognizing that corruption has evolved into a transnational and trans-sectoral phenomenon, participants call for a holistic approach, which not only involves the public sector but also the private sector, civil society, researchers, the media, and the relevant international organisations in the prevention of, and the fight against, corruption.

9. Participants stress the importance of both measures to detect, investigate, and punish corruption, and preventive measures as a tool to take systematic action against corruption; and welcome the broad range of existing national, regional, and international mechanisms that contain stipulations on the above, and new initiatives in this regard.

2. National Level

10. With a view to effectively preventing and curbing corruption at the national level, participants deem it necessary to, *inter alia*:

- (a) ensure the independence and the integrity of the judiciary;
- (b) ensure the integrity and effectiveness of law enforcement agencies;
- (c) promote and safeguard good governance, accountability, transparency, integrity and ethics in all sectors of society;
- (d) attach particular importance to government action with respect to corruption in the private sector, and strengthen countermeasures against private sector corruption thereby promoting good corporate governance;
- (e) encourage efforts to fight corruption by taking full advantage of new technology, especially information technology, with due regard to fundamental rights;
- (f) support the work of the media and civil society in preventing and detecting corruption.

3. International Cooperation

11. Recognizing the importance of international cooperation in combating corruption, participants recommend that countries, *inter alia*:

- (a) ratify and effectively implement as soon as possible, the already concluded relevant conventions on anti-corruption measures;
- (b) fully support the efforts undertaken within the United Nations for the negotiation of a comprehensive and effective Convention Against Corruption and its prompt finalization, and welcome the offer made by the Government of Mexico to host the high level political signing conference at the end of this year;
- (c) closely and actively cooperate in taking the necessary measures to combat money laundering and the transfer of funds and assets of illicit origin derived from acts of corruption, and devising effective ways and means concerning the return of such funds and assets to countries of origin;
- (d) share efforts and responsibilities in active multilateral technical assistance to build the capacity to fight corruption, which has a considerable negative impact on development;
- (e) call upon the appropriate international organizations to facilitate the sharing of information about the various domestic measures and best practices;
- (f) call upon the international community to support sustainable development in order to make societies less vulnerable to corruption.

The way forward

12. Reaffirming the significance of the Global Forum as an international arena for constructive deliberations on practical solutions against the scourge of corruption, participants recognize the importance and usefulness of the Global Forum process and the outcomes derived from these governmental gatherings.

1. The Network

13. Participants agree to establish a list of contact points called the Global Anti-Corruption Network in order to promote immediate cooperation among them within the framework of the Global Forum:

(a) the future host of the next Global Forum in chairing the Organizing Committee (OC) will work on the establishment of the Network with OC members and others;

(b) the purpose of the Network would be to facilitate communication and coordination, at the request of the OC, in areas of planning, and the overall organization process of the Global Forum;

(c) participants may want to review the role, functions, and the existence of the Network at the next GF with the view to maximizing its utility in serving the goals of the Global Forum and avoiding duplication of efforts.

2. Global Forum IV

14. Participants welcome the initiative of the Government of Brazil to host Global Forum IV in 2005, and welcome the proposal of the African Group to host Global Forum V in Africa. Participants firmly stand in their belief that the Global Forum process needs to be continued for the purpose of spreading and enhancing awareness of good governance and integrity all around the world. Participants express their firm commitment and conviction that the Global Forum series will be continued, thanks to the strenuous international endeavors to root out corruption, one of the pressing challenges of our times.

15. Participants commend the Government of the Republic of Korea for the successful back-to-back holding of the two leading anti-corruption gatherings—Global Forum III and the 11th International Anti-Corruption Conference (IACC)—and take note with interest of the “Seoul Findings” from the 11th IACC.

B. INTERNATIONAL LEGAL INSTRUMENTS ON CORRUPTION

1. *United Nations Convention against Corruption*

On 1 October 2003 after almost two years of negotiations, Member States of the United Nations finalized the text of a new international treaty, the United Nations Convention against Corruption. The Convention was agreed on by an Ad Hoc Committee, established by the General Assembly in December 2000. The Committee was serviced by the United Nations Office on Drugs and Crime (UNODC) in Vienna, Austria. The Convention will be submitted to the General Assembly, which is expected to adopt it and open it for signature by Member States in Mérida, Mexico, from 9 to 11 December 2003. The Convention will enter into force when it has been ratified by 30 countries.

This represents a major step forward in the global fight against corruption, and in particular in the efforts of UN Member States to develop a common approach to both domestic efforts and international cooperation. The treaty can be seen as the product of a series of both procedural and substantive developments.

From a substantive standpoint, the new Convention can be seen as the most recent of a long series of developments in which experts have recognised the far-reaching impact of corruption and the need to develop effective measures against it at both the domestic and international levels. It is now widely accepted that measures to address corruption go beyond criminal justice systems and are essential to establishing and maintaining the most fundamental good governance structures, including domestic and regional security, the rule of law and social and economic structures which are effective and responsive in dealing with problems, and which use available resources as efficiently and with as little waste as possible.

The gradual understanding of both the scope and seriousness of the problem of corruption can be seen in the evolution of international action against it, which has progressed from general consideration and declarative statements,⁶⁶ to the formulation of practical advice,⁶⁷ and then to the development of binding legal obligations and the emergence of numerous cases in which countries have sought the assistance of one another in the investigation and prosecution of corruption cases and the pursuit of proceeds. It has also progressed from relatively narrowly-focused measures directed at specific crimes such as bribery to broader definitions of corruption and more broadly-focused measures against it, and from regional instruments developed by groups of relatively like-minded countries such as the Organisation of American States,⁶⁸ the African Union (formerly Organisation of African Unity),⁶⁹ the OECD,⁷⁰ and the Council of Europe⁷¹ to the globally-based U.N. Convention.⁷² A series of actions on specific issues within specific regions has become more general and global in order to deal most effectively with the problem.

⁶⁶ See, for example A/RES/51/59 and 51/191, annexes, and the discussion held at the 9th U.N. Congress on the Prevention of Crime and Treatment of Offenders, held in Cairo from 29 April – 8 May 1995 (A/CONF.169/16/Rev.1, paragraphs 245-261).

⁶⁷ See, for example, the United Nations Manual *Practical Measures against Corruption*, ECOSOC Res.1990/23, annex, recommendation #8 and International Review of Criminal Policy, Special Issue, Nos. 41 and 42, New York 1993. This has since been revised and updated and is a companion volume to this Tool-kit.

⁶⁸ Inter-American Convention Against Corruption, OAS General Assembly resolution GA/RES.1398 (XXVI-0/96) of 29 March 1996, annexes.

⁶⁹ African Union Convention on Preventing and Combating Corruption, Maputo Mozambique, 11 July 2000, available from the AU on-line at: http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Treaties_Conventions_&_Protocols.htm.

⁷⁰ *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD document DAF/IME/BR (97)20.

⁷¹ European Criminal Law Convention on Corruption, 1998, European Treaty Series #173.

⁷² For a summary of other international legal instruments dealing with corruption, see *United Nations Manual on Anti-Corruption Policy*, Chapter V, available on-line at: <http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf>.

These trends were represented in the discussions which developed the terms of reference for the negotiation of the Convention and in the Convention itself. In formulating the terms of reference, the Intergovernmental Open-ended Expert Group concluded that the instrument should be “comprehensive” in the sense that it should deal with as many different forms of corruption as possible, and “multidisciplinary” in the sense that it should contain the broadest possible range of measures for doing so.⁷³ The Expert Group began the development of a broad inventory of specific forms of corruption, including areas such as trading in official influence, general abuses of power, and various acts of corruption within the private sector which had not been dealt with in many of the earlier international instruments.⁷⁴

Building on the broad range of measures included in the *Convention against Transnational Organized Crime*, it also called for criminal offences and investigative and prosecutorial powers. Subsequent efforts to reconcile individual national constitutional requirements, laws, policies and social and cultural factors generated extensive negotiations of the details, but all of these basic elements appear in some form in the finished Convention, with criminal offences specifically tailored to corruption.⁷⁵ Going beyond the scope of the Convention against Transnational Organized Crime, a series of specific anti-corruption measures were then added to promote transparency and high standards, particularly in the public service and applying both social and situational approaches to preventing corruption.⁷⁶ A further significant development was the inclusion of a specific chapter of the treaty dealing with the recovery of assets, a major concern for countries which are pursuing the assets of former leaders and senior officials accused or found to have engaged in corruption.

2. Council of Europe Criminal Law Convention on Corruption

In November 1998, the Committee of Ministers of the Council of Europe adopted the text of the Criminal Law Convention on Corruption and decided to open it for signature, by the Member States of the Council of Europe and the non-Member States, which have participated in its elaboration, on 27 January 1999. Currently Croatia, Cyprus, Czech Republic; Denmark; Hungary, Latvia, Slovakia, Slovenia and the Former Yugoslav Republic of Macedonia have ratified the Convention.

The Criminal Law Convention on Corruption is an instrument aiming at the co-ordinated criminalization of a large number of corrupt practices: *i*) active and passive bribery of domestic and foreign public officials; *ii*) active and passive bribery of national and foreign parliamentarians and of members of international parliamentary assemblies; *iii*) active and passive bribery in the private sector; *iv*) active and passive bribery of officials of international organizations; *v*) active and passive bribery of domestic, foreign and international judges and officials of international courts; *vi*) active and passive trading in influence; *vii*) money-laundering of proceeds from corruption offences; and *viii*) accounting offences (invoices, accounting documents, etc.) connected with corruption offences. In addition, it is foreseen that each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences law aiding or abetting the commission of any of the criminal offences established in accordance with the Convention.

States are required to provide for effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of

⁷³ Report of the Meeting of the Intergovernmental Open-ended Expert Group, A/AC.260/2, particularly at paragraph 27, and A/RES/56/260, paragraph 2 calling for a “broad and effective” instrument, and paragraph 3, calling for a “comprehensive and multidisciplinary” approach in developing the instrument.

⁷⁴ A/AC.260/2, paragraph 27

⁷⁵ For a complete review of the history of the negotiations and consideration of specific issues, see the official records of the Ad Hoc Committee, available from the UNODC web-site at: http://www.unodc.org/unodc/crime_cicp_convention_corruption_docs.html. In particular see the successive texts of the revised draft Convention, A/AC.261/3 and A/AC.261/3/Rev.1 – Rev.5 and the footnotes to specific provisions.

⁷⁶ For example, Articles [-6 and 7-] deal with codes of conduct and other measures specifically directed at public servants and public service situations, whereas Article [-13-] deals with the more general participation of society in preventing corruption.

liberty that can lead to extradition. Legal persons will also be liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with the Convention, committed for their benefit, and will be subject to effective criminal or non-criminal sanctions, including monetary sanctions. Furthermore, the Convention contains provisions concerning the setting up of specialized anti-corruption bodies, protection of persons collaborating with investigating or prosecuting authorities and gathering of evidence and confiscation of proceeds.

The Convention provides also for enhanced international co-operation (mutual assistance, extradition and the provision of information) in the investigation and prosecution of corruption offences. In connection with mutual assistance, it foresees that Parties will create special designated central authorities to deal with requests in a promptly manner. While mutual assistance may be refused if the request undermines the fundamental interests, national sovereignty, national security or *ordre public* of the requested Party, it may not be invoked on the grounds of bank secrecy.

3. Council of Europe Civil Law Convention on Corruption

The Civil Law Convention on Corruption of the Council of Europe is the first attempt to define common international rules in the field of civil law and corruption. It aims at requiring each Party to provide in its internal law for effective remedies for persons who have suffered damage as a result of corruption, in order to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. However, so far only Albania, Bulgaria and Estonia have ratified this Convention.

The Convention requires each Party to provide in its internal law for the right to bring a civil action in corruption cases. It should be noted that, under the Convention, damages must not be limited to any standard payment but must be determined according to the loss sustained in the particular case. This excludes punitive damages, however, parties whose domestic law provides for punitive damages are not required to exclude their application. The extent of the compensation is to be granted by the Court that can provide for the compensation of material damages loss of profits and non-pecuniary loss. In order to obtain compensation, the plaintiff has to prove the occurrence of the damage, whether the defendant acted with intent or negligently, and the causal link between the corrupt behaviour and the damage. The main achievement in this context consists in the usually reduced evidentiary requirements necessary in civil proceedings.

As far as the unlawful and culpable behaviour on the part of the defendant is concerned, it should be indicated that those who directly and knowingly participate in the corruption are primarily liable for the damage including the giver and the recipient of the bribe, as well as those who incited or aided the corruption or failed to take the appropriate steps, in the light of the responsibilities which lie on them, to prevent corruption.

The Convention also deals with the issue of state responsibility for acts of corruption by public officials. However, the Convention does not indicate the conditions for the liability of a State Party but leaves each Party free to determine in its internal law the conditions under which the Party would be liable.

Also the validity of contracts is addressed. According to the respective provision “each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void”. Furthermore, each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

The Convention also aims at protecting the interests of whistleblowers by obliging State Parties to take the necessary measures to protect employees, who report in good faith and on the basis of reasonable grounds their suspicions on corrupt practices from being victimized.

Finally, the Convention addresses also international co-operation. Under the Convention the Parties shall cooperate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters to which they are Party, as well as with their internal law.

4. *Resolution (99) 5 Establishing the Group of States against Corruption (GRECO)*

In May 1999, the representatives of the Committee of Ministers of Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Spain and Sweden, by adopting resolution 99 (5), established the Group of States against Corruption (GRECO).⁷⁷ The aim of the GRECO is to improve its members' capacity to fight corruption by monitoring their undertakings in this field, including the ratification, implementation and compliance of State Parties with the Twenty Guiding Principles for the Fight against Corruption and implementation of the international legal instruments adopted in pursuit of the Programme of Action against Corruption⁷⁸.

Ad hoc teams of experts are appointed to evaluate each member in each evaluation round. Evaluation teams are supposed to examine replies to questionnaires, request and examine additional information to be submitted either orally or in writing, visit member countries for the purpose of seeking additional information of relevance to the evaluation, and prepare draft evaluation reports for discussion and adoption at the plenary sessions.

5. *Resolution (97) 24 on The Twenty Guiding Principles for the Fight against Corruption*

In Resolution (97) 24 of November 1997, the Committee of Ministers of the Council of Europe agreed to adopt the twenty guiding principles for the fight against corruption, elaborated by the Multidisciplinary Group on Corruption (GMC).⁷⁹ The principles represent the fundamental directives that Member States are called to implement in their efforts against corruption both at national and international levels.

The principles, which have been elaborated on the basis of the recognition that the fight against corruption must be multidisciplinary, include different elements such as *i*) raising public awareness and promoting ethical behaviour; *ii*) ensuring a co-ordinated criminalization of national and international corruption; *iii*) guaranteeing the appropriate independence and autonomy of those in charge of the prevention, investigation, prosecution and adjudication of corruption offences; *iv*) taking appropriate measures for the seizure and deprivation of the proceeds of corruption offences as well as for preventing legal persons being used to shield corruption offences; and *v*) limiting immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society. In addition, the Committee of Ministers agreed on other measures like the *i*) promoting the specialisation of persons or bodies in charge of fighting corruption and providing them with appropriate means and training to perform their task; *ii*) denying tax deductibility for bribes of other expenses linked to corruption offences; *iii*) adopting codes of conduct both for public officials and for elected representatives; *iv*) promoting transparency within the public administration, particularly through the adoption of appropriate auditing procedures to the activities of public administration and the public sector as well as of appropriately transparent procedures for public procurement; *v*) guaranteeing that the media have freedom to receive and impart information on corruption matters; *vi*) ensuring that civil law takes into account the need to

⁷⁷ The following countries have then become Member States of GRECO: Bosnia and Herzegovina; Denmark; the former Yugoslav Republic of Macedonia, Georgia; Hungary; Latvia; Poland; United Kingdom of Great Britain and Northern Ireland and United States of America.

⁷⁸ The Programme of Action against Corruption, drafted by the Multidisciplinary Group on Corruption, has been approved by the Committee of Ministers in November 1996.

⁷⁹ The Multidisciplinary Group on Corruption has been set up as a result of the 1994 Malta Conference of the European Ministers of Justice.

fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption; and *vii*) ensuring that in every aspect of the fight against corruption, the possible connections with organized crime and money laundering are taken into account.

6. Model Code of Conduct for Public Officials

The Committee of Ministers of the Council of Europe adopted on 11 May 2000 a recommendation on codes of conduct for public officials, which includes, in the appendix, a Model Code of Conduct for Public Officials. The Model Code of Conduct gives suggestions on how to deal with real situations frequently confronting public officials, such as gifts, use of public resources, dealing with former public officials, etc. The Code stresses the importance of the integrity of public officials and the accountability of hierarchical superiors. It comprises three objectives: to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials. Furthermore, it contains a series of general principles addressing, for example, the conflict of interests, incompatible outside activities, how to react when confronted with problems such as offers of undue advantages, especially gifts, susceptibility to the influence of others, misuse of official position, use of official information and public resources for private purposes and the rules to follow when leaving the public service, especially in relations with former public officials.

7. The Council of the European Union (EU) Convention on the Protection of the European Communities' Financial Interests

The Convention constitutes the first agreement under "Provisions on police and judicial cooperation in criminal matters" of the Treaty of the European Union. Austria, Finland, France, Germany, Greece, Spain, Sweden and United Kingdom have ratified it so far.

The Convention aims at protecting the European Communities' financial interests by calling for the criminal prosecution of fraudulent conduct injuring those interests. Fraudulent acts are defined as all acts affecting the European Communities' financial interests, including any intentional act or omission relating to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities, (ii) non-disclosure of information in violation of a specific obligation, with the same effect, (iii) the misapplication of such funds for purposes other than those for which they were originally granted. Included are also revenue related incidents such as: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities, (ii) non-disclosure of information in violation of a specific obligation, with the same effect, (iii) misapplication of a legally obtained benefit, with the same effect."

Member States are obliged to establish jurisdiction over these offences when: (i) fraud, participation in fraud or attempted fraud affecting the European Communities' financial interests is committed in whole or in part within its territory, including fraud for which the benefit was obtained in that territory, (ii) a person within its territory knowingly assists or induces the commission of such fraud within the territory of any other State, (iii) the offender is a national of the Member State concerned, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred." Furthermore the Convention establishes the criminal liability of heads of businesses and covers the issues of extradition and prosecution as well as cooperation.

8. The Council of the European Union's (EU) First Protocol to the Convention on the protection of the European Communities' financial interests'

The Protocol was elaborated as an additional instrument to complement the Convention and to reinforce the protection of the Communities' financial interests. The Protocol is primarily aimed at acts of corruption, which involve national and Community officials and damage, or are likely to damage, the European Communities' financial interests.

In order to ensure a broad and homogenous application of its substantive provisions, the Protocol is applicable to community officials, national officials and officials of another Member State. The Protocol covers passive and active corruption actually or potentially damaging the Communities' financial interests as well as acts of participating or instigating such behavior.

As far as the jurisdiction is concerned, the Protocol establishes a series of criteria conferring jurisdiction of a Member State to prosecute and try cases involving the offences covered by the Protocol if (a) the offence is committed in whole or in part within its territory; (b) the offender is one of its nationals or one of its officials; (c) where the offence is committed against a national of the Member State, being an official as defined by the Protocol, or member, of a Community institution; (d) the offender is a Community official working for a Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State concerned.

9. The Council of the European Union's (EU) Second Protocol to the Convention on the Protection of the European Communities' Financial Interests

The Second Protocol is directed in particular at the liability of legal persons, the laundering and the confiscation of the proceeds of corruption, and the cooperation between the Member States and the Commission for the purpose of protecting the European Communities' financial interests and protecting personal data related thereto.

Under the Second Protocol legal persons can be held liable for fraud, active corruption and money laundering committed for their benefit. According to the Second Protocol legal persons shall be made liable for fraud, active corruption and money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on (i) a power of representation of the legal person, or (ii) an authority to take decisions on behalf of the legal person, or (iii) an authority to exercise control within the legal person, as well as for involvement as accessories or instigators in such fraud, active corruption or money laundering or the attempted commission of such fraud." Also Member States shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to has made possible the commission of a fraud or an act of active corruption or money laundering for the benefit of that legal person by a person under its authority." The sanctions foreseen under national law shall include criminal or non-criminal fines and may include other sanctions such as: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) a judicial winding-up order."

Also Member States shall take the necessary measures to enable the seizure and, without prejudice to the rights of bona fide third parties, the confiscation or removal of the instruments and proceeds of fraud, active and passive corruption and money laundering, or property the value of which corresponds to such proceeds. Any instruments, proceeds or other property seized or confiscated shall be dealt with by the Member State in accordance with its national law."

10. Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

The Convention has been elaborated in order to ensure that all corrupt conduct involving Community officials or Member States' officials is being criminalised. Before the Convention had been drawn up the criminal law in most Member States did not apply to officials of other Member States, even where it took place in their own territory or at the instigation of one of their own nationals. As this situation became increasingly intolerable the Council decided to develop a freestanding international legal instrument addressing all corrupt conduct involving Community officials or Member States' officials. The Convention draws extensively from the agreements reached already in the context of the above Protocol. It sanctions active and passive corruption of "Community officials" and "national officials" as well as the participation and instigation of such acts.

In order to broaden and strengthen the scope of the anti-corruption measures introduced by the Convention, it requires that each Member State's criminal law be adjusted to accommodate certain offences committed by individuals occupying specific posts in the Community institutions. As with the first Protocol, a principle of assimilation is introduced whereby Member States will be bound to apply to members of the Community institutions the same descriptions of corruption offences as apply to individuals occupying similar posts within their own institutions. For the rest the Convention is a copy of the above protocol with the sole difference of being applicable to all forms of corruption of community and national officials.

11. The Council of the European Union's (EU) Joint Action on corruption in the Private Sector

The Joint Action of 22 December 1998 is directed in particular at combating corruption in the private sector on an international level. For the purpose the Joint Action applies a broad definition of the concept of the 'breach of duties' covering as a minimum any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person. Passive corruption in the private sector is defined accordingly as the deliberate action of a person who, in the course of his business activities, directly or through an intermediary, requests or receives an undue advantage of any kind whatsoever, or accepts the promise of such an advantage, for himself or for a third party, for him to perform or refrain from performing an act, in breach of his duties. Active corruption in the private sector is described as the deliberate action of whosoever promises, offers or gives, directly or through an intermediary, an undue advantage of any kind whatsoever to a person, for himself or for a third party, in the course of the business activities of that person in order that the person should perform or refrain from performing an act, in breach of his duties.

Similar to the above-described instruments the Joint Action addresses also forms of participation and instigation of active and passive corruption, the liability of and sanctions for legal persons and the establishing of jurisdiction.

12. Inter-American Convention against Corruption

The Inter-American Convention against Corruption was adopted at the third plenary session, held on March 29, 1996 and addresses, both measures to prevent and control corruption. For this purpose it obliges Member States to take the necessary action (1) to promote and strengthen the development of mechanisms needed to prevent, detect, punish and eradicate corruption, and (2) to promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance. Since its entering into force on 6 March 1997 it has been ratified by Argentina, Bahamas (Commonwealth), Bolivia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, United States of America, Uruguay and Venezuela.

The Convention defines as acts of corruption the following behaviours: (a) the solicitation or acceptance, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, in exchange for any act or omission in the performance of his public functions, (b) the offering or granting, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, in exchange for any act or omission in the performance of his public functions, (c) any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party, (d) the fraudulent use or concealment of property derived from any of the acts referred to in this article, (e) participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article⁸⁰. The Convention also covers transnational bribery and illicit enrichment., even though in so far it does not establish an obligation for criminalisation. However, any State Party that does decide to not follow the recommendation of the Convention shall, as far as its laws permit, provide assistance and cooperation with respect to these offences. Transnational bribery is defined as “the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official’s public functions.” Illicit enrichment is described as the “significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.”

As far the preventive action against corruption is concerned the States Parties agreed to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: (1) standards of conduct for the correct, honourable, and proper fulfilment of public functions, (2) mechanisms to enforce these standards of conduct, (3) instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, (4) systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law, (5) systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems, (6) government revenue collection and control systems that deter corruption, (7) laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties, (8) systems for protecting public servants and private citizens who, in good faith, report acts of corruption, (9) oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts, (10) deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts, (11) mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, (12) the study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

⁸⁰ For the purpose of its application the Convention defines the terms of “public function”, as any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy. “Public official” is defined as any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy. “Property” means assets of any kind, whether movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets.

Furthermore, the Convention addresses the issues of jurisdiction over the offences it has established in accordance with the Convention and the issues of extradition and mutual legal assistance. In particular the Convention obliges State Parties to provide the broadest assistance possible with regard to measures of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of offences established in accordance with this Convention. Finally, the Convention states that State Parties, when requested to provide assistance, shall not invoke bank secrecy as a basis for refusal. At the same time, the requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized.

13. OECD-Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed on 17 December 1997 and entered into force on 15 February 1999. At the beginning of 2001, Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Republic of Korea, Mexico, Netherlands, Norway, Poland, Slovak Republic, Spain, Sweden, Switzerland, United Kingdom and United States have ratified the Convention. Brazil, Portugal, Turkey, Ireland, Luxembourg, New Zealand and Chile are in the process of ratification.

The main purpose of this Convention is to provide a framework to criminalise corruption in international business transactions. Countries party to the Convention pledge to punish those accused of bribing officials of foreign countries, including officials in countries that are not part of the Convention for the purpose of obtaining or retaining international business.

The Convention seeks to ensure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of a Party's legal system. International bribery is defined as the intentional offer, promise, or giving of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international businesses.

Also, the Convention addresses the issue of the criminal liability of legal persons, the effectiveness of the criminal and civil sanctions, the jurisdiction for the offences established under the Convention, the confiscation of the proceeds of corruption and bribery and the provision of mutual legal assistance. With regard to the "enforcement" of the offences established, the Convention recognizes the fundamental nature of national regimes of prosecutorial discretion. However, it specifies that investigation and prosecution of the bribery shall not be influenced by "...considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved." Although the primary scope of the Convention is the criminalization of the bribery of foreign public officials, it also contains provisions related to money-laundering and falsified accounts. In this regard the Convention requires State Parties make the bribery of foreign public officials a predicate offence to money laundering, given that bribery as such is a predicate to money laundering. In connection with falsified accounts, the Convention obliges State Parties to take the necessary measures, to prohibit the establishment of off-the-books accounts and similar practices used to bribe foreign public officials or to hide such bribery.

Within the framework of the OECD Working Group on Bribery in International Business Transactions and pursuant to the OECD Convention, a rigorous procedure for self - and mutual evaluation was adopted to ensure compliance with the Convention. Since 1999 twenty-one countries, out of the thirty-four signatories, that had deposited their instruments of ratification have been subject to close peer scrutiny monitoring. For each country, the Working Group on Bribery adopted a report, including an evaluation, which was made available to the public subsequently to the OECD meeting at the ministerial level. As highlighted in a report on the implementation of the Convention, presented in June 2000, the Working Group noted that there is overall compliance with the Convention's obligations in the great majority of countries.

14. The Revised Recommendation of the OECD Council on Combating Bribery in International Business Transactions

A first Recommendation on Bribery in International Business Transactions was adopted already in 1994. In spring 1997, the OECD Working Group on Bribery reviewed this Recommendation and issued a revised version, which was adopted by the OECD Council on 23 May 1997. This document pulls together analytic work on anti-corruption measures and commitments undertaken over the previous three years to combat bribery in international business transactions. As the expression of a common political position, it is an important vehicle to encourage action by Member countries. Its implementation is granted as it includes provisions concerning monitoring and other follow-up procedures designed to promote their implementation.

The Revised Recommendation invites member countries to "take effective measures to deter, prevent and combat" international bribery in a number of areas. In particular, it elaborates commitments in the fields of: criminalisation of bribery of foreign public officials; accounting, banking, financial and other provisions, to ensure that adequate records are kept and made available for inspection and investigation; and public subsidies, license, government-procurement contracts or other public advantage that could be denied as sanctions for bribery in appropriate cases. It also urges prompt implementation of the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials and incorporates the proposals contained in the 1996 Recommendation by the Development Assistance Committee on Anti-Corruption Proposals for Aid-Funded Procurement.

15. African Union Convention on Preventing and Combating Corruption

The African Union's Ministerial Conference held in Addis Ababa on 18-19 September 2002 approved the Draft African Convention on Preventing and Combating Corruption.

This new convention contains provisions that should guarantee access to information and the participation of civil society and the media in the monitoring process. Also noteworthy is an article, which seeks to ban the use of funds acquired through illicit and corrupt practices to finance political parties; and an article, which requires state parties to adopt legislative measures to facilitate the repatriation of the proceeds of corruption.

The African Union encouraged the participation of civil society in the drafting and deliberation of the convention. The convention was presented to heads of state for adoption at the AU summit in June 2003 in Maputo, Mozambique.

16. SADC Convention on Prevention and Combating Corruption

At any level, it has always been a fact of life that borders are porous no matter how well patrolled and, in this region, electrically fenced. Wars and strife in this region have also presented opportunities to all manner of smugglers and criminal organizations. These range from the bribing of customs officials at border posts and harbours to compromising immigration officers and anyone else in between. The seriousness of the problems created resulted in the SADC passing the Anti-corruption Protocol (the Protocol), which enjoins member states to pass relevant legislation as a priority. At a continental level, the Africa Governance Forum, scheduled as an annual event, is designed 'to pursue collaborative and coordinated programmes in support of good governance'.

The background to the Protocol is set forth as follows:

The Southern African Development Community (SADC) Protocol Against Corruption was adopted by the SADC Heads of State and Government at their August 2001 Summit held in Malawi making it the first sub-regional anti-corruption treaty in Africa. The SADC Protocol follows in the wake of the Inter-American Convention Against Corruption of 1996, the European Convention on the Fight Against Corruption of 1997, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions also of

1997 from which it derives inspiration, thus adding an African perspective in the globalisation of the fight against corruption.⁸¹

A leading NGO in this region, the Human Rights Trust of Southern Africa (SAHRIT) co-ordinated the lobbying of the SADC governments in order to support the Protocol which was adopted at a summit of heads of state in Blantyre in August 2001. The protocol has been described by SAHRIT as having a threefold purpose:

- (a) To promote the development of anti-corruption mechanisms at national level;
- (b) To promote cooperation in the fight against corruption by state parties; and
- (c) To harmonise anti-corruption national legislation in the SADC region.

The Protocol provides a range of preventive mechanisms, which include the following:

- Development of a code of conduct for public officials
- Transparency in public procurement of goods and services
- Easy access to public information
- Protection of whistle-blowers
- Establishment of anti-corruption agencies
- Developing systems of accountability and controls
- Participation of the media and civil society; and
- Use of public education and awareness as a way of introducing zero tolerance for corruption.⁸²

In addition the Protocol also:

Addresses the issue of proceeds of crime by allowing for their confiscation and seizure thereby making it more difficult to benefit from proceeds of corruption. It makes corruption or any of the offences under it an extraditable offence making it difficult for criminals to have a haven in one of the SADC countries. More so the protocol can be a legal basis for extradition in the absence of a bilateral extradition treaty. The SADC Protocol also provides for judicial cooperation and legal assistance among state parties. This is important as corruption often involves more than one country.⁸³

Importantly, in terms of Article 7 of the Protocol, 'State Parties undertake, to the extent possible, to develop and harmonise their policies and domestic legislation for the attainment of the purpose of this Protocol. Each State Party shall adopt the necessary legislative or other measures to establish as criminal offences under its domestic law the acts of corruption described in Article 3.' It would be instructive; therefore, to establish how many SADC countries have taken steps towards implementing the vision of the Protocol.

South Africa, for example, had published the 'Prevention of Corruption Bill' just 8 months after adoption of the Protocol.⁸⁴ The Bill has been described as forming 'part of a carefully designed legislative response to the increasing waves of internal and trans-national commercial and property-related crimes that have struck South Africa in the past ten years.'⁸⁵ Other laws promulgated as part of a package aimed at combating national and international crime included the Prevention of Organised Crime Act No. 121 of 1998 and the Financial Intelligence Centre Act No. 108 of 1996. The latter statute enjoins banks and financial

⁸¹ Phil Matsheza-Human Rights Trust of Southern Africa, SADC Protocol Against Corruption 'Making it Work' Africa Workshop: Prague, The Czech Republic: 9th October 2001

⁸² *Supra*

⁸³ *Supra*

⁸⁴ Explanatory summary of the Bill [B19 – 2002] published in Government Gazette No 23336 of 18 April 2002.

⁸⁵ Professor R. Palmer 'Amended National Report for South Africa: Fighting International and National Corruption by Means of the Criminal Law' –paper presented at XVI Congress of the International Academy of Comparative Law: Brisbane, Australia, 2002.

institutions to report suspicious transactions, inter alia as well as cash deposits in excess of R10, 000.00 aimed at detecting and combating money laundering.

Article 10 of the Protocol obliges state parties to assist each other to the fullest extent:

By processing requests from authorities that, in conformity with their domestic law, have the power to investigate or prosecute the acts of corruption described in this Protocol, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption. State Parties shall provide each other with the widest measure of mutual technical co- operation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.

17. *United Nations Convention against Transnational Organized Crime*^{86*}

The United Nations Convention against Trans-national Organized Crime, adopted by the General Assembly on 15 November 2000 and open for signature from 12 to 15 December 2000 in Palermo (Italy), even though mainly aimed at the fight against organized crime includes several provisions related to the phenomenon of corruption.

In particular, the Convention foresees the criminalization of the corruption of public officials; the adoption of such measures as may be necessary to establish as a criminal offence the participation as an accomplice in such an offence; the liability (criminal, civil or administrative) of legal persons corrupting public officials; the provisions of measures to prevent detect and punish the corruption of public officials; the promotion of the concept of "integrity" of public officials as well as the provision of adequate independence to competent authorities in the prevention, detection and punishment of the corruption of public officials. The Convention strengthens its provisions by stating that the offence of corruption shall be established, *inter alia*, independently of the transnational nature or the involvement of an organized criminal group.

In particular, each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: *i*) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; and *ii*) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. In addition, each State Party shall consider criminalizing the conduct described above involving a foreign public official or an international civil servant as well as the criminalization of other forms of corruption.

The UN Convention introduces and promotes the concept of "integrity" of public officials and foresees that each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (article 9).

In connection with confiscation and seizure, the UN Convention foresees that States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of: *i*) proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds; and *ii*) property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention. For this purpose, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act on the ground of bank secrecy.

The provisions of the UN Convention dealing with extradition and mutual legal assistance are similar to traditional provisions already in place in many regional or bilateral agreements. The major significance of these provisions is that a large number of countries is expected to ratify the Convention, making legal assistance and extradition available much more widely than is

⁸⁶ * Not yet in force

presently the case. These provisions are intended to set minimum standards only. Countries can go further in bilateral or regional arrangements, and are in fact encouraged to do so.

Under article 16, extradition from another State Party may be sought for the four specific offences established by the Convention independently of the involvement of an organized criminal group given the offence itself is punishable by the domestic laws of both States. Where extradition is refused solely on the ground that the concerned person is one of the requested State Party's nationals, the requested State Party shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purposes of prosecution (article 16, par.10).

Also, States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters (article 16, par. 15).

On the basis of article 18 the widest measure of mutual legal assistance can be requested from another State Party for any investigation, prosecution or judicial proceedings in relation to offences covered by the Convention. The provisions of this article can be used to obtain statements or other evidence, conduct searches or seizures, serve judicial documents, examine objects or sites, obtain original documents or certified copies, identify or trace proceeds of crime or other property, obtain bank, corporate or other records, facilitate the appearance of persons in the requesting state party, or any other form of assistance permitted by the laws of the states involved (article 18, par.3). Since the range of forms of assistance available is generally consistent with many existing legal assistance agreements, the major significance of the Convention provisions will be that these extend mutual legal assistance to a much greater number of countries than is presently the case. According to article 18, par. 8, States Parties to the UN Convention shall not decline to render mutual legal assistance on the ground of bank secrecy.

In addition, the UN Convention also provides the general basis for conducting joint investigations (article19), co-operation in special investigative procedures, such as electronic surveillance, and general law-enforcement co-operation (articles 20 and 27). The development of domestic training programmes and the provision of technical assistance to other States in training matters are also encouraged (articles 29 and 30).

18. Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security-ECOWAS⁸⁷

With reference to the Accra declaration on collaborating against corruption, ECOWAS, the Attorney-Generals and Ministers of Justice of the Member States of the Economic Community of West African States (ECOWAS) met in Accra for talks on "collaborating against corruption: toward effective strategies and mechanisms". The ECOWAS Revised Treaty and the provisions of the Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security give the mandate to ECOWAS Member States to eradicate corruption within their territories. Noting the limitations of the existing protocols, rules, regulations and norms against corruption within Member States and the Community at large, they expressed their determination to confront corruption collectively. The conference called for the harmonisation of the laws of Member States in a protocol including extradition, financial disclosure and judicial processes, and for collaboration between public, private and non-state actors, including a free and responsible media.

⁸⁷ Not yet in force

C. Code of Conducts

1. Code of Conduct for Public Servants⁸⁸

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that public administrations play an essential role in democratic societies and that they must have at their disposal suitable personnel to carry out properly the tasks which are assigned to them;

Considering that public officials are the key element of a public administration, that they have specific duties and obligations, and that they should have the necessary qualifications and an appropriate legal and material environment in order to carry out their tasks effectively;

Convinced that corruption represents a serious threat to the rule of law, democracy, human rights, equity and social justice, that it hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;

Having regard to the recommendations adopted at the 19th and 21st Conferences of European Ministers of Justice (Valletta, 1994 and Prague, 1997 respectively);

Having regard to the Programme of Action against Corruption adopted by the Committee of Ministers in 1996;

Having regard to Recommendation No. R (81) 19 of the Committee of Ministers of the Council of Europe on the access to information held by public authorities;

Having regard to Recommendation No. R (2000) 6 of the Committee of Ministers of the Council of Europe on the status of public officials in Europe;

In accordance with the Final Declaration and the Plan of Action adopted by the heads of state and government of the Council of Europe at their Second Summit, held in Strasbourg, on 10 and 11 October 1997;

Recalling in this respect the importance of the participation of non-member states in the Council of Europe's activities against corruption and welcoming their valuable contribution to the implementation of the Programme of Action against Corruption;

Having regard to Resolution (97) 24 on the twenty guiding principles for the fight against corruption;

Having regard to Resolutions (98) 7 and (99) 5 authorising and respectively adopting the Enlarged Partial Agreement establishing the Group of States against Corruption (GRECO), which aims at improving the capacity of its members to fight corruption by following up compliance with their undertakings in this field;

Convinced that raising public awareness and promoting ethical values are valuable as means to prevent corruption,

⁸⁸ Adopted by the Committee of Ministers at its 106th Session on 11 May 2000

Recommends that the governments of member states promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials based on the model code of conduct for public officials annexed to this Recommendation; and

Instructs the Group of States against Corruption (GRECO) to monitor the implementation of this Recommendation.

Model Code of Conduct for Public Officials:

Article 1

1. This Code applies to all public officials.
2. For the purpose of this Code "public official" means a person employed by a public authority.
3. The provisions of this Code may also be applied to persons employed by private organisations performing public services.

The provisions of this Code do not apply to publicly elected representatives, members of the government and holders of judicial office.

Article 2

1. On the coming into effect of this Code, the public administration has a duty to inform public officials about its provisions.
2. This Code shall form part of the provisions governing the employment of public officials from the moment they certify that they have been informed about it.

Every public official has the duty to take all necessary action to comply with the provisions of this Code.

Article 3

Object of the Code

The purpose of this Code is to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials.

Article 4

General principles

1. The public official should carry out his or her duties in accordance with the law, and with those lawful instructions and ethical standards which relate to his or her functions.
2. The public official should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the public authorities.

Article 5

1. The public official has the duty to serve loyally the lawfully constituted national, local or regional authority.
2. The public official is expected to be honest, impartial and efficient and to perform his or her duties to the best of his or her ability with skill, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case.
3. The public official should be courteous both in his or her relations with the citizens he or she serves, as well as in his or her relations with his or her superiors, colleagues and subordinate staff.

Article 6

In the performance of his or her duties, the public official should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

Article 7

In decision making the public official should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters.

Article 8

1. The public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.
2. The public official should never take undue advantage of his or her position for his or her private interest.

Article 9

The public official has a duty always to conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.

Article 10

The public official is accountable to his or her immediate hierarchical superior unless otherwise prescribed by law.

Article 11

Having due regard for the right of access to official information, the public official has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment.

Article 12
Reporting

1. The public official who believes he or she is being required to act in a way, which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law.
2. The public official should, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of this Code by other public officials.
3. The public official who has reported any of the above in accordance with the law and believes that the response does not meet his or her concern may report the matter in writing to the relevant head of the public service.
4. Where a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public official concerned, the public official should carry out the lawful instructions he or she has been given.
5. The public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment. The investigation of the reported facts shall be carried out by the competent authorities.
6. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith.

Article 13
Conflict of interest

1. Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
2. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.
3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:
 - be alert to any actual or potential conflict of interest;
 - take steps to avoid such conflict;
 - disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
 - comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.
4. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest.
5. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment.

Article 14
Declaration of interests

The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.

Article 15
Incompatible outside interests

1. The public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her superior.
2. Subject to the provisions of the law, the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment.
3. The public official should comply with any lawful requirement to declare membership of, or association with, organisations that could detract from his or her position or proper performance of his or her duties as a public official.

Article 16
Political or public activity

1. Subject to respect for fundamental and constitutional rights, the public official should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally.
2. In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan political purposes.
3. The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.

Article 17
Protection of the public official's privacy

All necessary steps should be taken to ensure that the public official's privacy is appropriately respected; accordingly, declarations provided for in this Code are to be kept confidential unless otherwise provided for by law.

Article 18
Gifts

1. The public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organisations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts.
2. Where the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior.

Article 19
Reaction to improper offers

If the public official is offered an undue advantage he or she should take the following steps to protect himself or herself:

- Refuse the undue advantage; there is no need to accept it for use as evidence;
- Try to identify the person who made the offer;
- Avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence;
- If the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;
- Obtain witnesses if possible, such as colleagues working nearby;
- Prepare as soon as possible a written record of the attempt, preferably in an official notebook;
- Report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority;
- Continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

Article 20
Susceptibility to influence by others

The public official should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

Article 21
Misuse of official position

1. The public official should not offer or give any advantage in any way connected with his or her position as a public official, unless lawfully authorised to do so.
2. The public official should not seek to influence for private purposes any person or body, including other public officials, by using his or her official position or by offering them personal advantages.

Article 22
Information held by public authorities

1. Having regard to the framework provided by domestic law for access to information held by public authorities, a public official should only disclose information in accordance with the rules and requirements applying to the authority by which he or she is employed.
2. The public official should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware.
3. The public official should not seek access to information which it is inappropriate for him or her to have. The public official should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment.
4. Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading.

Article 23

Public and official resources

In the exercise of his or her discretionary powers, the public official should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.

Article 24

Integrity checking

1. The public official who has responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required.
2. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice.

Article 25

Supervisory accountability

1. The public official who supervises or manages other public officials should do so in accordance with the policies and purposes of the public authority for which he or she works. He or she should be answerable for acts or omissions by his or her staff which are not consistent with those policies and purposes if he or she has not taken those reasonable steps required from a person in his or her position to prevent such acts or omissions.
2. The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his or her staff in relation to his or her office. These steps may include emphasising and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his or her staff, and providing by his or her personal conduct an example of propriety and integrity.

Article 26

Leaving the public service

1. The public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service.
2. The public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment.
3. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body.
4. The former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorised to do so.
5. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service.

Article 27

Dealing with former public officials

The public official should not give preferential treatment or privileged access to the public service to former public officials.

Article 28

Observance of this Code and sanctions

1. This Code is issued under the authority of the minister or of the head of the public service. The public official has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments. He or she should seek advice from an appropriate source when he or she is unsure of how to proceed.
2. Subject to Article 2, paragraph 2, the provisions of this Code form part of the terms of employment of the public official. Breach of them may result in disciplinary action.
3. The public official who negotiates terms of employment should include in them a provision to the effect that this Code is to be observed and forms part of such terms.
4. The public official who supervises or manages other public officials has the responsibility to see that they observe this Code and to take or propose appropriate disciplinary action for breaches of it.
5. The public administration will regularly review the provisions of this Code.

2. *THE BANGALORE DRAFT: International Code for Judicial Conduct*

Preamble

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS an independent judiciary is likewise essential if the courts are to fulfill their roles as guardians of the rule of law and thereby to assure good governance.

WHEREAS the real source of judicial power is public acceptance of the moral authority and integrity of the judiciary.

AND WHEREAS consistently with the United Nations Basic Principles on the Independence of the Judiciary, it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

The following principles and rules are intended to establish standards for ethical conduct of judges. They are principles and rules of reason to be applied in the light of all relevant circumstances and consistently with the requirements of judicial independence and the law. They are designed to provide guidance to judges and to afford a structure for regulating judicial conduct. They are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

The values which this Code upholds are:

- Propriety
- Independence
- Integrity
- Impartiality
- Equality
- Competence and diligence
- Accountability

Code of Judicial Conduct

I. *Propriety*

Value: PROPRIETY

Principle: Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Code:

1.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities (9).

1.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office (10).

1.3 A judge shall avoid close personal association with individual members of the legal profession, particularly those who practise in the judge's court, where such association might reasonably give rise to the suspicion or appearance of favouritism or partiality (11).

1.4 Save in exceptional circumstances or out of necessity, a judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case (12).

1.5 A judge shall avoid the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of impropriety on the part of the judge (13).

1.6 A judge shall refrain from conduct such as membership of groups or organizations or participation in public discussion which, in the mind of a reasonable, fair-minded and informed person, might undermine confidence in the judge's impartiality with respect to any issue that may come before the courts (14).

1.7 A judge shall, upon appointment, cease all partisan political activity or involvement. A judge shall refrain from conduct that, in the mind of a reasonable fair-minded and informed person, might give rise to the appearance that the judge is engaged in political activity (15).

1.8 A judge shall refrain from:

1.8.1 Membership of political parties;

1.8.2 Political fund-raising;

1.8.3 Attendance at political gatherings and political fund-raising events;

1.8.4 Contributing to political parties or campaigns; and

1.8.5 Taking part publicly in controversial discussions of a partisan political character (16).

1.9 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge (17).

1.10 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties (18).

1.11 A judge shall not testify voluntarily as a character witness, except that a judge may testify as a witness in a criminal proceeding if the judge or a member of the judge's family is a victim of the offence or if the defendant is a member of the judge's family or in like exceptional circumstances (19).

1.12 Subject to the proper performance of judicial duties, a judge may engage in activities such as:

1.12.1 The judge may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice and related matters;

1.12.2 The judge may appear at a public hearing before an official body concerned with matters relating to the law, the legal system and the administration of justice or related matters; and

1.12.3 The judge may serve as a member of an official body devoted to the improvement of the law, the legal system, the administration of justice or related matters (20).

1.13 A judge may speak publicly on non-legal subjects and engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with this Code (21).

1.14 A judge may participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties. A judge should not be involved in fund-raising or membership solicitation (22).

1.15 A judge shall not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person connected with a member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties (23).

1.16 Save for holding and managing appropriate personal or family investments, a judge shall refrain from being engaged in other financial or business dealings as these may interfere with the proper performance of judicial duties or reflect adversely on the judge's impartiality (24).

1.17 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties (25).

1.18 A judge shall not practise law whilst the holder of judicial office (26).

1.19 Except as consistent with, or as provided by, constitutional or other law, a judge shall not accept appointment to a government commission, committee or to a position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, the administration of justice or related matters. However, a judge may represent the judge's country or the state on ceremonial occasions or in connection with historical, educational, cultural, sporting or like activities (27).

1.20 A judge may form or join associations of judges or participate in other organizations representing the interests of judges to promote professional training and to protect judicial independence (28).

1.21 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties (29).

1.22 Subject to law and to any legal requirements of public disclosure, a judge may receive a small token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality (30).

1.23 A judge may receive compensation and reimbursement of expenses for the extrajudicial activities permitted by this Code, if such payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) Such compensation and reimbursement shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activities; and

(b) Reimbursement shall be limited to the actual cost of travel and accommodation reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation (31).

1.24 A judge shall make such financial disclosures and pay all such taxes as are required by law (32).

II. Independence

Value: INDEPENDENCE

Principle: An independent judiciary is indispensable to impartial justice under law. A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Code:

2.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason (33).

2.2 A judge shall reject any attempt to influence his or her decision in any matter before the judge for decision where such attempt arises outside the proper performance of judicial duties (34).

2.3 In performing judicial duties, a judge shall, within the judge's own court, be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently (35).

2.4 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary (36).

2.5 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence which is fundamental to the maintenance of judicial independence (37).

III. Integrity

Value: INTEGRITY

Principle: Integrity is essential to the proper discharge of the judicial office.

Code:

3.1 A judge shall ensure that his or her conduct is above reproach in the view of reasonable, fair-minded and informed persons (38).

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done (39).

3.3 A judge, in addition to observing personally the standards of this Code, shall encourage and support their observance by others (40).

IV. Impartiality

Value: IMPARTIALITY

Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the making of a decision itself but also to the process by which the decision is made.

Code:

4.1 A judge shall perform his or her judicial duties without favour, bias or prejudice (41).

4.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary (42).

4.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases (43).

4.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue (44).

4.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might believe that the judge is unable to decide the matter impartially (45)

4.6 A judge shall disqualify himself or herself in any proceedings in which there might be a reasonable perception of a lack of impartiality of the judge including, but not limited to, instances where:

4.6.1 The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

4.6.2 The judge previously served as a lawyer or was a material witness in the matter in controversy;

4.6.3 The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy (46) .

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family (47).

4.8 A judge who would otherwise be disqualified on the foregoing grounds may, instead of withdrawing from the proceedings, disclose on the record the basis of such disqualification. If, based on such disclosure, the parties, independently of the judge's participation, agree in writing or on the record, that the judge may participate, or continue to participate, in the proceedings, the judge may do so (48).

4.9 Disqualification of a judge is not required if necessity obliges the judge to decide the matter in controversy including where no other judge may lawfully do so or where, because of urgent circumstances, failure of the judge to participate might lead to a serious miscarriage of justice. In such cases of necessity, the judge shall still be obliged to disclose to the parties in a timely way any cause of disqualification and ensure that such disclosure is included in the record (49).

4.10 Save for the foregoing, a judge has a duty to perform the functions of the judicial office and litigants do not have a right to choose a judge.

V. Equality

Value: EQUALITY

Principle: Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Code:

5.1 A judge shall strive to be aware of, and to understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds") (50)

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds (51).

5.3 A judge shall carry out his or her duties with appropriate consideration for all persons (for example, parties, witnesses, lawyers, court staff and judicial colleagues) without unjust differentiation on any irrelevant ground, immaterial to the proper performance of such duties (52).

5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter which is before the judge, on any irrelevant ground (53).

5.5 A judge shall require lawyers in proceedings before a court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds. This requirement does not preclude legitimate advocacy where any such grounds are legally relevant to an issue in the proceedings (54).

5.6 A judge shall not be a member of, nor associated with, any society or organization that practises unjust discrimination on the basis of any irrelevant ground (55).

5.7 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not engage in independent, personal investigation of the facts of a case.

5.8 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not, in the absence of the other parties to the proceedings, communicate with any party to proceedings in the judge's court concerning such proceedings (56).

VI *Competence and Diligence*

Value: COMPETENCE AND DILIGENCE

Principle: Competence and diligence are prerequisites to the due performance of judicial office.

Code:

6.1 The judicial duties of a judge take precedence over all other activities (57).

6.2 A judge shall devote his or her professional activity to judicial duties. Such duties are broadly defined and include not only the performance of judicial duties in court and the making of decisions but other tasks relevant to the court's operations or to the judicial office (58).

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties (59).

6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms and, within any applicable limits of constitutional or other law, shall conform to such norms as far as is feasible (60).

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness (61).

6.6 A judge shall maintain order and decorum in all proceedings in which the judge is involved. He or she shall be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control (62).

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties (63).

VII *Implementation and Accountability*

Value: IMPLEMENTATION AND ACCOUNTABILITY

Principle: Implementing these principles and ensuring the compliance of judges with them are essential to the effective achievement of the objectives of this Code.

Code:

7.1 Institutions and procedures for the implementation of this Code shall provide a publicly credible means of considering and determining complaints against judges without eroding the essential principle of judicial independence.

7.2 By the nature of the judicial office judges are not, except in accordance with law, accountable to any organ or entity of the state for their judicial decisions but they are accountable for their conduct to institutions that are established to implement this Code.

7.3 The institutions and procedures established to implement this Code shall be transparent so as to strengthen public confidence in the judiciary and thereby to reinforce judicial independence.

7.4 Ordinarily, except in serious cases that may warrant removal of the judge from office, proceedings established to implement this Code shall be conducted in confidence.

7.5 The implementation of this Code shall take into account the legitimate needs of a judge, by reason of the nature of the judicial office, to be afforded protection from vexatious or unsubstantiated accusations and due process of law in the resolution of complaints against the judge.

7.6 The judiciary and any institution established to implement this Code shall promote awareness of these principles and of the provisions of the Code.

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