UNITED NATIONS

THE GLOBAL PROGRAMME AGAINST CORRUPTION

anti-corruption toolkit

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FOREWORD

The Anti-Corruption Toolkit

Since 1994, unprecedented efforts have been made to raise awareness about corruption, its insidious nature and the damaging effects it has on the welfare of entire nations and their peoples. Corruption not only distorts economic decision-making, it also deters investment, undermines competitiveness and, ultimately, weakens economic growth. Indeed, there is evidence that the social, legal, political and economic aspects of development are all linked, and that corruption in any one sector impedes development in them all.

There is now increasing recognition that anti-corruption policies and legislation are urgently required at the national and international level. Serious efforts to combat corruption are still in their infancy in most countries, and reliable information about the nature and extent of domestic and transnational corruption is difficult to obtain. The problems are compounded by the very broad nature of the phenomenon and a lack of consensus about legal or criminological definitions that could form the basis of international and comparative research.

Nevertheless, some jurisdictions have developed successful measures. This Anti-Corruption Toolkit is based on lessons learned from the technical cooperation activities facilitated by the Global Programme against Corruption of the United Nations *Office on Drugs and Crime*. The Toolkit provides an inventory of measures for assessing the nature and extent of corruption, for deterring, preventing and combating corruption, and for integrating the information and experience gained into successful national anti-corruption strategies.

The nature and effects of corruption are unique to each country and society. This Toolkit is intended to provide a range of options that will enable each country to deal with corruption as effectively as possible according to domestic needs.

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http://www.unodc.org/unodc/en/corruption.html

EQUIP YOURSELF

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

The United Nations Anti-Corruption Handbook for Investigators and Prosecutors, which contains descriptions of specific issues and options confronting criminal justice professionals in domestic and transnational corruption cases.

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. Case Studies, setting out practical examples intended to illustrate the use of individual tools and combinations of tools in actual practice, are included in the Toolkit. They provide information about the conditions under which a particular programme will or will not work and how various tools can be adapted or modified to suit the circumstances in which they are likely to be used.

The international legal instruments, 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, are available on the Internet on the United Nations Office of Drug Control and Crime Prevention (UNODC) web page:

http://www.unodc.org/unodc/en/corruption.html

To assist users who do not have Internet access, individual publications will also be produced and updated as necessary. Elements of the Toolkit may also form the basis for other publications, tailored to meet the needs of particular regions or target audiences, such as judges, prosecutors or law enforcement agencies.

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The meaning of "corruption" and a survey of its most common forms

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.

“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.

“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.

BRIBERY

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 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.

- 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.

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.

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 characterised 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.

ABUSE OF DISCRETION

In some cases, corruption can involve the abuse of a 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.

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.

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.

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.

END NOTES

(1)
Initial proposals for the Convention were gathered at an informal preparatory meeting held in Buenos Aires from 4-7 December 2001 and compiled in documents A/AC/261/3, Parts I-IV. Proposals to define "corruption" are in Part I, and proposals to criminalize acts of corruption are found in Part II.

(2)
See, for example, Rose-Ackerman, S., "Democracy and 'grand corruption' " UNESCO, 1996 (ISSI 149/1996), reprinted in Williams, R., ed. Explaining Corruption, Elgar Reference Collection, UK, 2000, pp.321-336.

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

(4)
Provisions that define or criminalize bribery include: article 8 of the UNConvention Against Transnational Organized Crime, GA/Res/55/25, Annex and article VI of the Inter-American Convention against Corruption of 29 March 1996 (OAS Convention), which require Parties to criminalize offering of or acceptance by a public official of an undue advantage in exchange for any act or omission in the

performance of the official's public functions. Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Article VIII of the OAS Convention require Parties to criminalize the offering of bribes by nationals of one State to a Government official of another in conjunction with a business transaction. Articles 2 and 3 of the European Union Convention on the Fight Against Corruption Involving Officials of the European Communities or officials of Member States of the European Union, Journal C 195, 25/06/1997, pp.2-11 (1997), requires Parties to criminalize the request or receipt by a public official of any advantage or benefit in exchange for the official's action or omission in the exercise of his functions ("passive bribery"), as well as the promise or giving of any such advantage or benefit to a public official ("active bribery"). The Council of Europe's Criminal Law Convention on Corruption, ETS No. 173 (1998), goes further by criminalizing "active" and "passive" bribery of, inter alia, domestic public officials, foreign public officials, domestic and foreign public assemblies, as well as private sector bribery, trading in influence and account offences. See also UN Declaration against Corruption and Bribery in International Commercial Transactions, GA/Res/51/191, Annex (1996), calling for the criminalization of corruption in international commercial transactions and the bribery of foreign public officials; and Global Forum on Fighting Corruption, Washington, 24-26 February 1999, "Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials" document E/CN.15/1999/CRP.12, Principle #4. The working definition used in this Tool Kit and by the CICP's Global Programme against Corruption (GPAC) is "the misuse of (public) power for private gain". The United Nations Manual on Anti-Corruption Policy discusses models based on the idea that all forms of corruption involve either the creation of conflicting interests or the exploitation of such interests that already exist.

(5)
A number of recent international legal instruments have sought to ensure that Parties have offences addressing this type of conduct with varying degrees of specificity. These include the Organization of American States' Inter-American Convention Against Corruption (1996) and the European Union's Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (1995). Article XI(1)(b) and (d) of the Inter-American Convention call upon Parties to consider criminalizing a government official's improper use or diversion of government property, including money and securities, regardless of the person or entity to whom the property is diverted, while Article XI(1)(a) calls upon Parties to consider criminalizing the improper use of classified information by a government official. Article IX requires, subject to a Party's Constitution and the fundamental principles of its legal system, criminalization of "illicit enrichment," meaning "a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions." Addressing the narrow area of protection of the financial interests of the European Community from fraud and corruption, Article 1 of the European Union's Convention requires Parties to criminalize the use or presentation of false or incorrect representations or non-disclosure of information the effect of which is the misappropriation or wrongful retention of funds from the budget of the European Communities. For a more detailed analysis of these instruments, see UN document E/CN.15/2001/3 (Report of the Secretary General on Existing International Legal Instruments Addressing Corruption)."

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.

Negative impact of corruption

1. Corruption tends to concentrate wealth, not only increasing the gap between rich and poor but 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.

CONDITIONS FACILITATING CORRUPTION

2. 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.

3. 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.

4. 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.

5. 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.

CONDITIONS REQUIRED TO PREVENT CORRUPTION

6. 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.

7. 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.

8. 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.

9. 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.

INVOLVING ALL KEY STAKEHOLDERS

10. 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.

11. 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.

12. 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.

THE LINKS BETWEEN CORRUPTION AND MONEY-LAUNDERING

13. 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.

14. 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.

CONSTRUCTING AN ANTI-CORRUPTION STRATEGY: AN INTEGRATED APPROACH

Developing a national anti-corruption strategy requires the successful merger of "universal" elements, namely those that have proved effective against corruption regardless of where it occurs, and elements that take into account country-specific circumstances.

An integrated approach will be: fact-based; transparent; simultaneously non-partisan and multi-partisan; inclusive; comprehensive; impact-oriented; and flexible.

Country-specific will include problems that may be unique to the country involved plus other national variables such as:

- Legal or constitutional constraints,
- The nature of political and legislative structures,

- The extent to which the media, academic sources and other elements of civil society are willing and able to participate in the strategy, and
- The availability and extent of domestic and other resources.

The early stages of planning frequently involve a preliminary assessment of the nature and extent of corruption in the country concerned and the relative strengths and weaknesses of governmental and societal elements called upon to combat it. That allows priorities to be set and efforts to be focused on the weakest and most vulnerable elements or on elements that require reform as a precondition for progress in other areas.

COMMON BASIC ELEMENTS OF ANTI-CORRUPTION STRATEGIES

Specific needs will vary from country to country but experience suggests that the elements listed below must be addressed as a priority before significant progress can be achieved.

- Effective rule-of-law structures, including judicial and legislative elements, are needed at an early stage. A professional, unbiased and independent judiciary is critical to the development and implementation of law enforcement and criminal justice measures; it is also necessary in areas such as the making and enforcement of legal contracts and the use of civil litigation as a means of identifying, exposing and obtaining redress for corrupt practices. Also required is an open and transparent legislature that formulates policy, creates laws in the public interest and provides a role model for other institutions.
- There must be transparency in public communications and mechanisms to give the public broad, straightforward and timely access to information. Government cannot begin to achieve credibility unless the public understands what it is doing.
- A professional, politically neutral and uncorrupted public service is one of the fundamental objectives of anti-corruption strategies. Establishing professionalism and neutrality will require a combination of legal standards and cultural reforms. The public service should be encouraged to adopt high standards of professionalism and integrity, and the general population should be encouraged to expect those high standards and take action when they are not met.
- Strong and independent elements are needed in several areas of civil society. The most important of these is a free, clean and independent media that disseminates important public information and provides criticism and commentary that is independent of political and public service influences. A free media can identify and expose corruption or other improper practices in Government; it can also validate Government measures that are neither corrupt nor improper.
- Periodic assessment of corruption and the effectiveness of anti-corruption strategies, as well as the flexibility to adjust strategies to take account of assessments, are also important. Experience has shown that efforts to combat corruption often have unforeseen consequences, for example, displacement effects. Displacement, where action against corruption in one sector effectively displaces it into other areas, should be identified quickly and the strategy adjusted to incorporate effective countermeasures. Assessment and adjustment also entail identifying and replicating measures that have proved successful.

AN INTEGRATED APPROACH TO DEVELOPING AND IMPLEMENTING STRATEGIES

The development and implementation of an effective anti-corruption strategy require the coordination and integration of many disparate factors. Elements must be integrated internally to form a single, unified and coherent anti-corruption strategy and externally with broader national efforts to bring about the rule of law, sustainable development, political or constitutional reforms, major economic and criminal justice reforms. In some cases, they must also be coordinated with the efforts of aid donors, international organizations or other countries.

In most cases, national strategies will be complex. To achieve a few basic goals, many interrelated elements will be required. Individual reform efforts must be carefully sequenced and coordinated over extended periods of time. Many information sources and other inputs must be integrated during strategy development and subsequently, at frequent intervals, as the strategy is implemented, assessed and adjusted.

Strategies require the support and concerted effort of individuals and organizations in the public sector, civil society and the general population. Some elements of national strategies must also be integrated with the strategies of other countries or with regional or global standards or activities. That will allow them to deal more effectively with transnational forms of corruption and to meet the commitments of instruments such as the Conventions adopted by the Organization of American States (OAS), The Organisation for Economic Cooperation and Development (OECD) and, ultimately, the United Nations Convention against Corruption.

To ensure integration, the following approaches should be adopted in developing, implementing, assessing and adjusting strategies:

The need for development, implementation and adjustment based on assessment and on fact.

It is important for strategies to be fact-based at all stages. Preliminary assessments of the nature and extent of corruption and the resources available to fight it are needed to develop a comprehensive strategy and to set priorities before the strategy is implemented. Upon implementation, further assessments of individual elements and overall performance should be undertaken, so that the strategy can be periodically adjusted to take advantage of successes and compensate for failures.

The need for transparency.

Transparency in Government is widely viewed as a necessary condition for effective corruption control and, more generally, for good governance. Open information and understanding are also essential to public participation in and ownership of anti-corruption strategies. Lack of transparency is likely to result in public ignorance when, in fact, broad enthusiasm and participation are needed. It can also lead to a loss of credibility and a perception that the programmes are corrupt or that some elements of Government may have avoided or opted out of them. In societies where corruption is endemic, such an assumption will usually be widespread and can be rebutted only by programmes being publicly demonstrated to be free of corruption. Where transparency does not exist, popular suspicions about the programmes may well be justified.

The need for non-partisan or multi-partisan support.

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

The need for inclusiveness.

It is important to include the broadest possible range of participants or stakeholders to ensure that all significant factors are considered and a sense of "ownership" of and support for the strategy are instilled. The elements of the strategy will work in virtually every sector of Government and society. Thus, information and assessments from each must be included so that advantages or strengths can be used to the best advantage and impediments or problems can be dealt with early on. Broad-based consultation and participation also address the concerns and raise the expectations of everyone involved, from senior officials, politicians and other policy makers to members of the public. Bringing otherwise marginalized groups into the strategy empowers them, providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will influence policy-making, giving them a greater sense of ownership of the policies that are developed. In societies where corruption is endemic, it is the marginalized groups that are most often affected by corruption and thus most likely to be in a position to take action against it in their everyday lives and through political action.

The need for comprehensiveness

The need for a comprehensive approach to developing, implementing and evaluating an anti-corruption approach is vital, with all sectors of society from the central Government to the individual being involved at every stage. That includes elements from the public and private sector, as well as international organizations, national non-governmental institutions and donor Governments.

The need for impact-oriented elements and strategies.

Clear and realistic goals must be set; all participants in the national strategy must be aware of the goals and the status of progress achieved to date. Thus, measurable performance indicators must be established, as well as a baseline against which the indicators can be measured. While elements of the strategy and the means of achieving specific goals may be adjusted or adapted as the strategy evolves, the basic goals themselves should not be changed if that can be avoided, with the occasional exception of time lines.

The need for flexibility.

While strategies should set out clear goals and the means of achieving them, the strategies and those charged with their implementation should be flexible enough to permit adaptations to be made based on information from the periodic progress assessments. Compliance should not be reduced by suggesting to those adversely affected by the strategy that, by opposing it, they might secure adaptations that would be more favourable to their interests.

END NOTES

(6)
Jeremy Pope, "Confronting Corruption", Transparency International Source Book 2000.

(7)
The Government of Nigeria, for example, has been pursuing proceeds of corruption transferred during the 1908s and 1990s, estimated in the tens and even hundreds of billions of dollars. In April 2002, it announced a settlement with the family of former military ruler Sani Abacha under which $535 million would be returned to Nigeria, criminal charges against family members would be dropped, and $100 million would be kept by the family as estimated income from before the late Mr. Abacha assumed power in a military coup in 1993. The settlement involved only proceeds held, and at the time frozen, in bank accounts in Switzerland.

An introduction to the Toolkit: its aims and intended uses.

As mentioned, the Toolkit is based on lessons learned from the technical cooperation activities facilitated by the Global Programme against Corruption (GPAC) under the framework of United Nations Centre for International Crime Prevention (CICP). GPAC activities have adopted a modular approach that draws from a broad set of “Tools", anti-corruption policies and other measures. The anti-corruption Tools presented in the present publication form a highly flexible Toolkit. Tools may be utilized at different stages and levels of an anti-corruption strategy, as well as in a variety of combinations, according to the needs and context of each country or sub-region.

The purpose of the Toolkit is threefold:

- To help Governments, organizations and the public understand the insidious nature of corruption and the damaging effects it can have on the welfare of entire nations and their peoples;
- To provide an inventory of measures to assess the nature and extent of corruption in order to deter, prevent and combat it more successfully; and
- To combine and integrate the various "Tools" into successful national anti-corruption strategies.

Individual tools may be used to augment existing anti-corruption strategies but, as a general rule, Tools should not be used in isolation. No serious corruption problem is likely to respond to the use of a single policy or practical measure. It is expected, therefore, that countries will develop comprehensive anti-corruption strategies consisting of a range of elements based on individual Tools. The challenge is to find combinations or packages of Tools that are appropriate for the task in hand, and to apply Tools in the most effective combinations and sequences possible. The Tools used must thus be considered and coordinated in a careful fashion. Regarding combining and packaging, for example, codes of conduct for public officials are usually directed both at the officials involved, to establish the standards they are expected to meet, and at the general public, to advise on the standards they have a right to expect. Regarding timing or sequencing, Tools intended to raise public expectations can do more harm than good unless tools intended to deliver those expected higher standards have had time to work.

The relationship between individual Tools or policy elements is complex, and may vary from one country to another. It will depend on factors such as the nature and extent of corruption and the degree to which the institutions and procedures needed to combat corruption are already present or need to be established. With that in mind, the description of each Tool includes a list of other, related Tools and some discussion of the nature of the relationships involved.

The choice and sequencing of tools is complex. In some situations, it could be seen as desirable to use certain tools in combination or to choose one on an exclusive basis, although, as mentioned, that is not desirable. Further complexities are added when the relationships between multiple packages or combinations of tools are considered.

There is no universal blueprint for fighting corruption. The Toolkit offers suggestions and information as to how other countries have successfully used the Tools. Generally, it is expected that countries will first make an assessment of the nature and scope of corruption problems. Next, they will develop an anti-corruption strategy, setting overall priorities and coordinating specific programmes and activities into a comprehensive framework. Then, specific elements of the strategy will be developed and implemented. Throughout the process, progress will be monitored and information about what is or is not effective will be used to reconsider and modify each element and the overall strategy, as necessary.

The Toolkit covers prevention, enforcement, institution building, awareness raising, empowerment, anti-corruption legislation and monitoring. It is an extensive, but by no means exhaustive, collection of theoretical and practical approaches and their applications developed from anti-corruption research and technical assistance activities, including the comprehensive Country Assessments undertaken by the Global Programme of the United Nations and other organizations and nations worldwide.

As the Toolkit is, by its very nature, being continuously developed and refined, the Centre for International Crime Prevention (CICP) welcomes comments and inputs to improve its scope and content to provide greater insight and understanding of individual anti-corruption measures. It is important to bear in mind that lessons are learned from success and perhaps even more so from failure. Users of the Toolkit are thus urged to provide comments regardless of whether or not their initial implementation of anti-corruption measures was seen as successful or not, and the most useful comments and experiences will be identified, refined and incorporated into the Toolkit. It is expected that further Tools will be added, as required, and that the existing content will be revised periodically to take account of lessons learned and the recommendations of countries using the Toolkit.

USING THE TOOLKIT

The Toolkit has been designed for maximum flexibility, and can be used by Governments or agencies as they think best. Elements can be used, inter alia, to provide basic information on corruption for training officials, and to provide advice or assistance in gathering and assessing information. The fundamental purpose of the Toolkit, however, is to suggest elements for a comprehensive national anti-corruption strategy and to assist Governments in developing, integrating, implementing and assessing those elements.

That will generally involve the following steps:-

Initial assessment

Prior to considering specific tools or anti-corruption measures, countries should engage in a transparent and extensive assessment of the nature and extent of the corruption problem and of the strengths and weaknesses of the institutions that will be called upon to take measures against it. Transparency is therefore all-important. Transparency will ensure that the assessment results are a valid reflection of the actual problem and thus a solid basis for planning and for the setting of priorities. It will also guarantee the basic credibility of the national strategy, which is essential to the participation and compliance of those affected by corruption, especially the general public who are the ultimate clients of the public services.

Ongoing assessment

The initial assessment is unlikely to remain either valid or accurate once the implementation of the strategy has begun. The impact of some elements will often be unpredictable; certain consequences, such as the displacement of corrupt conduct, may adversely affect other strategic elements or create the perception that the strategy is not working, thus eroding support. Ongoing assessments and periodic adjustments, dealt with on the same transparent basis as the initial assessment, are thus required. They should be undertaken on a comprehensive basis, at intervals, to assess overall progress. They may also focus on specific issues or areas if the need for information and possible adjustment becomes apparent.

Who will use the tools?

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

Resources required

Specific resources will vary from Tool to Tool and, to some extent, with the context in which the Tool will be implemented and the seriousness of the problems it addresses. The overall resource requirements for anti-corruption strategies, however, are clearer. Generally, the scope of reforms will require the commitment of substantial resources; and as the reforms will necessarily be of long duration, an ongoing and stable commitment of adequate resources will also be required. Fighting corruption is a major undertaking that cannot be accomplished quickly or cheaply. It requires an extensive commitment in political terms and the dedication of social and financial resources that tend to materialize only when the true nature and extent of the problem and the harm it causes to societies become apparent.

Progress is also difficult to achieve, and may be difficult to measure. The creation of popular expectations about standards of public service and the right to be free of corrupt influences has been identified as an important element of many anti-corruption strategies. The difficulties inherent in making progress, however, mean that those expectations must be carefully managed. Convincing populations that corruption must be extinguished may lead to cynicism and even worse corruption problems if the expectations are too high to be met in a realistic timeframe.

Resource allocations will, in some cases, require safeguards. Experience has shown that anti-corruption agencies often compromise their independence and credibility by having to seek and justify operational funding. The commitment of resources includes not only financial resources, although these are critical, but also the commitment of human and technical resources. In developing countries, expertise in economics, law and other relevant specialties may be even more difficult to secure than the funding needed to pay the experts. The commitment and allocation of resources must also be an integrated part of the overall strategy: under-funding can result in under-utilization of human or other resources. There have also been cases where too much funding from multiple donors or uncoordinated programmes have overloaded institutional capacities and resulted in wasted resources and less-than-favourable outcomes.

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

Summaries of the individual tools

The Toolkit is divided into eight chapters, as follows:

I. ASSESSMENT OF CORRUPTION AND OF INSTITUTIONAL CAPABILITIES AGAINST CORRUPTION
II. INSTITUTION BUILDING
III. SITUATIONAL PREVENTION
IV. SOCIAL PREVENTION AND PUBLIC EMPOWERMENT
V. ENFORCEMENT
VI. ANTI-CORRUPTION LEGISLATION
VII. INTERNATIONAL JUDICIAL COOPERATION
VIII. REPATRIATION OF ILLEGAL FUNDS

Most chapters are followed by a number of case studies showing how various anti-corruption measures, as outlined in the Toolkit, are actually being implemented in countries around the world.

For ease of reference and to give an overview of the contents of the Toolkit, a precis of each Tool is provided here.

I. ASSESSMENT OF CORRUPTION AND OF INSTITUTIONAL CAPABILITIES AGAINST CORRUPTION: TOOL#1 THROUGH TOOL #2

The need for impact-oriented elements and strategies.

Clear and realistic goals must be set; all participants in the national strategy must be aware of the goals and the status of progress achieved to date. While elements of the strategy and the means of achieving specific goals may be adjusted or adapted as the strategy evolves, the basic goals themselves should not be changed if that can be avoided, with the occasional exception of timelines.

TOOL #1

Assessing the nature and extent of corruption

Tool #1 is intended for use in identifying the nature and extent of corruption. It describes specific methods, including surveys, interviews, desk reviews, case studies, and other means, that can be used to gather information about corruption to support both quantitative and qualitative assessments.

Quantitative assessments examine the extent of corruption both generally and in specific sectors. A quantitative assessment allows for comparisons and establishes a baseline against which future progress in each area can be assessed.

Qualitative assessments focus more closely on the nature of corruption, examining typical cases in detail to determine how corruption actually works, who is involved, who benefits and who is victimized or adversely affected.

Such assessments are used to develop and refine specific measures. For example, codes of conduct for certain public servants may be adjusted to take account of the history of a particular corrupt practice or of pressures to engage incorruption that are specific to the duties performed. They may also be used as the basis for conclusions about the substantive effects of the anti-corruption measures taken, which will allow various strategic elements to be adapted wherever necessary. For example, staff who begin to resist attempts at bribery may then find themselves confronted with more coercive or threatening advances, and may require security and protection.

In dealing with corruption, both the perception and the reality are important, and are often (but not always) interdependent. For that reason, qualitative and quantitative assessments should include both objective and subjective assessments.

Objective assessments draw together information from diverse sources in order to compensate for biases and errors and help to develop an accurate picture of what is actually occurring. Subjective assessments examine the perceptions of those involved, those affected and the general population to determine whether the measures taken are effective or not.

TOOL #2

Assessment of institutional capacities and responses to corruption

Tool #2 uses similar methods of assessment as Tool #1 but focuses on the assessment of institutions as opposed to the assessment of corruption itself. Institutional assessment is intended to provide information about the extent to which institutions are affected by corruption, how far they may be utilized in the implementation of anti-corruption measures, and the extent to which their participation in the anti-corruption strategy is needed and at what stage(s). At the developmental stage, such information can be used to set priorities. Early efforts will focus on institutions where the problem is particularly serious or where it can be addressed quickly (to establish precedents and produce credibility for the strategy in the early stages), or where early reforms are needed as the basis for reforms in other areas at later stages of strategy implementation.

In many cases, the institutional analysis will lead to an early focus on the judiciary. If the judiciary is assessed as being free of corruption, other strategic elements can focus on criminal prosecution and civil litigation practices whose correct functioning depends on fair and independent judges. If a problem of corruption is identified in the judiciary, reforms will usually be a top priority. The functioning of many other strategic elements depends on the rule of law and independent judges and, if reforms succeed and are seen to be successful, the high status of judges in most societies will set an important precedent.

2. INSTITUTION BUILDING
TOOL #3 THROUGH TOOL #13

TOOL #3

Specialized anti-corruption agencies

Tool #3 is intended for use in assessing if a country should establish a specialized anti-corruption agency (ACA), if it should adapt existing law enforcement institutions to combat corruption or if it should use some combination of the two. The Tool looks at topics such as the possible relationship of an ACA with other institutions, its political, legal and public accountability, how efficient such an institution may be and the importance of having public credibility. The many advantages in setting up a separate agency are discussed, such as the "fresh start" it will give to anti-corruption efforts, the high degree of specialization and expertise it can accomplish, as well as the faster and more efficient work that a dedicated ACA can achieve.

While a separate ACA will undoubtedly send a clear message that the Government "means business", the Tool also discusses the possible downside, such as costs, rivalries, isolation and the undermining of existing institutions already engaged against corruption. To counter such problems, a scenario is put forward where dedicated anti-corruption units might be established within existing law enforcement agencies, allowing greater coordination of overall efforts.

Nevertheless, where it is decided to establish a completely separate agency, it must be afforded a high degree of autonomy, something that would probably be achieved only by statutory enactment and even constitutional change. The likely mandate of a separate ACA is also discussed. Though dependent on several country-specific variables, the mandate will require certain predetermined substantive elements: an investigative and, initially, a prosecutorial function; an awareness-raising function; an analysis, policy-making and legislative function; and a preventive function. Tool #3 discusses the scope and implications of each.

TOOL #4

Auditors and audit institutions

Tool #4 deals with the auditing process, outlining the purposes of audits and what they are expected to achieve. Audits can cover, inter alia, legal and financial issues, ensuring conformity with established standards or reviewing the performance of institutions and individuals. Particularly emphasized is that audits work through transparency and that their real power resides in the fact that most audit reports are made public. Even where national security matters or sensitive economic or commercial information are concerned, certain procedures can be put in place to assure the overall transparency of the audit.

Audits differ in terms of size, scope, the powers of auditors, their degree of independence from the bodies or persons they are auditing and what happens to their findings. From the most specific task, such as a review of public sector contracts, to the workings of large Governments, the overarching requirement is that an audit institution be as independent as possible. As public audit agencies are ultimately subordinate to and employed by the State, complete independence is impossible; nevertheless, major public sector auditors generally require a degree of independence roughly equivalent to that of judges or national anti-corruption agencies. Additional safeguards include security of tenure, as much financial and budgetary independence as possible, and respect for the integrity of the reporting procedures of auditors; those to whom the audit report is made should not, for instance, be permitted to alter or withhold it.

Tool #4 also discusses the difficult issue as to whether an audit body should have the power and responsibility to audit the democratically elected legislature and its members. Where an audit function has been established by the legislature, the importance of reporting to the entire legislature or a committee representing all political factions is underlined. Care must also be taken, when auditing the non-political elements of Government and public administration, not to interfere with the functioning of Government and possibly compromise its political accountability. As Tool #4 indicates, it is primarily for this reason that professional auditors are not empowered to implement their own recommendations.

A number of further safeguards should be integrated into the audit process, such as ensuring audit staff have the requisite professional qualifications and that standardization of audit procedures are in place. Tool #4 examines the scope of the work of auditors: its increasing national and transnational reach, taxation audits, public contracts and public works including any private sector component of the contract, audit of electronic data-processing facilities, audit of enterprises or institutions subsidized by public money, and the audit of international and supranational institutions. Tool #4, while cautioning against unrealistic aims and expectations, emphasizes the need for political will to ensure that an audit institution achieves maximum impact. Moreover, the need to bring public pressure to bear on Government is vital to avoid audit recommendations not being implemented or even suppressed.

TOOL #5

Ombudsmen

Tool #5 provides an overview of the mandates and functions of an ombudsman which, in most countries, generally go beyond corruption cases to include maladministration attributable to incompetence, bias, error or indifference. As many complainants will not know or suspect the presence of corruption, the ombudsman can play an important role in determining this and referring such a case to an anti-corruption agency or prosecutor for further action. Further advantages of ombudsman structures are their informality, which allows them to be used in relatively minor cases and their powers to fashion a suitable remedy for the complainant. In some countries, ombudsmen have taken a more proactive role in studying the efficiency and operational policies of public institutions in an effort to prevent injustices occurring in the first place.

Tool #5 outlines the necessity for the independence of the ombudsman, the need for a broad mandate and jurisdiction to allow the ombudsman to consider complaints that are not within the purview of other forums such as the courts or administrative tribunals, as well as a requirement for adequate investigative powers, operational transparency, accessibility and resources. Tool #5 also discusses extensively the role of the ombudsman and similar institutions as an element of anti-corruption strategies in international organizations and activities where mandates would focus primarily on areas of external complaint about the functions of the organization itself. The same operational safeguards would apply to ombudsmen in international organizations as those at the national level. The United Nations, it is made clear, has its own internal auditing mechanisms.

TOOL #6

Strengthening judicial institutions

As the senior, most respected and smallest criminal justice institution, the judiciary is relatively accessible to early, small-scale anti-corruption efforts. Moreover, it is at the judicial level that corruption does the greatest harm and where reforms have the greatest potential to improve the situation. Thus, measures directed at judges themselves should generally be implemented as a first step towards strengthening judicial institutions against corruption. A balance must, however, be struck between ensuring the independence of the judiciary and making it accountable.

Training in professional competence and integrity, as well as the development or review of a judicial code of conduct and informal discussions on ethical, substantive and procedural issues all form part of the process of strengthening the judiciary. Tool #6 discusses efforts at integrity-building, education about the nature and extent of corruption and the establishment of adequate accountability structures. It expresses the strict proviso that any proposals for judicial training and accountability must be developed by, or in consultation with, the judges themselves in order to protect judicial independence, although it does recommend that input be sought from other key groups including prosecutors, justice ministries and bar associations.

While the responsibilities of the judiciary are stressed, for example with regard to adhering to a code of conduct, ensuring the transparency of legal proceedings and disclosing assets and possible conflicts of interest, the judges and their families must also be afforded protection against corruption, especially from powerful and well resourced interests. Such measures should be backed by wide-ranging court reforms to address corruption problems, including providing proper remuneration and working conditions for judges and other court personnel, improvement of court management structures and the statistical management of cases to identify patterns that may indicate bias or corruption. Public education will be key to raising awareness of the standards to be expected of judges and the courts.

TOOL #7
Civil service reform to strengthen service delivery

In many countries, the inadequate management and remuneration of civil servants are among the chief causes of corruption and, consequently, of inadequate public service delivery. With significant investment by the donor community in civil service reform since 1990 having failed to reach the desired objectives, Tool #7 provides an insight into typical problems of civil services around the world and how they foster corruption. It also gives an overview of the integrated, long-term and sustainable policies needed to help build integrity within the civil service to curb corruption and improve service delivery.

Tool #7 provides a vision of a well performing civil service whose main focus is to improve general security (rule of law) and the quality, timeliness, cost and coverage of service delivery to the public. It also puts forward a strategic framework to help achieve such a civil service, the main components of which are the importance of paying a minimum living wage to public servants and implementing evidence-based or results-oriented management. The example of civil service reforms in Uganda, which saw a retrenchment of some 150,000 civil servants, provide an insight into how successful well managed, broad-based and visionary civil service reforms can be.

Tool #7 puts the case for integrating the various components of civil service reform by linking pay and employment reform to sound financial management, empowerment of the public to increase the accountability of public servants, extensive administrative reform, including soundly based decision-making on devolution and decentralization of staff, functions and resources, and emphasis on institutional reform in key sectors, such as health and education, that are particularly prone to corrupt influences. Indeed, the move away from the project-based approach to the integrated approach is ongoing with many donors applying various high-impact, non-lending operations and a new range of operational instruments for a looser, more country-driven approach to reform. The public and private sectors are discussed. Particular focus is given to the need for impartiality in discharging public duties and the requirement that public officials declare interests that might raise conflicts of interest and take steps to avoid them in the exercise of their duty. As public officials frequently have access to a wide range of sensitive information, rules prohibiting and regulating disclosure are also examined.

TOOL #8
Codes and standards of conduct

Tool #8 comprehensively examines additional rules that might be applied to key public sector groups, such as police and law enforcement officials; members of legislative bodies and other elected officials and judicial officers, including judges.

Tool #8 recognizes that the extent to which private sector codes will feature in national anti-corruption programmes will depend to some degree on the extent to which private sector activities are considered to affect the public interest. For example, the public interest would be triggered if corrupt practices entered stock market trading given that a clean market is necessary to the economic prosperity and stability of a country. A code of conduct for the media is also given prominence in Tool #8 as the question of public accountability of institutions and officials is a vital part of anti-corruption programmes and the media provide information that allows members of the public to make informed choices about governance and other important matters.

TOOL #9

National anti-corruption commissions, committees and similar bodies

Tool #9 distinguishes between an anti-corruption agency and a national anti-corruption commission. While the former is a standing body established to implement and administer prevention and enforcement elements of a national strategy, the latter is a standing or ad hoc body designed to develop, launch, implement and monitor the strategy itself.

The basic mandate of such a commission is to formulate the national strategy, making adjustments, as required, during its implementation. As with an anti-corruption agency, some degree of independence, entrenchment of mandate and security of tenure is needed to safeguard the work of the commission against undue influence, and membership should be selected with a view to ensuring expertise in a range of areas that reflects the country as a whole. Tool #9 provides guidelines for drafting legislation to establish a national anti-corruption commission.

Tool #9 also discusses the establishment of a national integrity unit to coordinate anti-corruption activities and the precise functions of the various institutions working against corruption. The mandate of such a unit as well as the functions it can perform are outlined. Tool #9 cautions that the public credibility of any commission

TOOL #10

National integrity and action-planning meetings

Tool #10 discusses the need for bringing together a broad-based group of stakeholders at meetings or “workshops” to develop a consensual understanding of the types, levels, locations, causes and remedies for corruption. Such meetings should occur at different phases during the development, implementation and evaluation of an anti-corruption strategy. They ensure that stakeholders are well informed and, if necessary, mobilize their support for the ongoing process.

Tool #10 emphasizes the need to strike a balance at such meetings between procedural and substantive issues. It provides comprehensive information on how to organize and successfully run meetings, organize working groups, prepare materials and make material available to a wider readership after the meetings. The roles of organizers and other key personnel are discussed in detail.

TOOL #11

Anti-corruption action plans

Anti-corruption action plans set clear goals, timelines and sequencing for the achievement of specific goals. Not only do such plans place pressure for action those expected to contribute to the anti-corruption effort, but they clarify the various issues involved, making both current and more advanced planning easier.

A national plan is likely to be an extensive document providing detailed coverage of all segments of Government and society. It will contain input from insiders and outsiders, including donor and other foreign Governments. Such diversity is important, as are wide consultations, transparency, popular support and political will. Plans will normally encompass five substantive issues: awareness-raising, institution building, prevention, anti-corruption legislation, and enforcement and monitoring.

Tool #11 sets out a number of action plan objectives for the executive and public sector areas. It also establishes objectives for specific groups such as the law enforcement community, prosecutors, legislators and legislative bodies, and civil society and the private sector. Tool #11 advises on the risks of setting overly ambitious or unrealistic goals that, if not achieved, will erode public confidence. It also warns of the need to overcome resistance wherever reforms need to be made. Such issues must be dealt with as they arise to retain momentum.

TOOL #12

Strengthening local governments

While many elements of anti-corruption strategies are conceived and planned at the national level, their effectiveness depends on being implemented willingly at the local level. Tool #12 offers suggestions on how to adapt national tools and institutions for local use, how to facilitate vertical and horizontal integration of local efforts and encourage public participation.

In developing countries, decentralization has increased citizen participation in local decision-making with advantages and disadvantages for the control of corruption. Tool #12 describes how local leaders can increase their efforts and capacity to execute local reforms, and how local corruption can be assessed and formed into a framework for action. Obtaining local participation and “ownership” of programmes is vital to public education and mobilization, as is ongoing evaluation and monitoring. While “outside” help, from central Government, donor and foreign

Governments, will undoubtedly be necessary in bringing anti-corruption values and activities to the local populace, such influences should in no way be allowed to dominate local proceedings.

TOOL #13

Legislatures and their efforts against corruption

Tool #13 discusses ways in which legislatures can strengthen their role in areas that are critical to combating corruption, such as transparency and accountability in Government, as well as special areas such as the formulation and adoption of anti-corruption laws and the independent oversight of anti-corruption bodies.

Anti-corruption efforts in legislative bodies may be directed at the institutions themselves or at individual members. Accountability of members may be set down by codes of conduct covering, inter alia, conduct of election campaigns, or they may cover rules of participation in legislative functions. A disciplinary mechanism can be instituted to investigate complaints and enforce disciplinary action where necessary. The legislature itself should conduct business in a transparent way to strengthen its political accountability without legislators being divested of any of their traditional immunities.

Tool #13 outlines a number of ways in which transparency and accountability can be furthered, for instance by the use of the committee system which distributes subject matter between many committees, some with overlapping functions and responsibilities. Open access to information and sittings, media transmissions of parliamentary proceedings, modern technological aids, such as web sites, and publications are among the transparency structures cited by Tool #13. So-called watchdog institutions can be set up to exercise some oversight over legislatures.

3. SITUATIONAL PREVENTION
TOOL #14 THROUGH TOOL #21

TOOL #14

Disclosure of assets and liabilities by public officials

Tool #14 describes ways of increasing transparency with respect to the assets and liabilities of public officials in order to deter illicit enrichment from sources such as bribery or investments made with insider knowledge. The obligation to disclose can be established by legislative means or as a contractual condition of employment. It is neither necessary or practical for every member of the public service to sign a disclosure document. It should be required only on reaching a certain fixed level of seniority or being promoted into a position where there is sufficient potential for illicit enrichment. That includes some disclosure with respect to associates and relatives of officials, as it is not unusual for officials to use family members as a conduit for ill-gotten gains. Tool #14 stresses the importance of striking a balance between disclosure requirements and invasion of privacy in such matters.

TOOL #15

Authority to monitor public sector contracts

Tool #15 shows how a specialized authority might be created to monitor key contacts and transactions in areas where corruption is widespread. Such an authority could be established within a country but in many cases it would need to be international to put it beyond the reach of corruption. With many development projects failing because of corruption, international organizations have, for several years, been focusing increasing attention on corrupt practices in economic, social and political development. Dubious practices within international agencies and non-governmental organizations that have resulted in aid not being maximized have come under scrutiny.

Discussions between the World Bank (WB) and the Global programme against Corruption (GPAC)) have mooted the establishment of a mechanism, currently referred to as an Anti-Corruption Forum (ACF) that would assist in the implementation and application of current and future anti-bribery conventions adopted by multilateral institutions. It would be a domestic institution, established by legislation or executive appointment or CICP would provide three experts from a pool of internationally renowned experts to staff an international authority for a requesting State. The ACF would assist in the review of public sector contracts and monitor international commercial transactions and, in the interests of transparency, produce a public report on its findings. A United Nations ombudsman is also envisaged to allow civil society a complaints mechanism regarding maladministration in the delivery by United Nations agencies of specific projects and services.

The challenges regarding the establishment of an ACF would lie in its location, addressing the issues of sovereignty that such an institution would provoke, thescope of its activities and identifying the key people to involve.

TOOL #16
Curbing corruption in the procurement process

Few activities create greater temptations or offer more opportunities for corruption than the procurement process. Goods and services are purchased by every level of Government and every kind of Government organization, often in large quantities and involving much money. Tool #16 discusses a number of methods for getting to grips with what is seen as the most common form of public corruption.

Tool #16 lays out a number of principles for fair and efficient procurement and shows how corrupt behaviour on the part of the purchaser and the supplier can work to undermine them. It also provides a number of key principles to be followed to combat corruption in procurement, the most powerful of which is currently public exposure. Only the United States has criminalized under its domestic laws the bribery of foreign officials to gain or maintain business. While the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development aims to internationalize the approach of the United States, there is obviously a need at the national level for a sound and consistent framework establishing the basic principles and practices to be observed in public procurement. Tool #16 sets the possible content and principles of such a framework. Tool #16 also notes the advances made in online procurement via the Internet, while also noting some of the possible loopholes in procedures.

The influence of Transparency International with its "islands of integrity" initiative, being developed in areas of Government activity that are particularly susceptible to corruption, for example revenue collection, is looked at in some detail. The approach proceeds from the fear that many of the pressures to engage in corruption arise from concerns that competitors will do so. It argues that if an island of integrity can be created by ensuring that a particular agency, department, segment of Government or transaction is not corrupt, then competitors can be secure in the knowledge that refraining from corrupt practices themselves will not put them at a disadvantage.

TOOL #17
Integrity pacts

Integrity pacts, as discussed in Tool #17, perform a similar function to islands of integrity, but are focused on specific contracts or transactions rather than ongoing institutional arrangements. An integrity pact consists of a contract in which the responsible Government office and other bidders or interested parties agree to refrain from corrupt practices. The agreement should include clear sanctions and remedies for all parties, including the possible referral of improprieties to law enforcement agencies.

TOOL #18
Reducing procedural complexity

The purpose of Tool #18 is to outline ways in which excessive administrative complexity, a major breeding ground for corruption, can be reduced. Tool #18 uses as an example the procedure for issuing a building permit. If user surveys show that obtaining such a permit is overly time-consuming, the bureaucracy in question should be studied and lack of efficiency, excessive complexity and unpredictability of administrative procedures should be noted with a view to identifying and implementing administrative reforms. Tool #18 cautions that, in many cases, elements of complexity are generated by employee initiatives and that streamlining reforms are often met with internal resistance.

TOOL #19

Reducing and structuring discretion

Tool #19 sets out a method for structuring discretionary powers to ensure that they are limited only to what is necessary to a given administrative function. Excessive substantive and procedural discretion in the provision of public services reduces accountability and transparency, thereby creating conditions in which corruption can flourish. Structuring discretion to take account of rules and criteria for decision-making, transparency and effective review mechanisms will reduce opportunities for corruption but, as under Tool #18, changes in employee attitudes will be required and there may be vested interests opposed to reforms.

TOOL #20

Results- or fact-based management

Tool #20 deals with the concept of results-based management (RBM) to increase overall accountability and make it more difficult for corruption to thrive. Results-based management, also known as fact-based management sets clear goals for achievement as well as criteria and processes for assessing if goals have been achieved. Such systems therefore function as both a management system and as a performance-reporting system. Tool #20 sets out the conditions required before such a system can be instituted. For example, an RBM will be difficult to apply to occupations or structures in which performance is difficult to quantify. Tool #20 also warns that genuinely effective qualitative criteria, in other words a realistic assessment of the quality of the service provided, may be virtually impossible to produce or monitor for some public sector activities.

TOOL #21

The use of positive incentives to improve employee culture and motivation

Positive incentives can prevent or combat corruption in various ways. For example, adequate wages can pre-empt the need for an employee to seek "compensation" from other sources and can be linked to improvements in performance generally and in relation to anti-corruption measures. Tool #21 provides an overview of the types of incentives that can be offered as well as the linkages that should be made between incentives and other reforms. The linkages are important because the conferring of extra remuneration may be beyond the means of many developing countries without reducing the number of employees and thus requiring a smaller number of employees to perform the work more successfully. Employees must also be made aware of the desired outcome for individuals and organizations, which will require performance-related goals and ongoing assessment. The main challenges in this area is the availability of financial resources to provide the positive incentives to carry out reforms. Such reforms may, sometimes, be supported by aid donors.

4. SOCIAL PREVENTION
TOOL #22 THROUGH TOOL #27

TOOL #22
Access to information

Increasing public access to information is a powerful mechanism of accountability, enabling civil society to oversee the State. Tool #22 discusses access-to-information laws and the four methods they use in enforcing transparency in Government: the requirement of a Government to publish an annual statement of its operations; a legally enforceable right of access to documented information; the right of an individual to amend any information relating to himself or herself that is incomplete or incorrect; and the establishment of independent bodies for appeal where access is denied. The need for confidentiality in certain matters does, however, entitle a Government to withhold certain information. Tool #22 states that the initial fear of Governments to provide information has proved groundless over two decades of successful practice and it is now recognized that the public has a "right to know". Various legislative initiatives will be required to supplement access-to-information laws. They are laid out in Tool #22.

TOOL #23
Mobilizing civil society through public education and awareness-raising

Tool #23 sets out the essentials of an awareness-raising programme and its desired impact. Empowering the public to oversee the State is an important aspect of anti-corruption programmes, as is building trust in the individual branches of Government: the executive, the legislative and the judiciary. Tool #23 describes how public trust can be won and subsequently managed in efforts against systemic corruption. New institutions, such as anti-corruption commissions, ombudsman offices and telephone "hot-lines" can provide citizens with easier access to credible new institutions for their grievances. The Internet can be used to raise awareness, its wide appeal, influence and use countering the attempts of totalitarian Governments to stifle information and news from outside sources. Governments should post their national integrity action plans, as well as survey and integrity workshop results, on the Internet to facilitate broad participation of interested parties in the discussions. Tool #23 does, however, caution that the Internet has less influence in poorer, developing countries and that printed media, radio and television are also important in reaching the public: advertisements in journals or magazines, posters, TV and radio public-awareness spots and leafleting in populous areas.

Tool #23 underlines the importance of public education. The public should learn not to pay bribes, to report corrupt incidents to the authorities, not to sell their vote, and to teach their children the right values. Tool #23 cites the experiences of the Independent Commission against Corruption of Hong Kong as a successful example of the use of the mass media as well as in-depth, face-to-face contact, as a means of combating corruption.

For any awareness-raising campaign to work effectively, there must, cautions Tool #23, be a political and financial commitment by the Government; and, given that public attitudes are notably difficult to change, the efforts must also be long-term and consistent.

TOOL #24

Media training and investigative journalism

Journalists play a major role in interfacing between the Government and the people. The purpose of Tool #24 is to strengthen the credibility, integrity and capability of the media to provide unbiased and responsible broadcast of corruption cases and anti-corruption initiatives. Tool #24 outlines some of the critical issues involved in Government-media relations. They include: autonomy from Government interference; the possession of sufficient legal, technical, economic and other expertise to enable to assess anti-corruption efforts critically; adequate professional standards in place regarding professional competence and objectivity; access to as much of the population as possible; and building an information network about what Government bodies are active in the anti-corruption field. Attention must also be given to the risks and responsibilities involved in investigative journalism and ways of controlling the credibility of sources of information discussed. As Tool #24 makes clear, however, media training will be a wasted effort unless the media is free and independent of political influence and if access to information is not sufficiently guaranteed.

TOOL #25

Social control mechanisms

Tool #25 explains the concept behind social control boards, a mechanism that helps Governments work more efficiently and helps society participate more fully in building an environment where there is equitable and sustainable growth, leading to timely and cost-effective service delivery to the public.

Social control boards provide an mechanism that is external to the public service and that provide an additional incentive for public servants to comply with the law and follow Government policy. The boards are composed of specialized NGOs sitting side by side with Government representatives. Effectively, civil society is being incorporated into Government programmes and given a voice to express its concerns and needs. It is thus able to play a decisive role in bottom-up monitoring of the delineation and implementation of reforms, and in assessing their value.

Tool #25 discusses various initiatives implemented to drive sustainable socially driven anti-corruption reforms. Anti-corruption advocacy through creative mechanisms such as community meetings, street theatre, art and informal dialogue are being carried out alongside more formal interventions, such as the establishment of a network of Anti-Corruption Observatories developed under the aegis of the International Law and Economic Development Center at the University of Virginia School of Law. Civic projects using social control boards have been successfully implemented in Venezuela and Paraguay. They have empowered individuals, communities and Governments by disseminating information and promoting transparency in the public sector.

Tool #25 stresses that three approaches have been harnessed to drive the socially driven anti-corruption movement: decentralization with strong social controls; high-level political will; and the introduction of enforceable internal and external checks and balances. A chart is provided showing the two-year percentage changes in perceived frequencies of corruption, effectiveness, access to institutions and user perceptions of administrative complexity at a municipality in Venezuela. Significant improvements in all factors are noted.

TOOL #26

Public complaints mechanisms

All persons, confronted with corrupt practices or maladministration, should have the means to complain about it, without suffering personal disadvantage. External mechanisms are possible, such as the office of the ombudsman. Internal reporting procedures are more complicated as there is a need to deal with potential dishonesty and the complicating factors of supervisory and personal relationships. It is thus essential for institutions to have well developed procedures in place to clarify what constitutes a reportable incident and what the correct reporting channels should be. Tool #26 makes the point that citizens must be kept informed about how and where to report corrupt behaviour and, for that purpose, it may be necessary to establish new channels or simplify existing ones.

TOOL #27

Citizens’ charters

Tool #27 covers the concept of citizens' charters and shows how they operate in the United Kingdom. Citizens' charters set down standards regarding quality, timeliness, cost, integrity and coverage of public services as the standard that users can reasonably expect and against which performance should be measured. Charters must be published, as must performance. Charters must provide full and accurate information available in plain language about how the service is run; there must be regular consultation with users; standards are set for courtesy and helpfulness, and if things go wrong an apology and swift remedy must be supplied. Services must provide value for money.

An overview of citizens' charters in the United Kingdom is given, as well as their administration and complaints mechanisms. There are 40 national charters covering the public services in the United Kingdom, including the Patients' Charter, the Parents' Charter and the Passengers' Charter.

5. ENFORCEMENT:
TOOL #28 THROUGH TOOL #31

TOOL #28

Guidelines for successful investigations into corruption

For the law enforcement community, Tool #28 sets out some general guidelines for investigating corruption. It is important that officials or bodies responsible for investigating corruption should be independent or autonomous. Tool #28 explains the mechanics of functional independence for investigative and prosecutorial staff where they are carried out by non-judicial staff. The problem of quis custodiet ipsos custodes? (Who will watch the watchman?) applies in such instances as sufficient independence must be subject to sufficient oversight and accountability to prevent abuses creeping into the system. While it is important for anti-corruption investigators to interact with other agencies, where corruption is rife, complete autonomy is advisable.

Adequate resources and training must also be available for investigators, as well as specific skills and knowledge training.

As well as encouraging individuals to report instances of corruption, other methods of bringing it to light can be used, such as requiring public employees to make a periodic disclosure of their assets, and carrying out audits and inspections, including "sting" operations or other integrity-testing tactics. As Tool #28 points out, such operations, although effective, are undoubtedly effective and are a powerful instrument for deterring corruption and detecting and investigating offenders.

Electronic surveillance, search and seizure and other such investigative methods are also the subject of Tool #28. It is stressed that human rights safeguards usually prohibit their use unless there is substantial evidence that a crime has been committed, or is about to be. The use of forensic accounting to detect fraud or track illicit proceeds by examining financial records for unusual patterns or amounts is also covered, as used by auditors or by criminal investigators.

Tool #28 discusses the various legal remedies available when corruption is identified but points out that in some cases “corrupt” behaviour may not be an actual crime. Moreover, the available evidence may not support prosecution of an individual involved because the burden of proof in criminal cases is high. In some cases, it may be deemed not in the public interest to prosecute an offender for example where large numbers of offenders could be involved making the costs of litigation and incarceration prohibitive. Nevertheless, it is important to view criminal prosecution and punishment as one among many sanctions available.

Corruption investigations tend to be large, complex and expensive, thus there must be an efficient use of resources. One of the key aspects is the relationship investigators have with the media. If the transparency and credibility of the investigations is assured, for example, witnesses will be encouraged to come forward. Managing the security of investigations and investigators is also a critical function, not just to ensure safety of personnel but to prevent leakages of information and safeguard physical evidence.

The management of grand corruption cases or those with transnational aspects raise the challenge of recovering proceeds that have been transferred abroad and to deal with delicate issues arising from allegations that senior officials are implicated.

Given the extent of corruption and the range of cases likely to exist, prioritizing which cases to pursue and what outcomes to seek will be necessary, involving the exercise of a great deal of discretion. Tool #28 lists the criteria that should be evaluated when proceeding to investigate corruption cases.

A range of investigative techniques that have proved highly effective in the investigation of widespread, large-scale corruption cases are provided by Tool #28. It is stressed here that various types of financial investigations into suspected corrupt individuals are often the most direct and successful method of proving criminal acts. Information on the factors that are likely to place an investigation at risk are outlined in Tool #28.

TOOL #29
Financial investigations and the monitoring of assets

Tool #29 deals with financial investigations that can be used as a starting point for further investigations or as back-up evidence for corruption allegations. Financial investigations aimed at targeting indicators of corruption, such as living beyond one's means, require expert use of available resources and careful consideration as to who will be targeted and why in order to conserve scarce resources. Thus, the likelihood of uncovering corruption should be borne in mind before beginning an investigation, as well as the potential scale. For example, investigators should direct available efforts towards reviewing disclosures by employees whose public duties expose them to a higher money value of bribes. Tool #29 reviews evaluation of key lifestyle indicators, the screening individuals under suspicion as well as those with whom they have strong ties, such as spouses and family members, and discusses alternative sources of information such as public registers and contracts. It also considers the difficulties of obtaining foreign assistance in identifying and recovering stolen assets if there is no mutual legal assistance treaty in place.

Some jurisdictions have now introduced measures that, in cases of suspected illegal enrichment, assigns the responsibility for providing satisfactory explanations as to the origins of the property to the official under scrutiny rather than to the prosecuting agency. Tool #29 stresses that national laws must, as a prerequisite, provide for comprehensive registration of assets and identification of their beneficial owners. Anonymity of ownership is, it states, the natural enemy of transparency and accountability and makes financial monitoring and investigation for the most part unfruitful.

TOOL #30

Integrity testing

Tool #30 provides a description of the activities that comprise integrity testing, a procedure used to determine whether or not a public servant or branch of Government engages in corrupt practices and thereby increases the perceived risk for corrupt officials of being detected.

Tool #30 gives an account of the significantly criticized "sting" type of operation, a very powerful tool against corruption but one that can cause "entrapment" if the investigator oversteps the boundaries and does not act with the strictest discipline: that is, instead of just creating opportunities for a suspect to commit an offence the investigator actually offers an encouragement to him or her to do so.

Integrity testing can be targeted or random. It has been carried out in the London Metropolitan Police, the police force of Queensland, Australia, and in the New York Police Department. It has been shown not to be effective on a one-off basis. Follow-up must be performed to "clean up" an area of corruption.

TOOL #31

Electronic surveillance operations

Electronic surveillance encompasses all information gathering by use of electronic means, both covert activities such as wire-tapping, video recording or eavesdropping and consensual recording where at least one of the parties knows and has consented to the conversation or activity being recorded. The first option,where the Government effectively spies on the parties with no knowledge or consent by any of the parties, is not well tolerated by the public who strongly believe in theright to privacy.

All Government wiretaps and eavesdropping should require a court order basedon a detailed showing of probable cause. Tool #31 presents an example of the process usually required for obtaining court consent and the information an application should contain. The various determinations that need to be made by a judge prior to issuing a court order are also set out.

The concept of minimization, whereby law enforcement officers should limit interception of communications, where feasible, to the offences specified in the court order, is explained. The flexibility afforded to law enforcement officers by consensual recording operations, due to the collaborator being privy to information about the transaction in question, is also demonstrated in Tool #31.

6. ANTI-CORRUPTION LEGISLATION
TOOL #32 THROUGH TOOL #38

TOOL #32
International and regional legal instruments

Tool #32 provides an overview of the international and regional instruments in place against corruption or containing anti-corruption provisions. They are:

United Nations instruments

- The United Nations Convention against Corruption
- The United Nations Convention against Transnational Organized Crime
- The United Nations International Code of Conduct for Public Officials
- The United Nations Declaration against Corruption and Bribery in International Commercial Transactions

Instruments and documents of the Organisation for Economic Co-operation and Development (OECD)

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- Revised Recommendations of the OECD Council on Combating Bribery in International Business Transactions
- Recommendation of the OECD Council on the Tax Deductibility of Bribes to Foreign Public Officials

Council of Europe Instruments and Documents

- Criminal Law Convention on Corruption (1998)
- Civil Law Convention on Corruption (1999)
- The Twenty Guiding Principles for the Fight Against Corruption (1997)
- Model Code of Conduct for Public Officials (2000)

European Union Instruments and Documents

- Convention of the European Union on the Protection of its Financial Interests (1995) and Protocols thereto (1996 and 1997)
- Convention of the European Union on the Fight against Corruption involving Officials of the European Community or officials of Member States (1997)
- Joint Action of 22 December 1998 on Corruption in the Private Sector by the Council of the European Union

Instruments and documents of the Organization of American States (OAS)

- Inter-American Convention against Corruption (1996)

TOOL #33

National legal instruments

With regard to the criminal law, Tool #33 considers the ways in which national laws deal with the sanctioning of corruption and related acts and the difficulties of defining certain behaviours, such as favouritism, nepotism, conflict of interest and contributions to political parties as corruption and thus devising suitable sanctions against them. Even slush funds, created "off the books" to pay bribes is not necessarily illegal in many national legal systems. There is, however, an increasing tendency at national and international levels to criminalize the possession of unexplained wealth. Tool #33 also notes that legal persons, in particular corporate entities, often commit business and high-level corruption and many jurisdictions have developed normative solutions regarding their criminal liability.

The confiscation of the proceeds of crime is also discussed under Tool #33. Confiscation should be obligatory and where proceeds are unavailable, an equivalent value of the proceeds should be confiscated. Various national legislators have introduced provisions to ease the evidentiary requirements to establish the illicit origin of corrupt proceeds. Both the United Nations Convention against Transnational Organized Crime and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) provide useful models with respect to easing the burden of proof and shifting the onus of proving ownership of excessive wealth on to the beneficiary.

Money-laundering statutes contribute significantly to the detection of corruption and related offences by providing the basis for financial investigations. Identification of the true beneficiary in such cases can, however, be difficult as accounts are often anonymous. Tool #33 makes it clear that the onus should be on financial institutions not only to register all information regarding a client but to report all suspicious transactions. Bank secrecy laws and professional secrecy should be limited to allow more access to accounts and a greater possibility of confiscation.

Access-to-information legislation can also assist in uncovering corruption and administrative procedures give civil society a tool to challenge abuse of authority. In that regard, through the creation of judicially enforceable procedural administrative rights, the public can bring suits against political or bureaucratic abuses of power.

TOOL #34

Dealing with the past: amnesty and other alternatives

Granting amnesty offers a chance to make a fresh start. It helps to ensure compliance with newly created laws by removing the burden of the past and allowing everyone to concentrate on the present and future. In some jurisdictions amnesty is granted automatically in some cases to those who report a corrupt action. Broad amnesty can be declared when a new law takes effect or a new anti-corruption authority comes into being. Tool #34 makes the point, however, that exceptions to broad amnesty should be contemplated in cases where the crime is so offensive as to require investigation and prosecution regardless of the burdens thus imposed on a new anti-corruption authority.

Amnesty would carry certain responsibilities, such as a public admission of the act, identification of others involved in the offences and restoration of corruptly acquired monies and property into an integrity fund.

TOOL #35

Standards to prevent and control the laundering of corruption proceeds

The link between money-laundering and corruption goes deep, eroding and undermining financial systems. Various forums have noted that a comprehensive anti-corruption strategy must also contain provisions to prevent and control the laundering of corrupt proceeds, using preventive (regulatory) and sanction-oriented measures.

Regarding the regulatory approach, Tool #35 describes the "Know Your Customer" Rule that aims to prevent financial institutions doing business with unknown customers. It sets out the implications of the "due diligence" rules that have been promoted at the international and national levels for some time and urges revision of existing "Red Flag" catalogues under which financial institutions are obliged to pay special attention to all complex, unusual transactions. Bank personnel acting as whistleblowers should be accorded protection and non-complying institutions and operators should be identified.

Criminal law sanctions are also considered by Tool #35. In most legal systems, corruption has not yet been made a predicate offence to money-laundering. Tool #35 recommends that the issue be studied from a technical standpoint as it could be a crucial instrument for making large-scale transnational bribery more risky and costly. Other ways of strengthening efforts against corruption put forward in Tool #35 would be the introduction of minimum standards on international cooperation, criminalization of slush funds and the introduction of corporate criminal liability.

Various international forums have expressed concern that inadequate company regulations prevent the disclosure of the true identity of beneficiaries. Tool #35, while acknowledging that this area needs further study, urges that steps be taken to make the 40 Recommendations of the intergovernmental Financial Action Task Force, set up to combat money-laundering, enforceable through proper training, controls and sanctioning. At the international level there should be harmonized substantive standards for under-regulated financial centres, including listing and isolation of uncooperative jurisdictions.

TOOL #36

Legal provisions to facilitate the gathering and use of evidence in corruption cases: easing the burden of proof.

Unlike most crimes, corruption offences usually have no obvious or complaining victim. Usually, those involved are beneficiaries having an interest in preserving secrecy. Tool #36 puts forward an argument for easing the burden of proof necessary to convict corrupt individuals and sets out a number of ways in which this may be achieved, such as increasing the significance of circumstantial evidence, criminalizing the possession of inexplicable wealth, confiscation of inexplicable wealth, instituting a property penalty and other measures to remove illegally earned goods, and allowing for civil or administrative confiscation or disciplinary action as an alternative to criminal proceedings. Tool #36 acknowledges, however, that such measures may be criticized for violating human

TOOL #37
Whistleblower protection

The main purpose of whistleblower laws, as described under Tool #37, is to provide protection for those who, in good faith, report cases of maladministration, corruption and other illicit behaviour within their organization. Experience shows, however, that the existence of a law alone is not enough to instil trust into would-be whistleblowers. The law has to provide a mechanism that allows the institution to deal with the content of the message and not the messenger, even if the message of the whistleblower proves false or the whistleblower was breaking the law by breaching confidentiality. The only onus on the whistleblower should be that he or she acted in good faith and was not making false allegations. Thus protection should be accorded, as well as compensation should victimization or retaliation occur. It should also be made clear who to turn to report suspicions or offer evidence. To ensure effective implementation of whistleblower legislation, people or institutions that receive disclosures must be trained in dealing with whistleblowers to ensure that they last the distance during what, for many, can be a highly stressful, drawn-out and complex process.

TOOL #38
Service Delivery Surveys

Tool #38 covers service delivery surveys (SDS) which originate from a communitybased, action research process developed in Latin America in the mid-1980s. Since then, these stakeholder information systems have been implemented in several countries.

The SDSs were designed to build capacity while accumulating accurate, detailed and "actionable" data rapidly and at low cost. Representative samples of communities are selected in which a baseline of service coverage, impact and costs is established via a household survey on use of services, levels of satisfaction, bribes paid and suggestions for change. Typically the production of actionable results from design stage to reporting takes 8 weeks. Tool #38 shows the impact of SDSs as a social audit process and as a way in which the Government and the governed can work as a partnership to produce and implement results-oriented development planning. SDSs effectively give the community a voice and reveal options for the achievement of goals rather than underscoring deficiencies.

There are certain challenges to measuring the impact of anti-corruption strategies. Data must be analysed by a competent institution; monitoring should never be an end in itself but should stimulate swift and effective application of findings into national policies and legislation. They should also be accompanied by targeted assistance programmes as many countries will lack financial, human and technical resources needed to implement what all agree are "best practices". Nevertheless, the utility of data collection is shown in the fact that the public is now far more aware of the levels, types, causes and remedies of corruption and thus the accountability of the State towards its public has been increased.

7. MONITORING AND EVALUATION
TOOL #39 THROUGH TOOL #40

TOOL #39
United Nations country assessment

United Nations country assessments are described under Tool #39. The assessments aim to produce a clear and coherent picture of the condition of a country with respect to the levels, locations, types and cost of corruption; the causes of corruption and the remedies for corruption. Tool #39 provides a description of the methodology used and the advantages of such assessments.

TOOL #40
Mirror statistics as an investigative and preventive tool

The purpose of Tool #40 is to uncover the levels of corruption by assessing secondary indicators such as the extent of the grey sector of an economy which includes such commodities as illegally imported cigarettes, liquor and such items. The link between the grey economy and corruption is important as corrupt practices usually "enable" the inflow and outflow of resources to and from this sector. Tool #40 describes two methods to estimate the size of the grey economy by using mirror statistics and shows how information thus obtained can be used as an investigative tool and as a preventive tool.

8. REPATRIATION OF ILLEGAL FUNDS
TOOL #41 THROUGH TOOL #44

TOOL #41
Measurable performance indicators for the judiciary

Tool #41 gives an account of the aims and the achievements of the first Federal Judicial Integrity and Capacity meeting held to initiate an evidence-based approach to the reform of the judiciary in Nigeria. Having agree to reform objectives, the meeting identified key reform measures and measurable performance indicators, allowing the establishment of a baseline against which progress could be measured.

TOOL #42
Extradition

Tool #42 gives an overview of extradition, extraditable offences, bars to extradition and the procedural issues concerned.

TOOL #43
Recovery of illegal funds

Illegal funds can vary from kickbacks through extortion to the looting of the national treasury and diversion of aid money. Repatriation of such assets have become a pressing concern for many States affected by the large-scale illegal transfer of funds by corrupt political leaders, their friends and associates. Repatriation success has, however, been very limited so far.

Tool #43 looks at some of the reasons hindering repatriation, including a lack of political will in the victim country; lack of an effective legal framework within countries whose assets have been diverted; insufficient technical expertise to prepare the groundwork at the national level, such as filing charges against offenders; any specialized technical expertise there is being mainly limited to expensive private lawyers who have no interest in building national capacity; reluctance of victim States to improve their national institutional framework which may result in even further looting.

Tool #43 shows how the United Nations Convention on Transnational Organized Crime, currently under consideration for ratification, will provide some solutions to such problems. The only problem is that it does not make the returning of assets mandatory, thus this may remain problematical, especially where the proceeds of corruption are involved. Tool #43 recommends that countries hesitant to seek repatriation of assets because they fear that they will become prey to corrupt practices again should devote some of their returned assets to strengthening the national institutional and legal framework.

TOOL #44
Mutual legal assistance

Mutual legal assistance is an international cooperation process by which States seek and provide assistance in gathering evidence for use in the investigation and prosecution of criminal cases and in tracing, freezing, seizing and ultimately confiscating criminally derived wealth.

Tool #44 gives an overview of a United Nations expert working group meeting at Vienna in December 2001 to facilitate the providing of effective mutual legal assistance. The meeting is synopsized under the following headings:

- Enhancing the effectiveness of mutual legal assistance treaties and legislation;
- Strengthening the effectiveness of central authorities;
- Ensuring awareness of national legal requirements and best practices;
- Expediting cooperation through use of alternatives, when appropriate;
- Maximizing effectiveness through direct personal contact between central authorities of requesting and requested States;
- Preparing effective requests for mutual legal assistance;
- Eliminating or reducing impediments to the execution of requests in the requested State;
- Making use of modern technology to expedite transmission of requests
- Making use of the most modern mechanisms for providing mutual legal assistance;
- Maximizing availability and use of resources; and
- Role of the United Nations in facilitating effective mutual legal assistance.

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