

## **CHAPTER III**

### **INSTITUTION BUILDING**

#### **A BROAD CONCEPT OF "INSTITUTION BUILDING". TOOL #3 THROUGH TOOL #13**

It is generally accepted that institutional changes will form an important part of most national anti-corruption strategies. Elements of institution-building are found in most if not all of the international treaties, plans of action and specific development projects which deal either with corruption or more general topics such as good governance.<sup>55</sup> As many factors related to institutional cultures and structures influence the levels and types of corruption that occur, institutional reforms may be used to try to counteract or reduce such influences. Reforms may include the introduction<sup>56</sup> of elements of accountability into organizations, the de-layering or simplification of operations to reduce errors and opportunities to conceal corruption, as well as more fundamental reforms seeking to change the attitudes and beliefs of those who work in an institution. In some cases, institutions may be completely eliminated or restructured for a fresh start, or completely new institutions may be created.

In the past, institution building has focused on the creation or expansion of institutions and the technical skills needed to operate them. In many cases, results have fallen short of expectations because the attitudes and behaviour that supported or condoned corruption were carried forward into the new

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<sup>55</sup> Much of the 2003 United Nations Convention against Corruption can be seen as institution-building in some form, particularly in the broad sense used in this Tool Kit. Of particular importance are Chapter II, Articles 5-13, which deal with prevention, in many cases by strengthening public- and private-sector institutions and training those who work in them, and Article 60, subparagraph 1(d), which calls for technical assistance in evaluating and strengthening institutions. Articles 6 and 36 deal with the establishment of specific anti-corruption bodies within the prevention and law enforcement sectors, Article 63 establishes a Conference of States Parties to deal with international issues arising under the Convention, and Article 62 calls for countries in a position to do so to make voluntary contributions to the work of various institutions, either through the United Nations Office on Drugs and Crime, or in direct bilateral assistance. Other international initiatives addressing this issue include: the United Nations Convention Against Transnational Organized Crime (2000), Article 9 (requiring Parties to provide anti-corruption authorities with adequate independence to deter inappropriate influence on their actions); the Council of Europe Criminal Law Convention on Corruption (1998), Article 20 (establishing specialized anti-corruption authorities); the Organisation of American States' Inter-American Convention Against Corruption (1996), Article III (preventative measures); the Global Forum on Fighting Corruption's Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials (1999) and the United Nations Convention against Corruption. See also Plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, GA/RES/56/261, Annex, Plan II, Action against corruption, subparagraphs 7(d) and (e).

<sup>56</sup> With respect to recent relevant international initiatives addressing this issue, see e.g., the United Nations Convention Against Transnational Organized Crime (2000), Article 9 (requiring Parties to provide anti-corruption authorities with adequate independence to deter inappropriate influence on their actions); the Council of Europe Criminal Law Convention on Corruption (1998), Article 20 (establishing specialized anti-corruption authorities); the Organisation of American States' Inter-American Convention Against Corruption (1996), Article III (preventative measures); the Global Forum on Fighting Corruption's Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials (1999) and the United Nations Convention against Corruption

institutions. It is now accepted that reforms must deal not only with institutions but also with the individuals who work in them. There is also a need for results-based leadership that promotes and applies integrity, accountability, transparency, as well as a general acceptance of the mind-set, beliefs and customs that favour integrity over corruption.

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

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

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

The target group at which institution-building reforms are directed must also be widened to include all parts of society interested in creating and maintaining national integrity. The focus of donor attention has traditionally been public administration institutions. The new approach requires coordinated elements to address stakeholders extrinsic to those institutions but whose participation and support are nevertheless necessary if effective reforms are to take place. In constructing overall strategies, institutional reforms can be grouped into "pillars of integrity" (see Figure 1) that are mutually supportive and include elements from government and elements of civil society.

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

From the private sector, there should also be inclusion of the media, relevant academic individuals and institutions, and other organizations, such as trade unions, professional associations and general or specific interest groups, who

play a vital role in promoting integrity and ensuring transparency and accountability.

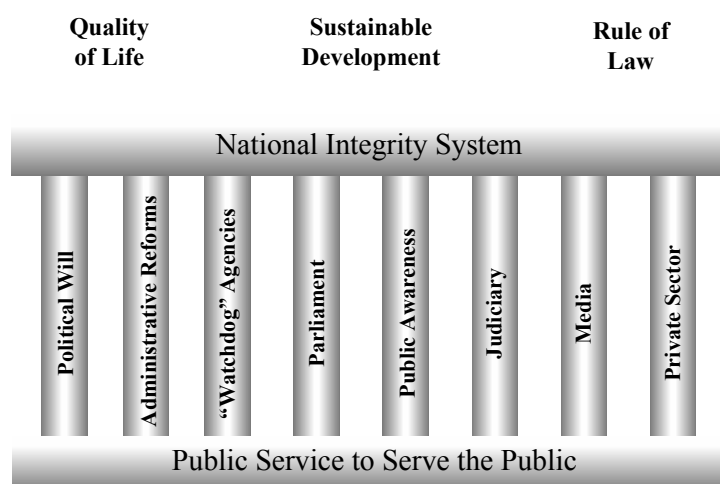


Figure 1: The Pillars of Integrity

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

The following diagram illustrates some of the key "pillars" that may need to be incorporated into institution-building projects<sup>57</sup>

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

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

<sup>57</sup> Petter Langseth, Rick Stapenhurst, and Jeremy Pope.(1997), The Role of a National Integrity System in Fighting Corruption. Washington, D.C.: EDI Working Papers Series, World Bank, based on earlier work by Ibriahim Seushi.

## ***THE MECHANICS OF INSTITUTION BUILDING***

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

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

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

Delegated legislative authorities can be appointed to operate under the oversight of the legislature where more detailed technical knowledge of corruption is needed. Essentially, the legislature is called upon to decide to combat corruption, to set general principles, and to enact key provisions, such as statutes creating anti-corruption authorities or establishing criminal offences and punishments. Delegated authorities are then called upon, in the context of each institution, to consider how best to implement reforms in each institution, to create the necessary rules and, periodically, to review and amend them.

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

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

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

### ***JUDICIAL INSTITUTIONS***

The reform or rebuilding of judicial institutions is often identified as a major priority in anti-corruption strategies. Judicial independence is a necessary condition for the effective rule of law and is commonly understood to require independence from undue influence by non-judicial elements of Government or the State. In practice, however, true judicial independence requires the insulation of judicial affairs from all external influences.

The process of interpreting law and resolving disputes before the courts involves a carefully structured process in which evidence is screened for reliability and probative value, presented in a forum in which it can be tested through such means as the cross-examination of witnesses and used in support of transparent legal arguments from all interested parties. Such a process ensures basic diligence, quality and consistency in judicial decision-making, and inspires public confidence in the outcomes.

Intimidation on the part of law enforcement officials or prosecutors, and such privileges may also shield corrupt judges. If a judge is criminally prosecuted, it may be very difficult to ensure that he/she is tried fairly.

Any strategy for the reform of judicial institutions should be carefully considered in light of the state of judicial independence in a country and the specific constitutional, legal and conventional measures used to protect it. Before anti-corruption reforms are instituted, it may be necessary to ensure that basic judicial independence is in place and operating effectively. In many cases, the prime considerations will be the selection, training and appointment of judges. Judicial candidates should be carefully investigated and screened to identify any incidents of past corruption; judicial training before elevation to the bench and for serving judges, should emphasize anti-corruption aspects. Ongoing freedom from any sign of corruption should also be an essential criterion for promotion to senior judicial positions. Only thus will it be possible to ensure the integrity of the appeal process and that senior appellate courts are in a position to pass judgment on corruption cases involving more junior judges.

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

public administration makes them a vital example for other officials. Judges who cannot be corrupted inspire and compel corruption-free conduct in society as a whole.

### ***INSTITUTION BUILDING IN LOCAL AND REGIONAL GOVERNMENTS***

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

The corruption of judicial institutions frustrates all those mechanisms, allowing judicial decisions to be based on improper influences and untested assertions. It also denies litigants basic fairness and the right to equality before the law. The ultimate result is inconsistent, ad hoc decision-making, a lack of public credibility and, in systems based on judge-made law, poor legal precedents.

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

The reform of judicial institutions is rendered more difficult and complex by many of the very structures that are intended to ensure the independence of judges from corrupt or other undue influences. Judicial independence and security of judicial tenure generally make the discharge or discipline of corrupt judges very difficult, if not impossible. Many countries also extend some degree of legal immunity to judges to prevent domination or intimidation on the part of law enforcement officials or prosecutors, and such privileges may also shield corrupt judges. If a judge is criminally prosecuted, it may be very difficult to ensure that he or she is tried fairly.

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<sup>58</sup> Many sources have set out what are seen as requirements for judicial independence, and as this is generally seen as a matter for more general rule of law reforms than anti-corruption strategies, it is not discussed in detail here. See, for example, "Basic Principles on the Independence of the Judiciary", Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, A/CONF/121/22/rev.1, UN Sales # E.86.IV.1, Part I.D.2, reprinted in United Nations: Compilation of International Instruments, Vol.1 Part 1 and International Commission of Jurists, Declaration of Delhi (1959), reprinted in *The Rule of Law and Human Rights: Principles and Definitions* (I.C.J., Geneva, 1966). See also Nemetz, N.T., "The concept of an independent judiciary" (1986) 20 U. of British Columbia L. Rev. pp.285-96, Rosenn, K.S., "The protection of judicial independence in Latin America", (1983) 19 U. Miami L. Rev. pp.1-35, and Stevens, R. *Independence of the Judiciary: The View From the Lord Chancellor's Office* (1993), reprinted at (1993) see also (1988) 8 Oxford J. of Leg. Stud. pp.222-48.

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Failure to deal with corruption at all levels in a coordinated manner will, at best, result in reforms that are only partly effective and, at worst, in the displacement of corrupt activity away from levels where effective controls and countermeasures are in place. For example, a corrupt company, unable to bribe legislative officials to produce the legislation it desires, may resort to bribing local officials to ensure the legislation it opposes is not enforced.

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



## **TOOL #3**

### **SPECIALIZED ANTI-CORRUPTION AGENCIES**

Anti-corruption strategies will usually have to consider whether to establish a separate institution or institution such as an anti-corruption agency (ACA) to deal exclusively with corruption problems, whether to modify or adapt existing institutions, or some combination of both. A number of legal, policy, resource and other factors should be considered in this regard.

The United Nations Convention against Corruption requires the establishment of such agencies, unless they already exist in some form, in two specific areas:

preventative anti-corruption bodies (Article 6) and bodies specialized in combating corruption through law enforcement (Article 36). Whether this requires two separate bodies is left to the discretion of governments: the agreed notes for the *Travaux Préparatoires* specify that State Parties may establish or use the same body to meet the requirements of both provisions.  
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In implementing the Convention and their national strategies, countries will need to consider whether to establish new entities, whether existing ones will meet the requirements, with or without modifications, and whether the most effective approach will involve a single centralized entity or the establishment of separate ones. In doing so, they should also bear in mind that the Convention sets minimum standards only<sup>60</sup> and that the most important considerations will be the effectiveness of the bodies in the context on domestic laws, procedures and practices.

A number of legal, policy, resource and other factors should be considered in establishing specialized anti-corruption agencies.

#### ***THE MAJOR ADVANTAGES OF A SEPARATE ANTI-CORRUPTION INSTITUTION ARE:***

- A high degree of specialization and expertise can be achieved;
- A high degree of autonomy can be established to insulate the institution from corruption and other undue influences;
- The institution will be separate from the agencies and departments that it will be responsible for investigating;
- A completely new institution enjoys a "fresh start", free from corruption and other problems that may be present in existing institutions,
- It has greater public credibility,
- It can be afforded better security protection;
- It will have greater political, legal and public accountability;

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<sup>59</sup> A/58/422/Add.1, paras. 11 and 39.

<sup>60</sup> See Article 65, paragraphs 2 regarding the freedom to apply measures which are "more strict or severe" than those required by the Convention itself.

- There will be greater clarity in the assessment of its progress, successes and failures; and
- There will be faster action against corruption. Task-specific resources will be used and officials will not be subject to the competing priorities of general law enforcement, audit and similar agencies.

***THE MAJOR DISADVANTAGES OF A SEPARATE ANTI-CORRUPTION INSTITUTION ARE:***

- Greater administrative costs;
- Isolation, barriers and rivalries between the institution and those with which it will need to cooperate, such as law enforcement officers, prosecution officials, auditors and inspectors; and
- The possible reduction in perceived status of existing structures that are excluded from the new institution.

From a political standpoint, the establishment of a specialized institution or agency sends a signal that the government takes anti-corruption efforts seriously. A separate agency may, however, generate competing political pressures from groups seeking similar priority for other crime-related initiatives. It may also be vulnerable to attempts to marginalize it or reduce its effectiveness by under-funding or inadequate reporting structures.<sup>61</sup> Generally speaking, the dividing up or fragmentation of law enforcement and other functions will reduce efficiency. On the plus side, an ACA will incorporate an additional safeguard against corruption in that it will be placed in a position to monitor the conventional law-enforcement community and, should the agency itself be corrupted, vice versa. The legislative and managerial challenge in this area is to allow just enough redundancy, and even rivalry, to expose corruption if the primary ACA fails to do so. There should not, however, be so much duplication allowed that the flow of intelligence becomes reduced or the investigative and prosecutorial opportunities available to the primary authority is diminished.

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

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<sup>61</sup> Note that both Articles 6 and 36 of the United Nations Convention against Corruption both explicitly require the allocation of adequate resources and what both refer to as the “necessary independence”, underscoring the importance of these requirements.

## ***ENSURING THE INDEPENDENCE OF SPECIALIZED AGENCIES***

Where a completely independent agency must be established, the necessary degree of autonomy can usually be achieved only by statutory enactment or, in some cases, even constitutional reforms. Fundamental rule-of-law principles, such as judicial independence, are often constitutionally based although, in many countries, the aim of reforms is more likely to be ensuring satisfactory interpretation and application of existing constitutional rules than adopting new ones. While anti-corruption agencies may not be considered as judicial in nature, where corruption is sufficiently serious and pervasive to require the establishment of a specialized institution, something approaching accepted standards for the independence of judicial or prosecutorial functions may be required<sup>62</sup>. They may include:

- Constitutional, statutory or other entrenched mandates<sup>63</sup>;
- Security of tenure for senior officials;
- Multi-partisan and public review of key appointments, reports and other affairs of the agency;
- Security and independence of budgets and adequate resources;
- Exclusivity or priority of jurisdiction or powers to investigate and prosecute corruption cases and the power, subject only to appropriate judicial review, to determine which cases involve sufficient elements of corruption to invoke this jurisdiction; and,
- Appropriate immunity against civil litigation.

## ***MANDATES OF SPECIALIZED ANTI-CORRUPTION AGENCIES***

The exact mandate of a specialized ACA will depend on many factors, not least:

- The nature and extent of the corruption problem;
- The external or international obligations of a country to establish such an agency or agencies;<sup>64</sup>
- Whether the agency is intended as a permanent or temporary measure;

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<sup>62</sup> Many sources have set out what are seen as requirements for judicial independence. See, for example, "Basic Principles on the Independence of the Judiciary", Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, A/CONF/121/22/rev.1, UN Sales # E.86.IV.1, Part I.D.2, reprinted in United Nations: Compilation of International Instruments, Vol.1 Part 1 and International Commission of Jurists, Declaration of Delhi (1959), reprinted in The Rule of Law and Human Rights: Principles and Definitions (I.C.J., Geneva, 1966). Examples may also be found in the independence granted to some other critical governance functions such as ombudsmen, electoral commissions and independent auditors or financial regulators.

<sup>63</sup> An "entrenched" mandate is one which is established by law and protected by amending procedures which are more difficult than for ordinary legislation, such as time-delays, special majority (e.g., 2/3) votes or additional legislative deliberations.

<sup>64</sup> The major obligation of this type is the requirement established by Articles 6 and 36 of the United Nations Convention against Corruption, but requirements may also be found in other treaties or other arrangements such as contractual agreements to perform specific business dealings in an "island of integrity" environment. See Tool #7, Integrity Pacts and related case studies for examples.

- The mandates of other relevant entities involved in areas such as policy-making, legislative change, law enforcement and prosecution;
- The management and regulation of the public service; and
- Whether the mandate is intended to deal with corruption at all levels (i.e. central, regional and municipal or local) of government.

***SUBSTANTIVE ELEMENTS OF SPECIALIZED ANTI-CORRUPTION AGENCIES COULD INCLUDE:***

**An investigative and initial prosecutorial function.<sup>65</sup>**

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

**An educational and awareness-raising function.**

An established ACA has the information needed to play an important role in educating the public about corruption. Transparency about specific cases of corruption is essential to establishing the credibility of anti-corruption efforts, both for deterrence purposes and as a measure of success. More general education about the true costs and extent of corruption is needed to mobilize popular support for the anti-corruption strategy itself.

**An analysis, policy-making and legislative function.**

A major element of anti-corruption strategies is the ability to take account of lessons learned and use them to modify the strategy as it proceeds. The ACA will have the necessary information, and should have the necessary expertise, to analyse it and recommend reforms. The ACA should be authorized to make such recommendations to both administrative and legislative bodies, publicly if necessary.

**A preventive function.**

Apart from basic deterrence and education measures, the ACA should be in a position to develop, propose and, where appropriate, implement preventive measures. For example, it could be granted the power to review and comment on preventive measures developed by other departments or agencies.

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<sup>65</sup> The United Nations Convention against Corruption envisages a simpler structure, comprising specialized agencies only in the areas of law-enforcement (Article 36) and prevention but includes all of the same substantive elements by treating, in general terms, everything other than enforcement and prosecution as forms of prevention.

## **TOOL #4**

### **THE OMBUDSMAN**

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

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

#### ***ROLE OF THE OMBUDSMAN IN ANTI-CORRUPTION PROGRAMMES***

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

The mandates of ombudsmen generally go beyond corruption cases, and include incidents of maladministration attributable to incompetence, bias, error or indifference that are not necessarily corrupt. That can be an advantage, as the complainant in many cases will not know of or suspect the presence of corruption. The ombudsman can determine that and, if necessary, refer the matter to an anti-corruption agency or prosecutor for further action. As noted, the informality of ombudsman structures also permits them to be used in

relatively minor cases where legal proceedings would not be feasible. Ombudsmen also generally have powers to fashion a suitable remedy for the complainant, which is often not the case with criminal proceedings. The ombudsman process is usually complaint-driven, which limits its usefulness in tackling corruption and in generating research or policy-related information. Some ombudsmen do, however, compile reports analysing their caseloads or have powers to make general recommendations to Governments in circumstances where complaint patterns suggest that there is some deeper institutional, structural or other problem.

In some countries, ombudsmen have taken a more proactive role in studying the efficiency and operational policies of public institutions in an effort to prevent occurrences of injustice, incivility or inefficiency. As with other functions, the breadth of their role in each country may depend on whether other agencies, such as Auditors-General or Inspectors-General, have been established to monitor various aspects of governance and make recommendations for reform. Where this is not done by other agencies, ombudsmen may perform functions such as making recommendations or proposals to Government departments or making public reports and recommendations. Their functions can also include monitoring the observance of leadership codes and investigating complaints of corruption. In some countries, several specialized ombudsmen rather than a single national ombudsman, exist, each being responsible for different private and governmental operations, such as health and legal services, police, defence forces, societies, insurance, pensions and investments.

### **MANDATES AND FUNCTIONS**

As with other watchdog bodies, ombudsmen require a sufficient degree of independence and autonomy to ensure that their enquiries and findings cannot be compromised and that they will enjoy public credibility.

- Mandates should be broad enough to ensure that ombudsmen can consider complaints that do not come within the purview of other forums, such as law courts or administrative tribunals. Indeed, overlap with other forums should be avoided as much as possible. Ombudsmen should not be empowered to consider major cases within the jurisdiction of other bodies. In minor cases, complainants should have a choice between the ombudsman and other proceedings. Mandates should also prevent the ombudsman from being used as an unofficial appeal or for reconsideration of matters already dealt with by other bodies. Since ombudsmen will receive a wide range of cases, they should also be mandated and trained to refer cases to other forums where appropriate.
- Ombudsmen should have the power to fashion remedies for complainants where possible, especially in cases where alternative forums lack such powers. Such remedies could include overturning decisions or referring them to the original decision-maker for reconsideration.
- The extent to which ombudsmen may also generate policy or make general recommendations for reform may depend on the mandates of other bodies in each country, but the following could be considered:

**Jurisdiction.**

Ombudsmen should have relatively broad jurisdiction in terms of what types of maladministration (including corruption) they may investigate and what institutions of Government they may investigate.

**Adequate investigative powers.**

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

**Transparency.**

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

**Integrity.**

The ombudsman and members of his or her office have essentially the same integrity requirements as those applicable to anti-corruption agencies. A high level of integrity for individual staff members and procedures is required to ensure the validity of results and the credibility of the office.

**Public accessibility.**

The public must have free, direct and informal access to the ombudsman without introduction or assistance.

**Resources.**

Ombudsmen must be provided with adequate staff and resources to ensure that their functions can be discharged competently, with due diligence, within a reasonable period of time, and in a manner apparent to the general population. One problem often confronting ombudsmen and the Governments that establish their offices is unexpectedly large case loads, due to the general nature of the mandate combined with inadequate resources and staff. In such cases, even if the office is seen as having integrity, it will not have credibility, either as a complaints mechanism or an element of the national anti-corruption programme.

***PRECONDITIONS AND RISKS*****Lack of coordination with other agencies.**

A country may recognize that fighting corruption requires more than merely enforcing the laws, and may thus adopt a strategy that involves elements of prevention and public education. That may still not be successful, however, if elements of the strategy are not bound together in a coordinated effort. The relatively broad, general mandates of ombudsmen, and the tendency to use them to fill gaps between other mechanisms that perform monitoring and accountability functions or create remedies, makes coordination particularly important in the area of prevention and public education.

**Unrealistic aims and expectations.**

The broad mandates and easy accessibility of ombudsmen generally limit them to relatively minor matters, with more serious enquiries assigned to better resourced and more powerful entities, such as law enforcement or

specialized anti-corruption agencies. Public expectations about the extent of enquiries that ombudsmen can conduct and the types of remedies they can create and enforce must be carefully managed. Information and mandate materials should set a high standard for ombudsmen without creating unrealistic expectations.

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

Unfortunately, cases of corruption or maladministration in international projects, such as the movement and housing of refugees, the delivery of food aid and the management of major international aid projects, have become all too common. The international aspects of the organizations and activities involved represent unique challenges, and ombudsmen can be just effective as an element of anti-corruption strategies in such cases as at the national level.

While efforts have been made to establish appropriate legal and regulatory frameworks for the administration of organizations such as the United Nations, they are seldom as extensive and well equipped as the legislative and enforcement structures of individual countries. The nature of international organizations and programmes also often results in a complex web of interlocking and overlapping jurisdictions with respect to corruption-related subject matter, and that can reduce the effectiveness of countermeasures. The extremely broad range of subject matter and the interplay of different languages, cultures, legal traditions and other factors can also pose challenges for anti-corruption efforts. The impact of all such factors may be reduced to some degree by using ombudsmen or similar officials with broad jurisdiction to hear complaints, fashion remedies or refer matters to other, more appropriate bodies.

Broadly speaking, international ombudsmen could be established in two situations.

**1 By international organizations**, such as the United Nations, as part of their internal management and governance structures. In such cases, an ombudsman would receive complaints from employees and outsiders, potentially dealing with subject matter ranging from internal management issues, such as staffing or the promotion of employees, to complaints or concerns with respect to how the organization executes its various mandates. A key function of an ombudsman here would be to receive and account for a very wide range of complaints, referring many of them to more appropriate bodies or officials.

**2 By individual agencies or organizations** involved in specific projects or programmes of an international nature. In that case, the jurisdiction of the ombudsman can be much more narrowly focused. The aid agency of a donor Government, for example, would probably have existing structures for complaints or concerns at home and rely on an ombudsman only as a means of dealing with complaints generated in the countries where it is active. Such an ombudsman may be established as an ongoing operation or established on a project-by-project basis, as needed. Further mandates for a project ombudsman may arise from the specific nature of the project itself and



knowledge of the exact country or countries where the project is to be conducted.

### ***OMBUDSMEN IN INTERNATIONAL ORGANIZATIONS***

Ombudsmen in international organizations would have the following characteristics, in addition to those applicable to all ombudsmen.

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

## **OMBUDSMEN IN NATIONAL ORGANIZATIONS CONDUCTING INTERNATIONAL ACTIVITIES**

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

### **RELATED TOOLS**

Tools that may be required before an ombudsman institution can be successfully established include:

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

Tools that may be required before an ombudsman can function properly include:

- Legislation and/or administrative measures ensuring that the ombudsman will have access to information, such as access-to-information laws and procedures, as well as effective protection for complainants, "whistleblowers" and others who assist in investigations or proceedings;
- Measures that raise public trust and awareness regarding the institution and its mandate, and that manage public expectations; and,

- Legislative or other measures that establish an effective and credible oversight and monitoring mechanism, such as bodies involving elements of civil society.

Given the general nature of the functions of most ombudsmen, there are probably no tools that cannot be used or should be avoided if an ombudsman is already established. For the same reason, where overlap occurs, careful consideration will be needed of the mandates and powers of the ombudsman and all areas of overlap to minimize inefficiencies, redundancies and the potential for parallel proceedings and inconsistent decisions.

Since the publication of the first edition of this Tool Kit, the General Assembly of the United Nations has established the office of the Ombudsman of the United Nations.<sup>66</sup> The Secretary General has set out the specific terms of reference and mandates of the new office,<sup>67</sup> and on 26 April 2002, appointed the first Ombudsman. Details of the terms of reference and operations of the new office can be found within the web-site of the United Nations at: <http://www.un.org/ombudsman/>

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<sup>66</sup> See GA/RES/55/258 of 14 June 2001, Part XI, paragraph 3, and GA/RES/56/253 of 24 December 2001, paragraph 79.

<sup>67</sup> ST/SGB/2002/12 of 15 October 2002.

## TOOL #5

### AUDITORS AND AUDIT INSTITUTIONS

The fundamental purpose of auditing is the verification of records, processes or functions by an entity that is sufficiently independent of the subject under audit as not to be biased or unduly influenced in its dealings.

The degree of thoroughness and level of detail of audits vary but, in general, they should fully examine the accuracy and integrity of actions taken and records kept. Corporate audits, for example, consider the substantive position of the company, the decisions made by its officials, whether the audit process itself was inherently capable of producing a valid result and the accuracy of the evidence or information on which decisions or actions were based. Any of those factors, if flawed, would result in an inaccurate or misleading conclusion.

The United Nations Convention against Corruption treats audit requirements as elements of prevention, in both the public sector (Article 9) and the private sector (Article 12), but specific elements of the Convention, such as the requirements to preserve the integrity of books, records and other financial documents make it clear that the functions of deterrence, detection, investigation and prosecution are also contemplated.<sup>68</sup> As with many preventive requirements, audits and auditors prevent corruption by making it riskier and more difficult, while at the same time laying the basis for reactive and remedial measures in cases where it is not prevented or deterred.

Audits work primarily through transparency. While some auditors have powers to act on their own findings, their responsibilities are usually confined to investigation, reporting on matters of fact and, sometimes, to making recommendations or referring findings to other bodies for action. While auditors may report to inside bodies such as Governments or boards of directors, their real power resides in the fact that audit reports are made public.

Once carried out, audits serve the following specific purposes:

- **They independently verify information and analysis**, thus establishing an accurate picture of the institution or function being audited.
- **They identify evidentiary weaknesses**, administrative flaws, malfeasance or other problems that insiders may be unable or unwilling to identify;
- **They identify strengths and weaknesses in administrative structures**, assisting decisions about which elements should be retained and which reformed;
- **They provide a baseline against which reforms can later be assessed** and, unlike insiders they can, in some cases, propose or impose substantive goals or time limits for reforms;

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<sup>68</sup> See Article 9, paragraph 3 (integrity of records), as well as Article 9 subparagraph 2 (e) (remedial measures where procedures not followed). Regarding the private sector, see Article 12, subparagraphs 2(f) (requirement for audit controls) and paragraph 3 (prohibition of acts inconsistent with effective audit controls, such as off-the-books accounting, and the intentional destruction of documents).

- In public systems, **they place credible information before the public**, generating political pressure to act in response to problems identified; and,
- Where malfeasance is identified, **they present a mechanism through which problems can be referred to law enforcement or disciplinary authorities** independently of the institution under audit<sup>69</sup>.

### ***DIFFERENT TYPES OF AUDIT***

Audits vary widely in scope, subject matter, the powers of auditors, the independence of auditors from the institutions or persons being audited, and what is done with reports, findings and other results.

Audits range in size from minor contractual arrangements, in which an auditor may be asked to examine a specific segment or aspect of the business activities of a private company, to the employment of hundreds of audit experts, responsible for auditing the entire range of activities of large Governments<sup>70</sup>.

Auditors may be mandated to carry out specific tasks, although that can compromise their independence; or they may be given general powers, not only to conduct audits but to decide which aspects of a business or public service they will examine each year. Public sector auditors are generally in the latter category because of the large volumes of information to be examined, the expertise required and the sensitivity of much of the information under review. The need for a high degree of autonomy and for resistance to undue influence are also important reasons for giving public sector auditors such discretionary authority.

Specific types of audit include:

#### **Pre-audit/post-audit.**

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

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<sup>69</sup> Article 14(3)(g) of the International Covenant on Civil and Political Rights provides the right of any person charged with an offence "Not to be compelled to testify against himself or to confess guilt", and some domestic constitutional guarantees extend this principle to those who may be suspected, whether or not they have been formally charged. In such cases conflicts between the roles of auditors and prosecutors may have to be reconciled. Generally legislation can compel those being audited to positively assist auditors, providing records and written or verbal explanations of actions taken, which in cases of malfeasance, may later lead to or support criminal charges. Some systems deal with this by

<sup>70</sup> One of the larger such institutions, the United States General Accounting Office, presently lists 3,275 employees.

**Internal/external audits.**

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

**Non-public audits.**

While a general principle of auditing is that the findings or conclusions reached should be publicly reported, that principle can conflict with the need for official secrecy in the public sector. Official secrets, ranging from national security matters to sensitive economic or commercial information, are protected by Governments but matters involving such information should not be exempt from auditing. If auditors are precluded from examining departments or agencies handling sensitive information, corruption or other improper activities are shielded from scrutiny. In such cases, it is preferable to audit sensitive activities, if necessary using auditors who have undergone background checks and cleared under official secrets legislation. There should be a requirement that reports are transmitted only to senior officials who are empowered to act on them or that reports are edited to prevent the disclosure of sensitive information. In such cases, the determination of what information is too sensitive to disclose should be made as independently as possible. One option is to permit auditors dissatisfied with a decision to appeal to the courts, with the requirement that proceedings be closed and any judicial decisions edited or kept secret. Another is to create a structure in which internal audits of sensitive departments are reported directly from the auditors to external civilian or political oversight bodies, that are established and cleared to review the information the audits contain.

**Audit subject matter: legal, financial, conformity with established standards and performance.**

Auditors may be mandated to examine legal or financial matters, to verify that internal procedures conform to prescribed or common standards or to assess the performance of individuals or institutions. As far as major public sector institutions are concerned, auditors are usually mandated to examine all the above-mentioned aspects of a given institution and to decide whether to audit and, if so, which aspects to audit. Such decisions can be made randomly to ensure general deterrence and/or on the basis of information received. For example, tips from insiders may generate an audit; and information gathered during a preliminary audit may make the auditors decide to examine specific areas or activities of an institution more closely.

## ***ENSURING THE INDEPENDENCE OF AUDIT INSTITUTIONS***

The degree of independence enjoyed by auditors varies. The validity and reliability of the audit, however, do depend on some basic degree of autonomy. Major public-sector auditors generally require, and are given, a degree of independence roughly equivalent to that of judges or national anti-corruption agencies. In common with those institutions, public audit agencies are ultimately subordinate to, and employed by, the State, making complete independence impossible. Nevertheless, a high degree of autonomy is essential in matters such as mandate and governance, budgets, staffing, the conducting of investigations, the making of decisions about what to audit and how, and the drafting and release of reports, as follows:

### **Independence of auditors and staff.**

The independence of audit institutions is directly related to the independence of their members, in particular, those with senior responsibilities or decision-making powers. To ensure staff competence, credibility and neutrality, candidates for positions should be carefully reviewed before being hired and, once employed, should be protected from outside influences. To prevent an abuse of their positions, audit staff, like judges, may require security of tenure, and there must be safeguards in the form of performance assessments, disciplinary procedures as well as other “disincentives” to engage in corrupt practices.

### **Financial and budgetary independence.**

Audit institutions must be provided with the financial means to accomplish their tasks. There must also be guarantees that budget reductions will not take place to limit an audit, prevent an audit from taking place or retaliate for a past audit. As Government auditors commonly review the activities of finance ministries and other budgetary agencies, direct access to the legislature or a multipartisan legislative committee may be required by auditors of budgetary matters.

### **Independence and transparency of reporting.**

As noted, the value of public sector audits is based on transparency and public disclosure. An audit report will usually provide information and recommendations for action by inside experts, but the pressure for experts to act on the recommendations is usually exerted by the general public.

The imperative for public disclosure of audit reports is usually made explicit in national legislation; or there may be a requirement that reports be made to a body whose proceedings are required to be conducted in public, such as a legislature or legislative committee. To ensure independence, the recipients of the report should not be permitted to alter or withhold it, and there should be a legal presumption of transparency at all times. While exceptions may be made, as in the case of sensitive information, they must be justified, if information is to be withheld.

## **RELATIONSHIP BETWEEN AUDIT INSTITUTIONS AND OTHER PUBLIC BODIES**

### **Relationship with the legislature and political elements of Government.**

Legislatures are political bodies whose members will not always welcome the independent oversight of auditors and other watchdog agencies. National audit institutions must, therefore, enjoy a significant degree of functional independence and separation both from the legislature and from the political elements of executive Government. One way is by constitutionally entrenching the existence and status of the institution, thereby making interference impossible without constitutional amendment. Where this is impracticable, the institution can be established by an enacted statute. The statute would set out basic functions and independence in terms that make it clear that any amendment not enjoying broad multipartisan support would be seen as interference and generate political consequences for the faction sponsoring it.

The mandate of an audit institution should also deal with the difficult question of whether the institution should have the power and responsibility to audit the legislature and its members. If an auditor has strong powers, there may be interference with the legitimate functions of the legislature and the immunities of its members. If, on the other hand, the legislature is not subject to audit, a valuable safeguard may be lost. One factor to be considered in making such a decision is the extent to which transparency and political accountability function as controls on legislative members. Another is the extent to which internal monitoring and disciplinary bodies of the legislature itself act as effective controls. A third is the degree of immunity members enjoy. If immunity is limited and members are subject to criminal investigation and prosecution for misconduct, then there may be less need for auditing. Where immunity is strong, on the other hand, exposing members to strict audit requirements may compensate for this. A mechanism could be tailored, for example, to ensure political and even legal accountability without compromising legislative functions<sup>71</sup>.

The third aspect of the relationship between the legislature and an audit institution lies in the process for dealing with the reports or recommendations of auditors. Auditors established by the legislature are generally required to report to it at regular intervals. As an additional safeguard, reporting to either the entire legislature or any other body on which all political factions are represented ensures multipartisan review of the report. Moreover, constitutional, legislative or

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<sup>71</sup> It is worth noting in this context that the function of legislative privileges or immunities is not the protection of members, but the protection of the legislature and the integrity of its proceedings. Thus, for example, the freedom of members to speak without fear of prosecution or action for libel is established, but often limited to speech in the course of legislative proceedings. Similarly, immunities from arrest or detention are often restricted to periods where the legislature is actually sitting or may be called into session. In some countries, privileges and immunities are also extended to participants who are not members, such as witnesses who testify before legislative committees. On the long historical development of immunities in the Parliamentary common-law system of the United Kingdom, see Erskine May's *Treatise on the Law, Privileges and Usage of Parliament*, chapt.5-8 and Wade, E.C.S. and Bradley, A.W., *Constitutional and Administrative Law*, 10th ed., chapt.12. For the application of this principle in Canada, see *New Brunswick Broadcasting Co. v. Province of Nova Scotia* [1993] 1 S.C.R. 319.



conventional requirements that proceedings and documents of the legislature be made public ensures transparency, a process further assisted by the close attention paid to most national legislatures by the media. In some circumstances, auditors may also be empowered to make specific reports, recommendations or referrals to other bodies or officials. For instance, some cases of apparent malfeasance may be referred directly to law enforcement agencies or public prosecutors.

### **Relationship to Government and the administration.**

The relationship between auditors and non-political elements of Government and public administration must balance the need for independent and objective safeguards with the efficient functioning of Government. Auditors should be free to establish facts, draw conclusions and make recommendations, but not to interfere in the actual operations of Government. Such interference would compromise the political accountability of the Government, effectively replacing the political decision-making function with that of a professional, but non-elected auditor. Over time, such interference would also compromise the basic independence of the office of the auditor, which would ultimately find itself auditing the consequences of its own previous decisions. That is the main reason why most auditors are not given powers to implement their own recommendations.

Regarding reporting, the primary reporting obligation of auditors is to the legislature and the public. Specific elements or recommendations of a report may be referred directly to the agency or department most affected, but that should be done in addition to the public reporting and not as an alternative, subject to the possible exceptions set out under "non-public audits", above.

## ***POWERS OF AUDITORS***

### **Powers of Investigation.**

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

### **Expert opinions and consultations.**

Apart from their objective investigative functions, audit agencies may also be used as a source of expert advice for Governments in such areas as the drafting of legislation or regulatory materials dealing with corruption. If permitted, such

input should be used on a strictly limited basis, as it could compromise the basic independence of the auditor<sup>72</sup>.

### **AUDIT METHODS, AUDIT STAFF, INTERNATIONAL EXCHANGE OF EXPERIENCES.**

#### **Audit staff.**

Audit staff should have the professional qualifications and moral integrity required to carry out their tasks to the fullest extent to maintain public credibility in the audit institution.

Professional qualifications and on-the-job development should include traditional areas, such as legal, economic and accounting knowledge, along with expertise, such as business management, electronic data processing, forensic science and criminal investigative skills. As with other crucial public servants, the status and compensation of auditors must be adequate to reduce their need for additional income and to ensure that they have a great deal to lose if they themselves become corrupted. As far as ordinary public servants are concerned, even if involvement in corruption is not cause for dismissal, it should result in the exclusion of that individual from any audit agency or function.

#### **Audit methods and procedures.**

The standardization of audit procedures, where possible, provides an additional safeguard against some functions of the department or agency under audit being overlooked. Where possible, procedures should be established before the nature and direction of enquiries become apparent to those under audit, to avoid any question of interference later. One exception, and a fundamental principle of procedure, is that auditors should be authorized and required to direct additional attention to any area in which initial enquiries fail to completely explain and account for processes and outcomes.

Essentially, the audit process will consist of initial enquiries to gain a basic understanding of what the department or agency does and how it is organized; more detailed enquiries to generate and validate basic information for the report; and even more detailed enquiries to examine areas identified as potential problems. Audits can rarely be all-inclusive, which will generally necessitate either a random sampling approach or the targeting of specific areas identified by other sources as problematic.

#### **Audit of public authorities and other institutions abroad, and joint audits.**

National auditors should be given powers to audit every aspect of the public sector, including transnational elements or those outside the country. Where the affairs of other countries are involved, joint audits carried out by officials of both

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<sup>72</sup> The situation is similar with respect to the use of supreme courts to provide what are effectively binding legal opinions on matters referred to them directly by governments, as opposed to having been raised by litigants. Some countries allow this practice, while others consider it an impermissible mixing of the judicial and executive branches of government.

countries could prove useful. In such cases, however, there must be a clear working arrangement governing the nature and extent of cooperation between auditors, and the extent to which mutual agreement is required regarding fact finding, drawing conclusions and making recommendations. While cooperation may prove useful, the national auditors of each country should preserve their independence and the right to draw any conclusions that they see fit.

#### **Tax audits.**

In many countries, domestic revenue or tax authorities have established internal agencies to audit individual and corporate taxpayers. One of the functions of national audit institutions is to audit those auditors as part of a more general examination of the taxation system and its administration. Such audits are vital, given that tax systems can be a “hot bed” of economic and other corruption.

When such an audit occurs, national audit agencies must have the power to reaudit the files of individual taxpayers. The purpose is to verify the work of the auditors, not to reinvestigate the taxpayers involved. Where malfeasance or errors are discovered, the interests of the taxpayer who has been previously audited and whose account has been settled should not be prejudiced.

National auditors should also have the powers to audit individual taxpayers under some circumstances, for example where there is no specialized tax audit function, where tax auditors are unwilling or unable to audit a particular taxpayer, and where an audit of the tax administration suggests collusion between a taxpayer and an auditor.

#### **Public contracts and public works.**

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

#### **Audit of electronic data-processing facilities.**

The increasing use of electronic data storage and processing facilities also calls for appropriate auditing. Such audits should cover the entire system, encompassing planning for future requirements; efficient use of data processing equipment; use of appropriately qualified staff, preferably drawn from within the administration of the audited organization; privacy protection and security of information; prevention of misuse of data; and the capacity of the system to store and retrieve information on demand.

#### **Audit of subsidized institutions.**

Auditors should be empowered to examine enterprises or institutions that are subsidized by public funds. At a minimum, that would entail the review of specific publicly funded or subsidized projects or programmes and, in many cases, a complete audit of the institution. As with contractors, the requirement to submit

to auditing and fully assist and cooperate with auditors should be made a condition of the funding or enshrined in any contract.

**Audit of international and supranational organizations.**

International and supranational organizations whose expenditures are covered by contributions from member countries should also be subject to auditing. That may, however, be problematic, if the institution receives funds from many countries and each insists on a national audit. In the case of major agencies, it may be preferable to establish an internal agency to conduct a single, unified audit, with participating States providing sufficient oversight to ensure validity and satisfaction with the results.

***PRECONDITIONS AND RISKS***

**Inadequate enforcement or implementation of findings or recommendations.**

As noted, auditors generally have the power only to report, not to implement or follow up on reports. Their recommendations usually go to the legislature or, occasionally, other bodies, such as the public prosecutor, whose own functions necessarily entail discretionary powers about whether or not to take action. The reluctance to implement recommendations can be addressed only by bringing political pressures to bear through the transparent reporting by the media of the recommendations. Additional attention may be focused by supplementary reports direct to the agencies that have been audited. Auditors can also report on whether past recommendations have been implemented and, if not, why not, through follow-up reports or by dedicating part of their current report to that question.

**Inadequate reporting and investigations.**

In the course of an audit, it is common for personnel to be diverted from their usual functions. A lack of qualified professional staff and resources therefore makes it difficult for those being audited to render the necessary cooperation and for auditors to successfully complete rigorous audits.

**Unrealistic aims and expectations.**

The belief that corruption can be eradicated, and in a short time, inevitably leads to false expectations, resulting in disappointment, distrust and cynicism. The mistaken impression may also be given that audit institutions have powers to implement or enforce their recommendations.

**Competition and relationships with other agencies.**

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

### **Lack of political commitment and/or political interference.**

Political will is essential to the impact of an audit institution. As with other anti-corruption initiatives, there should be as broad a range of political support as possible; oversight should be of a multipartisan nature; and mandates and operational matters should be put beyond the easy reach of Governments. The transparency and the competence of auditors will also help to ensure popular support for their efforts, and as a result, ongoing political commitment.

### ***OTHER RELATED INSTRUMENTS***

Instruments that may be required before an audit institution can be successfully established include:

- Instruments, usually in the form of legislation, establishing the mandate, powers and independence of the institution;
- Policy and legislative provisions governing the relationship between the audit institution and other related institutions, especially law enforcement, prosecution and specialized anti-corruption agencies;
- Instruments establishing legal or ethical standards for public servants or other employees, such as codes of conduct, both for general classes of workers and for those employed within the audit institution itself;
- Ways of raising public awareness and expectations regarding the role of the audit institution and its independence of other elements of Government; and
- The establishment of a parent body, such as a strong and committed legislative committee, to receive and follow up on reports.

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

## **TOOL #6**

### **STRENGTHENING JUDICIAL INSTITUTIONS**

The competence, professionalism and integrity of judges are critical to the success of anti-corruption efforts. The judiciary as an institution is essential to the rule of law, influencing efforts to control and eradicate corruption in many ways.

Judicial decisions that are fair, consistent with one another and based on law support an environment in which legitimate economic activities can flourish and corruption can be detected, deterred and punished. The high status and independence accorded judges in most societies makes them a powerful example for the conduct of others. Judges are called upon to adjudicate corruption cases, establish case law and punish offenders. In some cases, they may perform other critical functions, such as reviewing the appointments or status of anti-corruption officials or passing judgment on governance matters, such as the validity of elections or the constitutionality of laws or procedures. Thus, the judges themselves can become targets of corruption, particularly where efforts to corrupt lesser criminal justice officials have failed.

The independence of judges and their functions makes them a powerful anti-corruption force, but also represents unique challenges. Training in areas such as integrity must be carried out so as not to compromise judicial independence. Accountability structures must be able to monitor judicial activities as well as detect and deal with corruption and other conduct inconsistent with judicial office. At the same time, safeguards must be incorporated to ensure that judges cannot be threatened or intimidated, or judicial decision-making adversely influenced<sup>73</sup>

The unique importance of judicial institutions is recognized in the United Nations Convention against Corruption, which devotes a specific provision (Article 11) to the issues in this area. The Article calls for measures which strengthen integrity and prevent opportunities for judicial corruption itself, to be taken without prejudice to judicial independence. The Article also calls for similar action in respect of prosecutors in systems where they enjoy a similar degree of independence. It does not deal specifically with the question of educating or training judges in the complexities of corruption cases, but to the extent that this does not infringe judicial independence with respect to specific cases, it could be regarded as falling within Articles 7 and 60, on the basis that judges should also be considered as public officials and treated as other public officials, except where their status requires otherwise.

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<sup>73</sup> Regarding judicial independence, see Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, "Basic Principles on the Independence of the Judiciary", GA/RES/40/32 of 29 November 1985 and 40/146 of 13 December 1985, and "Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary", ECOSOC resolution 1989/60 of 24 May 1989.

### **Article 11\***

#### **Measures relating to the judiciary and prosecution services**

Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

*United Nations Convention against Corruption*

#### **ANTI-CORRUPTION MEASURES AFFECTING JUDGES**

The major focus of anti-corruption efforts should be to strengthen integrity, educate judges about the nature and extent of corruption, and establish adequate accountability structures.

##### **Assessment of the problem of judicial corruption.**

As with other anti-corruption measures, efforts to combat judicial corruption should be based on an assessment of the nature and scope of the problem. As many of the measures pertaining to judges must be developed, maintained and applied by the judges themselves, the assessment should also consider the capacity of the judiciary to undertake such functions.

An objective assessment of the full range of corruption types and the level and locations of courts in which they occur should be examined. All parties involved in anti-corruption efforts within judicial institutions (see "Consultations", below) should be asked about possible remedies. Data should be assembled and recorded in an appropriate format and made widely available for research, analysis and response.

##### **Consultations.**

Judicial independence precludes the imposition of reforms from external sources, which means that any proposals for judicial training and accountability must be developed in consultation with judges, or even developed by the judges themselves, with whatever assistance they may require. Consultations with other key groups, such as the bar associations, prosecutors, justice ministries, legislatures and court users are recommended. Lawyers, for example, are a source of information concerning problems about which judges may be unaware. In many countries, judges are drawn from the ranks of the legal profession, as

well as in consultation with the practising bar. In some cases, bringing together different groups to discuss issues informally may prove productive. Based on the consultation process, a specific plan of action could be drafted to set out the proposed reforms in detail, establish priorities and implementation sequence, and set targets for full implementation<sup>74</sup>.

### **Judicially established measures.**

To protect judicial independence, self-regulation structures should be developed wherever possible. In other words, based on consultations and other sources of information, judges should be encouraged and assisted in the development and maintenance of their own accountability structures. With this in mind, the establishment of bodies such as judicial councils, in which judges themselves hear complaints, impose disciplinary measures and remedies, and develop preventive policies, will be required. Views about the extent to which training can be required without compromising judicial independence vary; it is preferable, however, for training programmes in such areas as anti-corruption to be developed by, or in consultation with, judges to the fullest extent possible. That avoids the debate about independence and is likely to increase the effectiveness of the training.

### **Judicial training.**

The focus of the subject matter of judicial training should be to assist judges in maintaining a high degree of professional competence and integrity. Possible subject matter could include the review of codes of conduct for judges and lawyers<sup>75</sup>, particularly if they have been revised or reinterpreted, and a review of statute and case law in key areas such as judicial bias, judicial discipline, the substantive and procedural rights of litigants and corruption-related criminal offences. Less structured options, such as informal discussions, could be used to explore difficult ethical issues among judges.

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<sup>74</sup> For an example of this, see Petter Langseth and Oliver Stolpe, "Strengthening Judicial Integrity Against Corruption", CIJL Yearbook, 2000

<sup>75</sup> In jurisdictions where judges are chosen from the practicing bar, codes of professional conduct for lawyers often continue to apply. Judges should also be aware of the standards expected of the legal counsel who appear before them.



### **A judicial code of conduct.<sup>76</sup>**

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

### **The quality of judicial appointments.<sup>77</sup>**

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

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<sup>76</sup> More detailed information about codes of conduct or principles for judicial conduct (the common term in civil law systems) for judges are set out in the Tool # 8 Codes of Conduct and case study #8.#9, and #10. The United Nations Convention against Corruption does not call specifically for judicial codes of conduct, but measures set out in Article 11 "...may include rules with respect to the conduct of members of the judiciary". To the extent that judges are also be made subject to codes of conduct for public officials under Article 7, bearing in mind that Article 11 requires that actions be without prejudice to judicial independence. In most systems, this would allow for the adoption of some common principles for all public officials and the further tailoring of others in their application to judges.

<sup>77</sup> Article 11 of The United Nations Convention against Corruption does not deal specifically with the selection and appointment of judges. To the extent that judges are considered to be public officials and subject to judicial independence, however, they could be subject to Article 7, paragraph 1, which establishes basic principles for "...recruitment, hiring, retention, promotion and retirement..." of, where appropriate, non-elected public officials. Clearly, imposing requirements on retention and retirement, as well as some requirements on promotion, have the potential to infringe judicial independence. Screening and other conditions on recruitment and hiring would not, however, as the candidates are not judges when these take place. Article 11 requires that actions taken be "without prejudice" to judicial independence.

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

### **The assignment of cases and judges.**

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

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

### **Transparency of legal proceedings.**

Wherever possible, legal proceedings should be conducted in open court, a forum to which not only the interested parties but also the media and civil society, have access.

Public commentary on matters, such as the efficacy, integrity and fairness of proceedings and outcomes, is important and should not be unduly restricted by legislation, judicial orders or the application of contempt-of-court offences. The exclusion of the media or constraints on their commentary should be limited to matters where it is demonstrably justifiable, for example protecting children and other vulnerable litigants from undue public attention, and only to the extent that such an interest is served. Media may be permitted to attend proceedings and report on the facts and outcome of a case, for example, but not to identify those involved. *Ex parte* proceedings, excluding one or more of the litigants, should be permitted only where secrecy is essential, and should always be a matter of record. Neither litigants nor legal counsel should have any communication with a judge unless representatives of all parties are present.

### **The review of judicial decisions.**

The primary forum for reviewing judicial decisions is the appellate courts. Appeal judges should have the power to comment on decisions that depart from legislation or case law so radically as to suggest bias or corruption. They should

also be able to refer such cases to judicial councils or other disciplinary bodies, where appropriate. Such bodies should have the power to review but not overturn judgments where a complaint is made or on their own initiative, for example where concerns are raised through other channels such as media reports.

### **Transparency and the disclosure of assets and incomes.**

The potential corruption of judges, like other key officials, can be approached on the basis of unaccounted-for enrichment while in office, using requirements that relevant information must be disclosed, and investigations and disciplinary measures undertaken where impropriety is discovered.<sup>78</sup> Powers to audit or investigate judges affect judicial independence if they are specific to a particular judge or enquiry. Thus, while routine or random audits could be performed by other officials, provided that true randomness can be assured, any follow-up investigations should be a matter for fellow judges.

### **Judicial immunity.**

By virtue of the nature of their office, judges generally enjoy some degree of legal immunity. Immunity should not extend to any form of immunity from criminal investigations or proceedings; nevertheless, improper criminal proceedings or even the threat of criminal charges can be used to compromise the independence of individual judges. Where criminal suspicions or allegations emerge, it may be advisable to ensure that they are reviewed not only by independent prosecutors but also by judicial councils or similar bodies. Where an investigation or criminal proceedings are under way, the judge concerned should be suspended until the matter has been resolved. A criminal acquittal, however, should not necessarily lead to reinstatement as a judge, particularly as the burden of proof is higher in criminal than in disciplinary proceedings. For example, a judge may be dismissed where there is substantial evidence of wrongdoing but not enough for a criminal conviction; or there may be discovery in a case of misconduct not amounting to crime but inconsistent with continued office as a judge, for example the failure to disclose income or conflict of interest.

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<sup>78</sup> Regarding transparency and the disclosure of assets and income, see United Nations Convention against Corruption, Article 52, paragraph 5, which requires States Parties to consider “effective financial disclosure systems for appropriate public officials”. As with other requirements, this would have to be implemented without prejudicing judicial independence (Article 11, paragraph 1), but this should be possible in most systems. A similar requirement might also be seen as falling within the more general requirement of Article 7, paragraph 4, which requires systems that promote transparency and prevent conflicts of interest. An offence of illicit enrichment is also included in the Convention (Article 20), but it is optional because in some jurisdictions placing the burden of proving that assets acquired are legitimate on the accused public official is considered an infringement on the right to be presumed innocent under ICCPR Article 12, paragraph 2 and domestic constitutional requirements.

### **The protection of judges.**

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

### **Dealing with judicial resistance to reforms.**

Resistance to reform by judges can arise from several factors. Legitimate concerns about judicial independence can, and should, make judges resistant to reforms imposed from non-judicial sources. In such cases, there is the risk that efforts to combat judicial corruption, even if successful, may set precedents that reduce independence and erode basic rule-of-law safeguards. Resistance of that nature can best be addressed by ensuring that reforms are developed and implemented from within the judicial community, and that judges themselves are made aware of that fact and of the need to support reform efforts. Resistance may also come from judges who are corrupt, and fear the loss of income or other benefits, such as professional status, that derive from corruption or the influence it enables them to exert. Those involved in past acts of corruption may also face criminal liability if such behaviour is exposed. The benefits of reform to such judges, if any, tend to be long-term and indirect and therefore not seen as compensation for the shorter-term costs of ceasing corrupt activity and embracing reforms<sup>79</sup>.

To redress the imbalance, it may be possible, in some cases, to ensure that early stages of judicial reform programmes incorporate elements that provide positive incentives for the judges involved. For example, reforms promoting transparency and accountability in judicial functions can be accompanied by improvements in training, professional status and compensation and tangible incentives, such as early retirement packages, promotions for judges and support staff, new buildings and expanded budgets.

Another factor that may diminish judicial resistance is a poor public perception of the judiciary and the resulting pressure on courts and judges. Where corruption is too pervasive, the basic utility of the courts tends to be eroded, leading members of the public to seek other means of resolving disputes, and the popular credibility and status of judges diminishes. Crises of that nature can graphically demonstrate the extent of corruption and the harm it causes, reduce institutional resistance and generally provide a catalyst for reforms.

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<sup>79</sup> Buscaglia, Edgardo and Maria Dakolias (1999) "Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account" Technical Papers. Legal and Judicial Reform Unit. Washington DC: The World Bank

## **The reform of courts and judicial administration**

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

- **Adequate resources and salaries.** Ensuring that courts are adequately staffed with judges and other personnel can help reduce the potential for corruption. Officials who are adequately paid are less susceptible to bribery and other undue influences; systems that deal with such cases quickly minimize the opportunities for corrupt interference or for officials to sell preferential treatment or charge "speed money".
- **Court management structures.** Management structures can set standards for performance, and ensure transparency and accountability by, for example, ensuring proper records are kept and cases are tracked through the system. Where feasible, computerization or the use of other information technologies may provide cost-effective ways of implementing such reforms.
- **Statistical analysis of cases.** The analysis of statistical patterns with respect to how cases arise, how they are managed and assigned to judges and their outcomes can help to establish norms or averages and identify unusual patterns that may be indicative of corruption or other biases. Where misconduct is suspected, the records of specific judges could be subjected to the same analysis.
- **Public awareness and education.** Efforts should be made to educate the public about the proper functioning of judges and courts in order to raise awareness about the standards that should be expected. That usually generates other benefits, such as increasing the credibility and legitimacy of the courts and increasing the willingness of outsiders to participate in or cooperate with judicial proceedings.
- **Alternative dispute resolution.** Alternatives, such as mediation between litigants, can be used to divert cases from the courts. Such a step may allow litigants to avoid a forum suspected of corruption, although the alternative method may be just as vulnerable, if not more so. Such options do reduce court workloads and conserve resources, and are often available for impoverished litigants or for small cases where a judicial trial is out of reach.

## **PRECONDITIONS AND RISKS**

### **Implementation issues**

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

- The independence of the judiciary imposes exceptional requirements that do not apply to the reform of other institutions. Some measures may have to be implemented in ways which are more costly, elaborate or time-consuming, while others may not be possible at all. For example, giving officials a free hand to impose disciplinary measures on public servants found to have engaged in corruption would create problems if applied to judges because it raises the possibility that discipline or the threat of discipline could be used to unduly influence judicial decisions. Article 11 of the United Nations Convention against Corruption requires that anti-corruption measures be applied to judges, “without prejudice to judicial independence”. In addition to domestic legal and constitutional requirements, those engaged in the formulation of programmes which apply to judges should consult the relevant United Nations Standards and Norms in Crime Prevention and Criminal Justice for information on the requirements of judicial independence.<sup>80</sup>
- Many other anti-corruption measures require an effective rule-of-law framework that, in turn, requires competent and independent judges.
- Criminal court judges will be called upon to deal with corruption cases as a national anti-corruption programme is applied. Early cases will set important precedents in areas such as the definition of corruption or acts of corruption, and in deterring corruption.
- As corruption-related cases increase, judges themselves will become targets of corruption. If they succumb, many other elements of the strategy will fail.
- The judiciary is usually the most senior and respected element of the justice system, and the extent to which it pursues and achieves a high standard of integrity will set a precedent for other officials and institutions.
- The judiciary is also likely to be the smallest criminal justice system institution, which makes it relatively accessible by early, small-scale efforts.
- The independence of the judiciary imposes exceptional requirements that do not apply to the reform of other institutions and may take time to achieve. For example, judges will require time to develop their own codes of conduct.
- Judges exercise the widest discretion and have the most powerful positions in both civil and criminal justice systems. While reforms to other institutions, such as the legal profession, prosecution services and law enforcement agencies, are also critical, it is at the judicial level that corruption does the greatest harm and where reforms have the greatest potential to improve the situation.

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<sup>80</sup> See Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, "Basic Principles on the Independence of the Judiciary", GA/RES/40/32 of 29 November 1985 and 40/146 of 13 December 1985, and "Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary", ECOSOC resolution 1989/60 of 24 May 1989. These may be found in the *Compendium of UN Standards and Norms in Crime Prevention and Criminal Justice*, Part 1, Section D, available on-line at: <http://www.uncjin.org/Standards/Compendium/compendium.html>.

- To ensure lasting anti-corruption reforms, short-term benefits must be channelled through permanent institutional mechanisms capable of sustaining reform. The best institutional scenario is one in which public sector reforms are the by-product of a consensus involving the legislatures, the judiciary, bar associations and civil society.

### ***RELATED MECHANISMS***

Mechanisms that may be required before initiating the strengthening of judicial institutions include:

1. An independent and comprehensive assessment of the judiciary, usually at the request of the chief justice;
2. The development and establishment of a code of conduct for the judiciary;
3. Ethics training for all judges, magistrates and court staff to (i) make them aware of the code conduct and (ii) understand the consequences if caught in breaking the code;
4. Public awareness raising regarding their rights and where to complain when these rights are not honored;
5. The establishment of an independent and credible complaints mechanism for judicial matters;
6. The establishment of a judicial council or similar body with the capability to investigate complaints and enforce disciplinary action when necessary and
7. Mechanisms that may be needed in conjunction with anti-corruption agencies include:
  - An integrity and action planning meeting among all key judicial players to agree on an action plan (usually on initiative of the chief justice);
  - The agreement of measurable performance indicators for the judiciary;
  - The conduct of an independent comprehensive assessment of judicial capacity, efficiency and integrity, and of the degree of public confidence and trust in judges and judicial institutions; and,
  - The dissemination and enforcement of a code of conduct for the judiciary.

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

### ***IMPLEMENTATION OF TOOL #6***

The typical user of Tool #6 will be the chief justice and/or the judiciary service commission. Having launched a reform programme at the national level, the chief justice would be expected to delegate the implementation of the reform to the chief judges at the state/district level.

To ensure the successful implementation of the reform of the judiciary, the necessary resources must be in place. Specific resources will vary according to the scope and duration of judicial reform programmes and cost factors associated with specific elements. Costs will usually arise from training, the support of judicial councils and specialized anti-corruption bodies, better compensation for judges, facilities and equipment, and the costs of retiring judges.



## **TOOL #7**

### **CIVIL SERVICE REFORM**

Reforming the civil service will be a major element of virtually every national anti-corruption strategy, and in many cases will be sufficiently large and complex a programme to warrant breaking it down both into chronological stages and into thematic elements. One of the main goals is the improvement of service-delivery by determining what should be expected of each public sector element or unit, how that output can best be delivered and then developing and implementing reforms accordingly. Other goals will often but not always overlap. These include the incorporation of effective monitoring and oversight functions, for example, which in some cases may slow – or at least not accelerate – service delivery, but will produce effects such as the improvement of accountability and reductions in losses due to corruption. Critical elements of public service reforms will generally address individual factors, collective factors and structural or systemic factors. For example, better training and remuneration are intended to change individual behaviours by reducing the incentives to engage in corrupt behaviours. Other forms of training in areas such as ethics and the raising of expectations both inside and outside of the public service operate on civil servants collectively by suppressing cultural attitudes which favour corruption and replacing them with new values which favour integrity. Systemic or structural reforms, such as the reduction of discretion and the de-layering or streamlining of overly-complex bureaucratic structures, are intended to combat corruption by improving transparency and reducing the opportunities for corruption to occur.

#### ***WHAT IS CIVIL SERVICE REFORM AND HAS IT WORKED?***

Recognizing the importance of building the capacity of Governments to achieve economic and social objectives, the donor community has invested significantly in civil service reform since 1990. Few observers doubt the centrality of civil service performance to the development agenda but some question the effectiveness of past programmes to strengthen the civil services in developing countries. In most countries, the conclusion must be that when it comes to corruption, the civil service is more likely to be seen as part of the problem than part of the solution.

Numerous service delivery and/or corruption perception surveys have found civil services to be corrupt, and thus inefficient and untrustworthy in curbing corruption. A World Bank paper<sup>81</sup>, raising the question, "...have World Bank interventions helped make Governments work better?", answers probably not. With more than 169 civil service reform projects between 1987 and 1999 in 80 countries, that is a serious setback and demands a serious rethink of the current approach to civil service reform.

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<sup>81</sup> Barbara Nunberg (1999) Rethinking Civil Service Reform, World Bank PREM Notes, number 31

The World Bank has done a number of things in the name of civil service reform, mainly focusing on the rather narrow area of addressing fiscal concerns, that is bringing balance to government pay and employment practices. Despite that effort, most civil servants do not earn "a living wage"<sup>82</sup>, which is one of the major causes of petty and administrative corruption<sup>83</sup>.

Civil service reform projects also involve streamlining Government functions and organizational structures, improving human resources policies in central and local Governments, revising the legal and regulatory framework for the public administration, providing institutional support for Government decentralization and managing the process through which such changes are implemented. Internal analysis at the World Bank suggests that civil service reform operations in past years often missed even their main fiscal targets and were seldom designed to address the corruption issue. During the early 1990s, less than half the civil service reform operations of the Bank reduced wage bills or compressed salaries (a questionable objective in the first place). Moreover, the "right-sizing" of the public service was in the order of a modest 5 to 10 per cent and was often reversed soon after being brought in. Fiscal savings from such cuts were rarely sufficient to finance salary increases for higher level staff<sup>84</sup>.

### **TYPICAL ISSUES IN THE CIVIL SERVICE**

Assessments of civil services around the world all conclude that they are marked not only by their bloated structures but also by inefficiency and poor performance. The key symptoms observed include:

- Abuse of office, and Government property;
- Embezzlement;
- Abuse of power;
- Obsolete procedures;
- Lack of discipline;
- Lack of appropriate systems;
- Thin managerial and technical skills; and
- Poor attitudes and massive bureaucratic red tape.

In other words, public servants seem to serve themselves rather than the public. The key causes of the problem have also been identified in numerous reports as:

- Inadequate pay and benefits (remuneration);
- Insufficient focus on process with inadequate attention to such aspects as transparency, non-partisanship, inclusion of key stakeholders and impact orientation;
- Inadequate human-resource management;

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<sup>82</sup> Langseth,P., (1995) Civil Service Reform in Uganda; Lessons Learned in *Public Administration and Development*; Vol.15,365-390

<sup>83</sup> Langseth,P., (1995) Civil Service Reform in Uganda; Lessons Learned in *Public Administration and Development*; Vol.15,365-390. See also United Nations Convention against Corruption, Article 7, subparagraph 1(c), calling for adequate remuneration and pay scales, taking into account levels of economic development.

<sup>84</sup> Nunberg and Nellis (1995)

- Dysfunctional organization;
- Insufficient management and supervisory training;
- Inadequate facilities, assets and maintenance culture;
- Unnecessary procedural complexity;
- Abuse of procedural discretion;
- Lack of accountability;
- Inadequate performance management and measurable performance indicators;
- Project focus rather than programme focus;
- Uni-dimensional rather than multi-disciplinary approach; and
- Lack of leadership ethic and code of conduct for civil servants.

### ***ELEMENTS OF A NEW APPROACH***

There is broad agreement that a new approach is needed. Helping countries reform their civil services should also include helping build integrity to curb corruption and thereby improve service delivery. Such an approach requires a broad range of integrated, long-term and sustainable policies, legislation and measures. The Government, the private sector and the public need to work in partnership to define, maintain and promote performance standards that include decency, transparency, accountability and ethical practice, in addition to the timeliness, cost, coverage and quality of general service delivery. Education and awareness-raising that foster law-abiding conduct and reduce public tolerance for corruption are central to reducing what is, effectively, a breeding ground for corruption.

### ***ELEMENTS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION CALLING FOR CIVIL SERVICE REFORM***

Reforming elements of the civil service to prevent and combat corruption can cover a very broad range of measures, and many elements of the Convention either call for such reforms or support them in some way. The drafters considered such reforms to be principally a matter of prevention, and most of the relevant provisions are found in Chapter II. The most important provision is probably Article 7, which calls upon States Parties to "...endeavour to adopt, maintain, and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants, and where appropriate, other non-elected public officials." It then calls for additional measures in respect of the selection and training of individuals for positions seen as particularly vulnerable to corruption.<sup>85</sup> Three such areas are identified by subsequent articles: those dealing with public procurement, the management of public finances, and judges,<sup>86</sup> but the language leaves it open to States Parties to decide whether other areas should be accorded special attention, taking into account the variables inherent in their own domestic government structures.

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<sup>85</sup> Article 7, subparagraph 1(b).

<sup>86</sup> Articles 9 and 11.

Other provisions of the Convention which should be considered in developing civil service reforms include Article 8 (codes of conduct for public officials); Article 10 (public reporting and transparency in public administration); Article 13 (participation of society in anti corruption efforts); the criminalization requirements for offences involving misconduct by civil servants (Articles 15- 20); Article 33 (protection of persons who report corruption); Article 34 (measures to address consequences of corruption); Article 38 (cooperation between national public authorities); Article 39 (cooperation between public authorities and the private sector), and Article 60 (training and technical assistance).

### ***VISION OF FUNCTIONING CIVIL SERVICE***

Following is a vision of what a properly performing civil service might be like:

1. In five years the civil service in Country X will be smaller and have better paid, honest, better trained, more motivated, and therefore more efficient and more effective, public servants. Its main focus will be to improve general security (rule of law) and quality, timeliness, cost and coverage of service delivery to the public.
2. The Civil Service of Country X will have the following characteristics:
  - a. The **shared values** of the civil service will be based on the following principles:
    - Consultation;
    - Service standards;
    - Access;
    - Courtesy;
    - Access to information;
    - Openness and transparency;
    - Discipline; and
    - Value for money.
  - b. Those shared values will be established, with the participation of the public servants through a **code of conduct**, made available to the public through a Citizens' Charter. The code will be monitored through a public complaints systems and enforced through disciplinary boards.
  - c. A baseline focusing on quality, timeliness, cost and coverage of services and public trust in and satisfaction with the public service will already be in place. A transparent **evidence-based management system** with measurable impact indicators will be monitored against the baseline. Ministries, departments, groups and individuals will all have measurable performance indicators and targets.
  - d. Since most of the direct interface between the Government and the public takes place at the local level, there will be a **decentralization of resources and tasks**, allowing implementation of a functional budgeting system of priorities and resource allocation to local government. Again, evidence-based management will assure accountability based on identified priorities with measurable performance indicators; performance

- targets will be monitored against an established baseline. Value for money and public satisfaction with the services will be monitored across local governments.
- e. **Rationalization and "right-sizing"** will take place based on the principle that the Government should undertake only those functions that it can effectively and efficiently perform and that cannot be privatized will be undertaken. There is a need for evidence-based establishment control and monitoring.
  - f. **Reduced levels of corruption** will be enforced by:
    - Empowering the victims of corruption to report any irregularities;
    - Increased disciplinary follow-up of complaints (enforcement of code of conduct); and
    - Criminalization of corruption.
3. The civil service in Country X:
- Will be paid a minimum living wage and be given an evidence-based performance increase in pay;
  - Will have clear and measurable organizational objectives and demonstrate commitment to such goals and objectives;
  - Will be fully accountable and responsible for the outputs of their jobs and committed to achieving clearly defined individual objectives;
  - Will be regularly monitored by an empowered civil society that know its rights, has access to information and a credible complaints mechanisms, trusts the criminal justice system and is regularly surveyed about quality, cost and timeliness of services received and the security situation.

### ***STRATEGIC FRAMEWORK TO REFORM THE CIVIL SERVICE***

The strategic framework and action plan needed to implement the foregoing vision would have at least six major components. Inherent in each would be the importance of paying a minimum living wage and of implementing evidence-based or results-oriented management. The framework would include<sup>87</sup>:

- Strengthening the ministry in charge of civil service reform and establishing a close relationship between it and other anti-corruption agencies (see Tool #3) and institutions representing civil society;
- Introducing an "affordable civil service" through "right-sizing" and rationalization of ministries and local government structures. Independent institutional assessments would be carried out, on the basis of which recommendations would be made as to simplification of procedures, reduction of structural discretion and introduction of evidence-based or results-oriented management.

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<sup>87</sup> Langseth, Petter., EDI Staff Working Paper. Washington: EDI, No 95-05

- Enforced payroll monitoring and establishment control and the use of the rationalization effort combined with a job-grading exercise to "right-size" the civil service, including elimination of "ghost workers".
- Paying the civil servants in the rationalized and "right-sized" civil service a minimum living wage, without delays, on a monthly basis. Based on assessment and results-oriented management, implementation of monetization of benefits and pay.
- Reduction of corruption and improved service delivery through increased accountability via: (i) enforced codes of conduct; (ii) increased supervision; (iii) enforced results-oriented, management-based measurable performance indicators; (iv) empowering the public through citizens' charters; a credible public complaints system; access to information and whistle blower protection.
- Managing public expectations and winning public trust through a credible communication strategy.

For the new strategic framework to work, a fundamental change is needed in the handling of public affairs, that is a move towards an integrated approach while ensuring that the process is evidence-based, transparent, inclusive, broad-based, comprehensive, non-partisan and impact-oriented.

The development of an integrated, holistic strategy involves a clear commitment by political leaders to combating corruption wherever it occurs, and also submitting themselves to scrutiny. Primary attention should be given to prevention of future corruption by introducing system changes such as simplifying procedures, reducing discretion, and increasing accountability through increased transparency, in other words opening up the Government to public scrutiny<sup>88</sup>.

Areas of Government activity most prone to corruption should be identified and relevant procedures should be reviewed as a matter of priority, and civil servants who hold high positions or positions which are especially vulnerable to corruption, or where there are high costs to society and governance if corruption occurs should be made subject to additional scrutiny using means such as financial disclosure and review requirements.<sup>89</sup> The salaries of civil servants and political leaders should adequately reflect the responsibility of the post and be as comparable as possible with those in the private sector, both to reduce the "need" for corruption and to ensure that the best human resources can "afford" to serve the State.<sup>90</sup>

Legal and administrative remedies should provide adequate deterrence, for example:

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<sup>88</sup> See United Nations Convention against Corruption, Article 10.

<sup>89</sup> See United Nations Convention against Corruption, Article 7, subparagraph 1(b), Articles 9 and 11, and Article 52, paragraph 5.

<sup>90</sup> See United Nations Convention against Corruption, Article 7, subparagraph 1(c).

- Corruption-induced contracts should be rendered void and unenforceable<sup>91</sup>
- Close monitoring of Government activities that involve large financial transactions should be introduced;
- There should be random intensive audits; and/or
- Licences and permits obtained through corruption should be rendered void.

A creative partnership should be forged between the public service and civil society, including the private sector, the professions, religious organizations and relevant pressure groups<sup>92</sup>. One important outcome of the partnership would be to allow a systematic dialogue to develop between the public service and the public it serves. Through systematic service delivery surveys, citizens' charters that explain to the public their rights and credible complaints systems, service delivery should be monitored systematically against a pre-established baseline using measurable performance indicators. In countries with systemic corruption, such service delivery surveys often turn into "corruption surveys", as one of the main reasons why the public is not being served is corruption: petty, administrative and grand.

## ***ELEMENTS OF A NEW APPROACH***

### **Pay and employment reform.**

Many civil service reform operations have focused on reforming Government pay and employment policies. The objectives have been to reduce the aggregate wage bill, right-size and streamline the civil service, and rationalize remuneration structures<sup>93</sup>. Some would argue that such reforms have been driven by narrow fiscal determinants, have been politically difficult, and have had minimal impact both fiscally and otherwise. What was missing was an integrated approach addressing the reform in an integrated and evidence-based manner. With a more serious, systematic and holistic impact assessment, it is said, it would have been realized that the traditional approach to civil service reform did not work. Some observers argue that pay and employment reforms should be abandoned altogether. Others argue that when public servants cannot afford to stay away from corruption, pay reforms need to be deepened, broadened and lengthened.

Pay and employment reforms<sup>94</sup> are often needed to restore fiscal balance, a necessary but insufficient precondition for curbing corruption or for performance

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<sup>91</sup> See United Nations Convention against Corruption, Articles 34 and 35.

<sup>92</sup> See United Nations Convention against Corruption, Article 13.

<sup>93</sup> Lindauer, David (1994), *Government Pay and Employment Policies and Economic Performance*, Washington, D.C.: World Bank

<sup>94</sup> Langseth and Mugaju (1996), *Post Conflict Uganda, Towards an Effective Civil Service*, Fountain Publishers, Kampala Uganda (ISBN: 9970 02 120 6)

and capacity improvements that will lead to improved service delivery to the public. In the past, civil service reforms have generally been too narrow and too modest to achieve any of their key objectives. Most "right-sizing" programmes have sought reductions of 5 to 15 per cent while much bolder cuts are needed to render most government affordable. In Uganda in 1993-94, for example, the public service and the army were both reduced by 50 per cent so that the Government could afford to pay civil servants and soldiers a living wage. Uganda was, comparatively speaking, in an excellent fiscal position, spending less than 30 per cent of recurrent expenditure on the wage bill while other African countries were spending as much as 75 per cent. Yet, five years later, the cut had to be as deep as 50 per cent to implement a living wage with a compression rate of 1-10 five years later<sup>95</sup>. The expected "pain" of the redundancy of nearly 150,000 civil servants was reduced by<sup>96</sup>:

- A well managed and well received voluntary redundancy programme;
- The fact that more than 60,000 ghost workers were taken off the payroll between 1992-1994;
- Good support for the redundant staff who received an acceptable compensation package (31); and
- Availability of farming land, due to the civil war, making it possible for redundant staff to make a living from the land

As was proved in the case of Uganda, downsizing programmes, if well managed, need not be politically destabilizing. Focus groups conducted at the village level in Uganda in 1994, revealed that the 95 per cent of the population who did not profit directly or indirectly from working in the civil service, were totally unconcerned about what might happen to "the fat cats" in the public service. "They never served us so why should we be concerned if they lose their job?" was the typical response. Even without elaborate schemes for redundant staff as in Uganda, severance, where it existed, and "moonlighting" and/or "daylighting" have provided a transitional cushion for displaced civil servants, and the informal and agricultural sectors have been able to absorb more workers than expected.

One of the lessons learned from the "right-sizing" exercises is that where civil servants are paid less than a living wage, they are still making enough to feed their families, either the "half-honest" way where they have multiple jobs, stealing only time from the service, or through the more dishonest way where, through

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<sup>95</sup> The policy decision by cabinet was to keep the wage bill under 45% of the recurrent expenditures

<sup>96</sup> Retrenched staff received a compensation package consisting of three months basic salary in lieu of notice, one month's salary in lieu of leave entitlements, transportation money from workplace to home district by the most direct route (the approved formula was in 1994 the equivalent of US\$ 200 plus US\$ 2 per kilometer to help the retrenched staff reach their hometown or village) and a severance package of equivalent to three months basic salary for each completed year of pensionable service up to a maximum of twenty years.. This package did not apply to people who had yet not been confirmed in their appointment. Such officers were entitled to only one month's basic salary in lieu of leave entitlement, and transport from the place of work to home district. See Langseth and Mugaju (1996), *Post Conflict Uganda, Towards an Effective Civil Service*, Fountain Publishers, Kampala Uganda (ISBN: 9970 02 120 6)



corruption, they are making many times their wage or salary. Thus, reforms can perhaps be pushed further on political grounds as well.

Donor-supported pay and employment reforms have continued to focus on short-term and narrow goals, such as one-shot employment cut rather than the holistic and multi-disciplinary approaches addressing:

- Affordability of the civil service by "right-sizing";
- Accountability through evidence-based monitoring of impact indicators, followed up by improved supervision and discipline;
- Capacity through the strengthening of human resources management; and
- Incentives through the implementation of codes of conduct, complaints systems, support of whistleblowers and empowerment of civil society.

Even where civil services have been "right-sized", other key reform areas have not been addressed, and it is not uncommon that successful redundancy schemes are followed by rehiring exercises. In Uganda, for example, a decentralization reform ran in parallel with the civil service reform, and many of the redundant civil servants found new jobs at the district level.

### **Towards an integrated approach**

As the focus on pay reform and employment is too narrow to achieve the necessary institutional changes to reduce corruption and improve service delivery, the emphasis needs to be extended to include results-oriented management, human resources management and decentralization. It then needs to be extended yet further, using an even broader and highly selective approach that addresses the role of the State, with important implications for the functions, structure, organization and process of Government.

At least four more dimensions of Government reorientation need to be considered in the more integrated reform model.

***The first*** is the by now widely recognized connection between civil service management and the framework of controls and incentives embodied in the financial management systems of Governments. Strong links between personnel and budgets functions are essential to sound Government management.

***The second*** is the empowerment of the public to increase the accountability of civil servants. As already mentioned, there is a need to pass legislation and introduce measures that will increase public access to information and thereby open up the Government to public scrutiny. The empowerment of the public should also be increased through citizens' charters that make them aware of their rights; with improved confidence in the State, the public should, if they are not served according to their rights, be encouraged to complain through complaints systems and/or service delivery or integrity surveys.

***The third*** dimension is the extensive administrative reform occurring throughout developing countries at the decentralized subnational level of Government. Decisions about devolution and deconcentration of staff, functions and resources must be linked to policies on central civil service

reform. It is also critical that the decentralization effort is coupled with an evidence-based approach where service delivery baselines are established and monitored by measurable performance indicators across subnational and national units. It is critical that a partnership is established between with civil society and the private sector that allows periodic and independent monitoring of the State.

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

#### **Moving from a project to an integrated approach.**

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

The conventional project approach of donors is not well suited to the new construct of Government reconstruction and reorientation. Most projects are based on an engineering model that emphasizes tight timeframes and de-emphasizes human variables. Institutional reforms require adaptability and a commitment by participants to reform goals among national and international civil servants. Such reforms are subject to a myriad of unpredictable variables, making any blueprint at best simplistic. Since corruption is everywhere and cross-cutting, the issue of integrity of national and international "players" becomes an important new variable that needs to be addressed in a credible manner, both in the donor institutions and the Government itself. In other words, in order to help client countries implement an integrated approach, many donor organizations need to reform themselves to be credible.

The process is already ongoing; many donor agencies have begun to move away from their earlier project focus and have started applying a more integrated approach. Various high-impact, non-lending operations and a new range of operational instruments provide for a more flexible, more country-driven approach to reform. In addition, thought is being given by the organizations, such as the World Bank, to new types of programme loans that could develop the

programmatic approach more systematically. Such loans may support medium-term reforms within a broad policy framework agreed by the World Bank, each Government, the judiciary, the independent anti-corruption agencies and civil society. Establishing overall programme criteria and governance mechanisms for the reform process, conditional on the development of evidence-based and result-oriented reform packages, is key to the success of an integrated programme approach.

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

#### **Learning from best practice.**

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

The range of new approaches and models available to Member States can be overwhelming. The present Toolkit may be an example of the variety and complexity involved in moving a Government towards an integrated approach that introduces improved affordability, integrity, security and service delivery.

#### ***PRECONDITIONS AND RISKS***

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

Moreover, most industrial country innovations are only now being tested. According to Nunberg<sup>97</sup>, debates run high on the reforms, and the jury is still out with respect to some of the more controversial elements of the new public management, including the use of market mechanisms, such as performance-related pay or widespread contractual employment, in core civil services. For three reasons, adapting elements of competing administrative models to the context of Member States will be complex.

First, countries must be allowed to choose mechanisms that are appropriate for their own circumstances, selecting from a menu, such as the Toolkit, that neutrally demonstrates the pros and cons for each option. In the midst of powerful advocacy by true believers in one or another approach, donors can play an objective role in advising developing countries interested in sampling elements of governance reform so that blueprints are not imported wholesale from other countries.

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

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

Having said this, there are important reasons why some degree of international consistency in civil service reforms may be seen as desirable. Prominent among these are the fact that lessons may be learned and expertise transferred from country to country, and that in an increasingly interdependent environment, countries operating with similar values, standards and structures can usually collaborate more easily and effectively than those which lack significant common ground. One of the most significant effects of the United Nations Convention against Corruption, as with other global treaties, is that it represents a broad international consensus about values, standards and structures, on which individual countries can then build further taking into account national variables such as legal traditions, cultural factors and degree of economic development. The Convention encourages such an approach by making some fundamental elements mandatory for all States Parties, by making other elements variable,

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<sup>97</sup> Nunberg, Barbara (1997) Re-thinking Civil Service Reform: an Agenda for Smart Government, Poverty and Social Policy working paper, World Bank, Washington, D.C.: World Bank.

optional or subject to the selection of options or elements of discretion, and by making clear the fundamental principle that it is intended to establish basic minimum standards which individual States Parties are both free to, and encouraged to, exceed.

***IMPLEMENTING TOOL #7***

The user of Tool #7 would typically be the ministry in charge of civil service reform but also departments in line ministries and/or ministries in charge of local government reforms.

Resources needed to implement reform will vary from country depending on the type of reform being implemented. Staff redundancy measures, for example, require large resources.

## **TOOL #8**

### **CODES AND STANDARDS OF CONDUCT**

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

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

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

Codes that support disciplinary structures may also set out procedures and sanctions for non-compliance. Codes may be developed for the entire public service, specific sectors of the public service or, in the private sector, specific companies or professional bodies such as doctors, lawyers or public accountants. Several models have been developed to assist those developing such codes<sup>98</sup>

#### ***DESCRIPTION***

One of the many challenges of setting standards or establishing codes of conduct is to ensure that the legal, behavioural, administrative and managerial aspects of such instruments are consistent with basic principles of justice, impartiality, independence, integrity, loyalty towards the organization, diligence,

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<sup>98</sup> See Case Study #8 Codes of Conducts for different organizations

propriety of personal conduct, transparency, accountability, and responsible use of organizational resources.

### **Means of setting standards or establishing codes of conduct**

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

- **Legislation**, usually criminal and/or administrative law, is used to set general standards that apply to everyone or to large categories of people. The criminal offence of bribery, for example, applies to anyone who commits the offence, and usually covers all bribery or bribery involving the public interest or a public official. In some countries, more specific legislation is used to set additional standards applicable to all public officials or, in some cases, even private sector workers.
- **Delegated legislation or regulations**, in which the legislature delegates the power to create specific technical rules, may also be used for setting standards for specific categories of officials, such as prosecutors, members of the legislature or officials responsible for financial accounting or contracting matters.
- **Contract law** is another major source of standards. Using contracts governing employment or the delivery of goods or services, standards may be set for a specific employee or contractor as part of his or her individual contract. Alternatively, an agency or department may set general standards to which all employees or contractors are required to agree as a condition of employment.

Higher standards can usually be set for smaller, more specific groups based on what can be reasonably expected of that group. Private citizens are subject only to basic criminal offences such as bribery, whereas judges can reasonably be prohibited from accepting gifts or having financial or property interests that might conflict with their impartiality.

The source of a particular standard has procedural implications. Breaches of criminal law standards result in prosecution and punishment, and require a high standard of proof and a narrow range of prohibited conduct. Breaches of an employment contract, on the other hand, usually lead to disciplinary measures or dismissal subject to a lower standard of proof. Employees can be dismissed for failing to declare conflict of interest or accepting gifts, even if bribery cannot be proved.

More than one standard or code of conduct will often apply to a particular official or employee. A prosecutor, for example, may be required to meet:

- Specific standards for prosecutors;
- Professional standards set by the bar association or professional governing body for lawyers;
- General standards applicable to all public servants; and
- Standards set by the criminal law.

A key issue that must often be addressed in setting specific standards is to ensure that the standards are not inconsistent with more general standards that

already apply, unless an exception is actually intended. The concept of "double jeopardy" does not usually apply to disciplinary proceedings. For example, a prosecutor convicted of accepting a bribe would usually be subject to separate proceedings leading to a criminal penalty, professional disbarment and dismissal for breach of contractual standards.

## ***ELEMENTS OF CODES OF CONDUCT***

### **General content and format**

Codes of conduct usually establish general standards of behaviour consistent with basic ethical principles of justice, impartiality, independence, integrity, loyalty towards the organization, diligence, propriety of personal conduct, transparency, accountability, and responsible use of organizational resources. They may also contain more specific standards applicable to specific (and clearly defined) groups of employees, as well as procedures and sanctions to be applied in cases of non-compliance. Compliance mechanisms should also include less drastic options to reduce the use of disciplinary measures. One common way of administering ethical standards is to establish a consultant individual or body, so that individuals can enquire whether a particular activity would be in breach of the rules before engaging in it. For example, judicial councils or committees could be consulted by a judge who is uncertain as to whether he or she should hear a particular case; and public servants could enquire whether a proposed gift can be accepted or refused. Such an approach reduces the costs and harm caused by disciplinary actions and, as no liability is involved, allows the application of standards that might otherwise be too general to enforce.

Specific standards may include positive obligations, such as the requirement to disclose assets or potentially conflicting private interests, and prohibition, such as the ban on accepting gifts. Usually, standards applicable to the public sector not only prohibit conduct seen as inconsistent with the office involved but also conduct that might give outsiders the perception of impropriety or damage the credibility or legitimacy of that office. Clarity is advisable to ensure that the rules will be understood and to support enforcement. Rules set by employment contracts do not come within the purview of the criminal law. Codes or, in some cases, the parent legislation or regulations, may also contain self-implementing elements, such as requirements that employees be trained or that they should read and understand codes before they are hired.

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

- Public sector codes can be established either by legislative or contractual means, or a combination of the two. In most cases, private sector codes do not raise sufficient public interest to warrant legislation and are implemented exclusively by contract.
- Public sector codes pursue only the public interest and generally involve provisions that balance the public interest against the rights of the officials to whom they apply. For example, disclosure requirements must balance the public interest in transparency with individual privacy rights. Private sector codes, on the other hand, often protect the private interests of the



employer, which may or may not coincide with the public interest. For example, confidentiality may take precedence over transparency. Private sector organizations will sometimes find it necessary or desirable to include in their codes elements that address the public interest. For instance, codes for medical practitioners and lawyers are intended to protect patients and clients, which is seen as essential to the delivery of the specific services and to the credibility of the profession. In many cases, private sector organizations will try to protect the public interest to preserve self-regulation instead of being regulated by the State.

## ***ELEMENTS OF CODES OF CONDUCT FOR PUBLIC OFFICIALS***<sup>99</sup>

### **General elements**

Anti-corruption elements can and should be supported by more general standards of ethics and conduct to promote high standards of public service, good relations between public officials and those they serve, as well as productivity, motivation and morale. Such standards can promote a culture of professionalism within the public service while, at the same time, fostering the expectation of high standards among the general population.

Specific elements could include the following:

- Rules setting standards for the treatment of members of the public that promote respect and courtesy;
- Rules setting standards of competence for public servants, such as knowledge of relevant laws, procedures and related areas to which members of the public may have to be referred;
- Rules establishing performance criteria and assessment procedures that take into consideration productivity and the quality of service rendered; and
- Rules requiring managers to promote and implement service-oriented values and practices and requiring that their success in doing so be taken into account when assessing their performance.

### **Impartiality and conflicts of interest**<sup>100</sup>

Impartiality is essential to the correct and consistent discharge of public duties and to ensuring public confidence in them. The requirement for impartiality will generally apply to any public official who makes decisions. Higher or more specific standards will be applicable to more powerful or influential decision-makers, such as senior public servants, judges and holders of legislative or executive office. Essentially, impartiality requires decisions to be taken on the facts alone, without resort to extraneous considerations that could influence the outcome in any way. Such considerations may arise from the individual ethnic

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<sup>99</sup> See case study #10; UN Code of Conduct for Public Servants

<sup>100</sup> See, for example, Royal Canadian Mounted Police External Review Committee, Conflict of Interest, <http://www.erc-cee.gc.ca/Discussion/english/eDP10.htm>

customs or religious beliefs of officials, or come into play where their private interest conflicts with their public duty. Codes of conduct should seek to deal with both those eventualities. Specific requirements could include:

- A general requirement that decisions be made on the facts alone. In some circumstances, there could also be rules prohibiting, for example, discrimination based on characteristics such as race, ethnicity, gender, religion or political affiliation.
- Requirement that senior officials responsible for establishing the criteria for decision making should limit them to those relevant to the decision at hand; further, that all criteria be set out in writing and made available to those who will be affected by the decision.
- Requirement that written reasons be given for decisions, to permit subsequent review.
- Requirement that specified officials avoid activities that might give rise to conflicts of interest. That may, for example, preclude senior public servants from playing an active role in party politics. Those responsible for decisions affecting financial markets are often precluded from investing personally or are required to place investments in "blind trusts" thus preventing officials from making a decision that might affect their personal interests.
- Requirement that officials avoid conflicts by altering their duties. For example, a judge who represented a particular individual prior to his appointment should not hear a case involving the former client. The conflict should be disclosed and the case assigned to another judge. Officials on public boards or commissions are often precluded from debating or voting on agenda items that could affect their personal interests.
- Requirements that officials declare interests that may raise conflicts. Frequently, there are provisions for general disclosure at the time of employment and at regular intervals thereafter, as well as disclosure of a potential conflict of interest as soon as it becomes apparent. Such requirements ensures basic transparency by alerting those involved that action may have to be taken to eliminate a conflict.
- Requirements that officials should not accept gifts, favours or other benefits. Where a direct link between a benefit and a decision can be proved, offences related to bribery may apply but, in many cases, the link, if any, is more general. To prevent such a situation and ensure there is no perception of bias, there can be a "blanket" prohibition of the acceptance of gifts or the prohibition can be selectively applied to those affected by, or likely to be affected by, any past or future decision of the official involved. Depending on custom or the nature of the office, exceptions may be made for very small gifts. Where officials are allowed to accept gifts under certain circumstances, the rules can also require disclosure of information about the nature and value of the gift and the identity of the donor so that there can be an independent assessment of whether the gift is appropriate or not.

### **Rules for the administration of public resources.**

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

- Rules requiring all decisions to be made in the public interest, such interest being expressed in terms of maximizing the benefits of any expenditure while minimizing costs, waste or inefficiency.
- Rules requiring the avoidance, where possible, or the disclosure of actual or potential conflicts of interest, similar to conflict of interest rules for public officials. (See above). In practice, for example, such rules might require an official awarding a Government contract to make full disclosure and step aside if one of the applicants proved to be a friend, relative or former associate;
- Rules requiring that proper accounting procedures be followed at all times and appropriate records be kept to permit subsequent review of decisions;
- Rules requiring officials to disclose information about decisions. For example, winning bidders may be required to submit the details of their bid for review by the losers.
- Rules requiring officials to disclose assets and income to permit scrutiny of sums of money not derived from public employment.

### **Confidentiality rules**

Public officials frequently have access to a wide range of sensitive information and are usually subject to rules prohibiting and/or regulating disclosure. The rules may range from criminalizing espionage and the disclosure of official secrets to lesser sanctions for the disclosure of information such as trade secrets or personal information about citizens.

Such rules commonly combine positive obligations to maintain secrecy or take precautions to avoid the loss or disclosure of information, and impose sanctions for intentional disclosure and, in some cases, negligence. Secrecy requirements can be used to shield official wrongdoing from disclosure; modern legislative and administrative codes have thus begun to include provisions to protect "whistleblowers" acting in the public interest. Specific rules could include the following.

- Secrecy oaths requiring that confidential information be kept confidential unless official duty requires otherwise.
- Classification systems to assist officials in determining what information should be kept confidential or secret and what degree of secrecy or

protection is appropriate for each category of information. For example, information that could endanger lives, public safety, national security or the normal functioning of major public agencies to function is usually subject to a relatively high classification.

- Rules prohibiting officials from profiting from the disclosure of confidential information. In some countries, there is civil liability for appearance fees or book publication royalties if generated in part by inside information.
- Rules prohibiting the use of confidential information to gain financial or other benefits. Insiders with advance access to Government budgets are usually prohibited from making investment deals that would constitute "insider trading" in the private sector. The rules should be broad enough to preclude direct use or disclosure of the information, or the provision of advice based on the information to others who may then profit.
- Rules prohibiting the disclosure or use of confidential information for an appropriate period after leaving the public service. The period will generally depend on the sensitivity of the information and how quickly it becomes obsolete. Obligations regarding inside knowledge of pending policy statements or legislation usually expire when they are made public, whereas obligations relating to certain national security interests may be permanent. Officials with broad inside knowledge may be prohibited from taking any employment in which that information could be used, although such a prohibition may possibly be accompanied by some provision for compensation. In drafting requirements for post-employment cases, care should be taken to distinguish between the use of skills and expertise gained in the public service that may be used freely, and confidential information, that may not.

#### **Additional rules for police and law enforcement officials<sup>101</sup>**

Many law enforcement agencies, because of the nature of their duties and the powers and discretion they exercise, have developed specific codes of conduct to supplement those that apply to public officials.

Law enforcement personnel are particularly likely to be exposed to corrupt influences when dealing with crimes that generate large proceeds, such as drug trafficking, organized crime, which often has the motivation and resources to corrupt investigators, and major corruption cases, where persons are suspected of having engaged in corruption. For such reasons, specific anti-corruption rules and internal enforcement mechanisms are sometimes directed at law enforcement personnel who commonly work in such areas.

Specific rules may include the following.

- Prohibition on acting or claiming to act as an official when not on duty or in areas of geographic or subject-matter jurisdiction beyond the mandate of the official concerned;

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<sup>101</sup> For a general code of conduct, see "Code of Conduct for Law Enforcement Officials", GA/RES/34/169 of 17 December 1979 and ECOSOC Res.1989/61, "Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials.

- General prohibition on abuse of power;
- Requirement that some sensitive duties, such as interrogating suspects, be carried out only with witnesses present or, where feasible, where audio or video recording are being made; and
- Requirement that records be kept by an agency and its individual officers regarding general enforcement policies and priorities, and that individual officers exercise discretion, so that conduct at variance with the standards will become apparent.

### **Additional rules for members of legislative bodies and other elected officials**

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

Rules that may apply in such cases include:

- Rules governing legislative or parliamentary immunity. Legislators are given a measure of legal immunity to ensure that they cannot be prevented from attending sittings and that threats of civil or criminal action cannot be used to influence their participation or voting. The scope of the immunity should be narrow to ensure that immunity cannot be used to shield the subject from ordinary criminal liability;
- To ensure that elected officials cannot conceal corruption proceeds, rules requiring the disclosure of assets and financial dealings will be required. Essentially, rules may be the same as for other senior public officials;
- Rules requiring elected officials to disclose the sources and amounts of political donations and to account for election expenditure. Such rules may be imposed as a means of ensuring election fairness and combating corruption;
- Rules prohibiting the use of legislative privileges or facilities for private gain or other non-legislative purposes. Such restrictions often prohibit the use of legislative facilities for partisan political purposes to ensure that incumbents do not gain any unfair political advantage; and
- Rules prohibiting the payment of legislative members for work done in the course of their duties, apart from prescribed salaries or allowances.

### **Rules for cabinet ministers or other senior political officials**

Many ministers and many senior officials hold partisan political offices, either appointed through affiliation or selected from among the elected members of the

legislature. Whether the senior officials are elected or not, many of the foregoing rules still apply. Ministers, however, occupy positions of sufficient power, influence and seniority that additional rules may also apply, for example:

- More extensive rules on the disclosure of assets and incomes and for avoiding conflicts of interest, plus closer surveillance to ensure that any conflicts are avoided or dealt with.
- Accountability to the legislature. The relationship between the executive and legislative varies from one country to another. In the interests of transparency and political accountability, the ministers who formulate and implement Government policy are usually required to appear before legislative bodies to provide information and account for the actions of their departments. Sanctions for failing to appear or for misleading legislatures may apply;
- Post-employment constraints. Constraints are similar to those that may be applied to public servants but are more stringent and, in some cases, last longer. Such constraints exist partly because of the extent and sensitivity of the information ministers hold, and partly because post-ministerial advantages could be linked to undue influence on decision-making by the minister while in office. For example, if a minister takes a job with a company affected by his or her previous duties, suspicions of clandestine employment offers to the minister while in office would undoubtedly be raised. Such employment may also cause concern that the former minister could have inside information, or that he or she may have undue influence with colleagues still in office. In some circumstances, a ministerial office may have involved such broad-ranging powers and interests that a prohibition on post-ministerial employment for some time after leaving office may be necessary. Pensions, severance packages or other compensation may have to take that into consideration.
- Confidential information. Rules governing the disclosure of confidential information are similar to those applicable to other present or former public servants. Closer monitoring may be warranted, however, because of the sensitivity of the information to which ministers generally have access.
- Transitional requirements. Unlike ordinary members of elected legislatures, political ministers and elected heads of State have both political and executive responsibilities that may come into conflict during transitional periods, such as election campaigns and the period between the decision of the electorate and the handing over of office. Broadly speaking, political ministers should be prohibited from using executive powers in ways that confer partisan political advantage, although their accountability in such circumstances may be political rather than legal. Some rules that may be applied include prohibition on the awarding of contracts, hiring people or conferring benefits that are unnecessary for the maintenance of Government; prohibition on the use of public servants for partisan purposes, accompanied by measures prohibiting public servants from engaging in such conduct and protecting those who refuse to do so; rules limiting the destruction of documents (in hard copy or digital format) to records of a political nature; and rules prohibiting public servants from disclosing official records of a political nature to members of subsequently elected Governments.

### ***Rules for judicial officers***<sup>102</sup>

As noted in the segment dealing with building judicial institutions, judges should be subject to many of the same rules as other public servants, with two significant differences. Compliance with basic standards of conduct is more important for judges because of the high degree of authority and discretion their work entails. Thus, the formulation and application of codes of conduct for judges must take into consideration the importance of basic judicial independence<sup>103</sup>. The senior and critical function of judicial officers will often make them the focus, at an early stage, of anti-corruption strategies. Thus, the measures developed for judges and the reaction of judges to those measures will serve as a significant precedent for the success or failure of elements applied to other officials.

*Possible rules include:*

- Rules intended to ensure neutrality and the appearance of neutrality, for example restrictions on participation in some activities, such as partisan politics, that are taken for granted by other segments of the population, and some restrictions on the public expression of views or opinions. Such restrictions may depend on the level of judicial office held and the subject matter that may reasonably be expected to come before a particular judge. In general, the restrictions must be balanced against the basic rights of free expression and free association, and any limitations imposed on judges must be reasonable and justified by the nature of their employment<sup>104</sup>. Judges may also be restricted in their ability to deal in assets or property, particularly if their jurisdiction frequently raises the possibility of conflict of interest. Where such conflicts are less likely, a more practicable approach may be that of disclosure and avoidance.
- Rules intended to set standards for general propriety of conduct. Judges are generally expected to adopt high moral and ethical standards; conduct failing to meet such standards, even if not criminal or a clear breach of a legal standard, may call the fitness of a judge into question. Conduct seen as inappropriate may vary with cultural or national characteristics, and it is important that reasonably clear guidelines, standards or examples are set out. Usually judges will do this themselves. Examples of inappropriate conduct may include serious addiction or substance-abuse problems, public behaviour displaying a lack of judgment or appreciation of the role of judges, indications of bias or prejudice based on race, religion, gender, culture or other characteristics, and patterns of association with inappropriate individuals, such as members of organized criminal groups or persons engaged in corrupt activities.

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<sup>102</sup> See Case study #9 Bangalore Principles of Judicial Conduct for Judges

<sup>103</sup> See Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, "Basic Principles on the Independence of the Judiciary", GA/RES/40/32 of 29 November 1985 and 40/146 of 13 December 1985, and "Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary", ECOSOC resolution 1989/60 of 24 May 1989.

<sup>104</sup> See International Covenant on Civil and Political Rights of 16 December 1966, Articles 19 and 22.

- Rules prohibiting association with interested parties. The integrity of legal proceedings depends on the basic principle that all elements of a case be laid out in open court to ensure basic transparency, and that all interested parties have an opportunity to understand all the elements of a case and respond accordingly. The appearance of integrity is also critical. Usually, judges are prohibited from having contact with any interested party under any circumstances; any exceptions to this are set out in detail in procedural rules. Judges should also be prohibited from discussing matters that come before them and should be required to ensure that others do not discuss them in their presence. Rules governing other public servants, and especially those in high professional or political offices, should also prevent them from contacting judges or discussing matters that are before the courts.
- Rules governing public appearances or statements. Judges are often called upon to make public comment on the court system or contemporary legal or policy issues. The integrity of proceedings and any resulting case law depends on the inclusion of all judicial interpretation and reasoning in a judgment; rules should therefore prohibit a judge from commenting publicly on any matter which has come before him or her in the past or is likely to do so in the future. Rules may also require judges to consult or seek the approval of judicial colleagues or a judicial council prior to making any comment, particularly if they hold senior judicial office and likely to hear a wide range of cases.
- Rules limiting or prohibiting other employment. Codes of judicial conduct often either prohibit alternative employment entirely, limit the nature and scope of such employment, or require disclosure and consultations with chief judges or judicial councils before other employment is taken up. Both the nature of the employment and the remuneration paid can give rise to conflicts of interest, and such limitations/prohibitions usually extend to unpaid (pro bono) work.
- Rules requiring disclosure and disqualification. Rules intended to prevent conflicts of interest are often supplemented by rules requiring judges to identify and disclose potential conflicts, and to refrain from hearing cases in which such conflicts may arise. Rules should also provide a mechanism whereby a judge can alert colleagues to an unforeseen conflict that arises while a case is ongoing. The rules may require disclosure and consultation with the parties, and in extreme cases, self-disqualification and termination of the proceedings and their recommencement before another judge. Mechanisms should also be in place for parties, witnesses, other participants or any other member of the public to identify possible conflicts of interest in judicial matters, and for the discipline of any judge who fails to disclose a known conflict.

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

- A personal bias or prejudice concerning a party or issue in contention;
- Personal knowledge of any facts in contention or likely to be in contention;



- Involvement of personal friends, associates, former associates or former clients<sup>105</sup>; and
- The existence of a significant material financial or other personal interest on the part of the judge, or on the part of a close friend or relative that could be substantially affected by the outcome.

### **Codes of conduct for the private sector**

The extent to which private sector codes feature in national anti-corruption programmes will depend, to some degree, on political and policy assessments of the extent to which any given private sector activity affects the public interest. Areas in which significant public interests are triggered include organizations that deal frequently with the Government, for example providing goods or services, or those whose basic functions affect the public interest or public policy, such as the media.

Governments often choose to go beyond such areas, regulating private sector activities whose collective or long-term effects raise significant public interests. Those involved in such activities could also be required or encouraged to adopt and enforce codes of conduct as part of a larger regulatory strategy. One such example is trading in stocks or securities where individual trades are private but rules ensuring transparency and public confidence in the market are established as a prerequisite for economic prosperity and stability in the country.

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

In general, private sector rules may include rules setting out the basic interests of the employer, the relevant public interests and the circumstances in which each should be given priority. Rules requiring employees to keep employer information confidential, for example, may have express exceptions for situations where the employer is a supplier to the Government. If an employer does not create such exceptions, they may be created by the State in the form of legislation. Similarly, rules for dealing with cases of "whistleblowers" who disclose information in the public interest but to the detriment of the employer may be created by legislation or court decisions.

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<sup>105</sup> Where judges are recruited from the ranks of the practising Bar, full application of this principle may not be practicable, especially in regions or communities where there are relatively few lawyers.

Regarding private codes, they could also address a number of anti-corruption questions. Here, however, "corruption" will generally mean conflicts of interest where individual interest is placed ahead of the interest of the employer rather than the public.

*Some possible rules follow but they are by no means exhaustive.*<sup>106</sup>

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

### **Rules for journalists.**

As noted, members of the media, in providing information that allows the public to make informed choices about governance and other important matters, have a greater overlap in private interest and public interest functions than most. Political accountability, for example, depends on an independent media to inform the electorate about what their elected officials have or have not done while in office and what they propose to do if elected or re-elected. More generally, the media ensure transparency in public affairs, an important function in ensuring good governance in general and the control of corruption in particular. Rules for journalists could include the following.

- Rules setting standards for the quality of research and the accuracy of reporting. Generally, negligence or wilful blindness with respect to the accuracy of information gathered or the reporting of information that has not been properly verified or is known to be false or inaccurate, serves the interests of neither the public nor the employer;
- Rules governing the conduct of employees in cases where private and public interests may conflict. One possibility in such cases may be

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<sup>106</sup>IFWEA Journal, "Company Codes of Conduct: Raising Awareness", [http://www.ifwea.org/journal/1099/company\\_codes\\_of\\_conduct\\_html](http://www.ifwea.org/journal/1099/company_codes_of_conduct_html)  
Human Rights for Workers - A Hong Kong Critique of Corporate Codes, <http://www.senser.com/8-9.htm>.

- consultations with other experienced journalists or editors during which the relevant private and public interests could be identified and assessed. While the views of the government or particular officials, if known, may be relevant to discussions, they will not necessarily determine their outcome.
- Rules governing attempts to corrupt members of the media will generally be similar to those for other private-sector employees. They may include requirements not to accept gifts or other benefits and to disclose any possible conflicts of interest, including offers of gifts or benefits, other employment, or memberships or other affiliations. The major difference between the media and other areas of private employment is the breadth of their field of activity. Reporters or editors can be called on to deal with news in almost any area, thus there is much more potential for conflicts of interest to be raised. Where such conflicts are seen as inevitable, rules may even prohibit some forms of activity completely. For example, those who report on or analyse stock markets and have the power to influence trading may be prohibited from trading themselves and should disclose in advance any commentary that could, when published, affect trading.

## **PRECONDITIONS AND RISKS**

### **The implementation of codes of conduct**

Examples of cases in which excellent codes of conduct have been drafted, and then implemented ineffectively or not at all, abound. Codes must be formulated with a view to effective implementation, which means an effective implementation plan and a strong commitment to ensure that the plan is carried out. Implementation strategies should include a balance of "soft" measures that ensure awareness of the code, and encourage and monitor compliance, and "hard" measures, clear procedures and sanctions<sup>107</sup> to be applied when the code is breached.

*Effective implementation may require the following elements.*

- Drafting and formulation of the code so that it is easily understood both by the "insiders" who are expected to comply with it and the "outsiders" whom they serve.
- Wide dissemination and promotion of the code, both within the public service or sector affected and among the general population or segment of the population being served.
- Employees should receive regular training on issues of integrity and on the steps each employee can take to ensure compliance by colleagues. Peer pressure and peer reviews could be encouraged.

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<sup>107</sup> Mike Nelson, The Challenge of Implementing Codes of Conduct in Local Government Authorities, paper presented at the 9th International Anti-Corruption Conference, [http://www.transparency.de/iacc/9...apers/day4/ws3/d4ws3\\_mnelson.html](http://www.transparency.de/iacc/9...apers/day4/ws3/d4ws3_mnelson.html); Meredith Burgmann, Constructing Legislative Codes of Conduct, <http://www.aph.gov.au/senate/pubs/pops/pop35/chapter5.htm>.

- Managers should be trained and encouraged to provide leadership, as well as advice on elements of the code and in the administration of compliance (monitoring and enforcement) mechanisms.
- The establishment of monitoring and enforcement mechanisms can range from criminal law enforcement to occupational performance assessment and research techniques.
- The establishment and use of transparent disciplinary procedures and outcomes. Transparency is important to ensure fairness to the employees involved and to assure insiders and the general public that the code is being applied effectively and fairly.
- The effective use of a full range of incentives and accountability structures. Using deterrence measures such as extensive monitoring and threats of disciplinary action are an effective means of ensuring compliance with the code; they are not, however, always the most efficient option. Those who are subject to the code should also be provided with as many positive incentives as possible to comply with it. Those could include education and information programmes to instill professional pride and self esteem; compensation to reflect the higher degree of professionalism expected, and the inclusion of elements of the code in employee assessment mechanisms. Front-line employees should be assessed on their compliance and managers on the way they promote and apply the code in dealing with subordinates.
- The establishment of mechanisms to permit feedback from employees and outsiders, anonymously if necessary, on the administration of the code, to indicate possible areas for expansion or amendment.
- The establishment of mechanisms to permit reports of non-compliance, anonymously if necessary.
- The establishment of mechanisms to enable employees who are uncertain about the application of the code to elements of their duties, to consult prior to making decisions. For example, those facing conflicting obligations to keep information confidential while ensuring transparency in decision-making may consult regarding what information should be disclosed, to whom and in what circumstances.

### ***RELATED TOOLS***

Tools that may be required before codes of conduct can be successfully implemented include:

- Publicity campaigns and the development and promotion of such documents as citizens charters that raise awareness of the code and those it regulates. Such mechanisms establish expectations on the part of the population, particularly those directly affected by corruption.
- Establishment of an independent and credible complaints mechanism to deal with complaints that the standards prescribed have not been met; and

- Establishment of appropriate disciplinary procedures, including tribunals and other bodies, to investigate complaints, adjudicate cases and impose and enforce appropriate remedies.

*Tools that may be needed in conjunction with codes of conduct include:*

- Tools involving the training and awareness-raising of officials subject to each code of conduct to ensure adherence to the code and identify problems with the code itself;
- The conducting of regular, independent and comprehensive assessments of institutions and, where necessary, of individuals, to measure performance against the prescribed standards;
- The enforcement of the code of conduct by investigating and dealing with complaints, as well as more proactive measures, such as "integrity testing"; and,
- The linking of procedures to enforce the code of conduct to other measures to identify corruption, such as more general assessments of performance and the comparison of disclosed assets with known incomes

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

## **TOOL #9**

### **NATIONAL ANTI-CORRUPTION COMMISSIONS AND SIMILAR BODIES**

National anti-corruption commissions, committees and similar bodies may be established to fulfill a wide range of purposes. They may be composed of politicians, public servants and/or members of civil society. The nature and composition of a particular body will depend mainly on what it is expected to accomplish.

Such bodies differ from anti-corruption agencies. An anti-corruption agency is a standing public service body established to implement and administer prevention and enforcement elements of a national strategy. Anti-corruption committees or commissions, on the other hand, can be standing or ad hoc bodies. They are intended, inter alia, to develop the anti-corruption strategy and its major elements, including the establishment of an independent anti-corruption agency and other necessary entities; to develop legislation; to develop appropriate action plan(s); to take measures to keep the public informed; and to foster broad-based support of the national strategy.

Other functions, including public monitoring both of the implementation of the national strategy and of the work of officials or bodies forming elements of that strategy, can be assigned as needed. Any ongoing roles will depend on how successful the national strategy is and whether ongoing responsibilities have been safely passed on to other bodies, such as anti-corruption agencies. For example, once basic anti-corruption legislation is developed and enacted, it may be sufficient to leave development of future amendments to the usual legislative process, possibly advised by the anti-corruption agency or outside sources of expertise.

#### ***DESCRIPTION***

##### **Mandate**

The basic mandate of a committee is usually to formulate the national strategy, making adjustments, as needed, during its implementation. That would include, for example, setting basic priorities, sequencing strategic elements, monitoring progress in specific areas and adjusting planning and timelines to progress or delay actions as implementation proceeds. In the interests of transparency and the coordination of the activities assigned to it, the committee should report to the legislature and key officials. More generally, it should report to the public, encouraging support and participation, and managing expectations.

##### **Constitution, establishment and legal basis.**

As with anti-corruption agencies, some degree of independence, entrenchment of mandate and security of tenure is needed to ensure that the work of the committee will not be subject to undue influences or curtailment by those

uninterested in controlling corruption. Entrenchment could be accomplished by an executive order, entrusted to the legislature or, if necessary, by a more stringent mechanism. One possibility is establishment for a fixed period, with some form of renewal or extension if the mandate has not been effectively discharged.

### **Membership**

Members of the committee should be selected with a view to ensuring expertise in a range of areas. Membership should be sufficiently diverse as to reflect the country as a whole. Generally, committees will consist of members recruited from the executive, judiciary, legislature, electoral governing body, civil servants in key departments such as customs, procurement, revenue collection and law enforcement, and from regional and local government bodies. Members from outside Government may include representatives of religious groups, relevant non-governmental organizations, business leaders, the media and the academic community.

Committees must enjoy public confidence and credibility, and that is enhanced by the appointment of individuals widely known and respected for their integrity, commitment and competence. Membership should represent areas of the public and private sectors identified as critical for the success of the national strategy. Often, those areas will themselves be early targets of any reforms needed, and members will be able to assist in the reform process and keep the committee aware of progress as it proceeds.

### **Drafting legislation establishing a national anti-corruption commission.**

Legislation establishing such a national anti-corruption commission should deal with the following issues.

- If an existing body is to be mandated, the name and description of the body; if it is not to be mandated, the name by which the new body is to be designated;
- The basic composition of the body and the process whereby members should be appointed and removed. Once established, the body itself could be delegated the responsibility of appointing and removing members. Legislation could specify appropriate levels of representation from key areas such as the judiciary, civil society and public service, if necessary;
- The process whereby the chairperson is appointed and removed;
- Powers of the committee to engage, retain, compensate and dismiss staff, including regular staff, and the ad hoc engagement of individuals with specialized expertise;
- Provisions requiring members to disclose and, where necessary, discontinue other activities that may raise conflicts of interest. Similar provisions should be established for the staff of the committee, either through the legislation itself, with the committee using powers delegated by the legislation, or through contractual provisions developed by the committee;
- Provisions governing the budget of the committee, ensuring basic independence and the adequacy of resources. The committee can also

- be required to submit to external audits or report on its activities and expenditures on a periodic basis; and
- Provisions setting out the basic mandate and powers of the committee. The provisions will usually include the development of a national strategy, the monitoring and adjustment of the strategy where necessary, and the roles to be played by the committee in the implementation of the strategy.

*Roles might include:*

- The development and furnishing to other entities of advice on the strategy and the programmes to implement it;
- The conducting of information campaigns to educate and develop support for the strategy among the general public and key population groups;
- The establishment and implementation of training programmes, or the delegation of that responsibility to specific departments or agencies. For example, the national committee may design general anti-corruption training programmes, and then call upon specific entities, such as the judiciary or law enforcement agencies, to adapt and supplement the general materials to take account of the issues most likely to arise for each entity;
- The establishment of monitoring and reporting mechanisms to gather information about progress in implementing the strategy, the compilation and analysis of that information and the production of regular public reports on the status of implementation;
- The role, if any, to be played by the committee in monitoring activities in specific areas, such as the operation of political organizations or election mechanisms. Such roles will depend to a large degree on whether other organizations already perform them; and
- Provisions establishing the tenure of the committee, including provisions governing automatic renewal or expiry of its mandate, the intervals at which that should occur, and any criteria for review and determination of whether the mandate should continue or not. Once specific goals are set for the national strategy, the committee should usually continue in existence until the goals have been demonstrably met or until such time as its work has been transferred to other established entities, such as an anti-corruption agency.

**Establishment of a national integrity unit to support committees and commissions**

The purpose of a national integrity unit is to coordinate anti-corruption activities and the precise functions of the various institutions engaged in active efforts against corruption. The specific mandate will depend on whether other entities such as anti-corruption agencies, commissions or committees have been established and, if so, what their mandates are.

In circumstances where steering committees or commissions develop, launch, implement and monitor national strategies and where agencies actually implement and administer prevention and enforcement elements of a national



strategy, a national integrity unit would be called upon to consult with a national committee on elements of the national strategy, coordinating the formulation of specific mandates to ensure effectiveness and minimize redundancy. As the strategy is implemented, it would consult with departments, agencies and other entities about ongoing operations, ensuring mandates were respected and minimizing gaps and redundancies.

**Functions that can be performed by a national integrity unit,**

*Secretariat to a national integrity commission or steering committee.*

In some countries a national integrity unit has functioned as a secretariat to the national integrity steering committee or similar body. It may perform the same functions for other entities such as ad hoc working groups, for example those working for reforms of public administration, deregulation, privatization, budget, taxation, and banking.

*Clearing-house for citizen participation.*

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

*Special tasks.*

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

**PRECONDITIONS AND RISKS**

**Four major areas of concern can be identified:**

*Selection of members.*

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

*The setting of reasonable goals and the management of public expectations.*

In sub-units as in other anti-corruption bodies and programmes, credibility is often damaged if the extent of corruption and the difficulty of the task at hand are underestimated. There can be unreasonable expectations and the perception that the committee is a failure if expectations are not met. Expectations as to the goals of the committee, the timeframe for the achievement of various objectives and the indicators used to assess ongoing progress must, therefore, be reasonable.

*Isolation of the committee and its work from civil society.*

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

*Lack of involvement of all stakeholders.*

If key individuals or entities are not closely involved, credibility may be damaged. More seriously, uninvolved stakeholders may refuse to cooperate with or may impede the reform effort. For example, while strict corruption offences may be enacted, they will have little impact if they are not properly enforced or if the judiciary does not cooperate. It is also just as important to involve corrupt stakeholders, or those perceived as being so, as well as stakeholders who play a critical role in anti-corruption efforts, such as judges and watchdog agencies. A common mistake has been to establish national integrity units that report to the executive instead of to an independent entity such as a national anti-corruption commission or committee. Reporting to the executive erodes credibility, particularly if corruption involves the executive or is perceived as doing so; it also impairs the functioning of the unit in coordinating anti-corruption efforts on a daily basis. If an independent entity has not been established specifically for the anti-corruption strategy, reporting to other independent entities, such as judicial bodies or multipartisan legislative committees, could be considered. As with other entities, units must have the necessary financial and human resources, as well as freedom from interference.

## **RELATED TOOLS**

For the sake of efficiency, national anti-corruption commissions, committees and similar bodies would need to be supported by:

- Evidence about types, levels, cost and causes of corruption established through independent comprehensive assessments;
- Credible public complaints mechanisms;
- Tools that raise awareness of members of the public about their role in fighting corruption;
- Legislation empowering and protecting the public in their efforts against corruption, including access to information/whistleblower protection legislation.
- Codes of conduct and citizens charters outlining performance standards; and
- National and municipal (local) broad-based integrity and anti-corruption action-planning meetings.

## **TOOL #10**

### **NATIONAL INTEGRITY AND ACTION-PLANNING MEETINGS**

As anti-corruption strategies are developed, implemented and evaluated, it will frequently be necessary to bring stakeholders together to ensure that they are well informed and to assess, and if necessary mobilize, their support for the process.

National integrity meetings can be held to deal with any substantive or procedural aspect of the strategy; they may be of a very general nature or focus on a specific area or issue of concern. Action-planning meetings generally deal with more specific matters, for example assessing the effects of past or ongoing activities and developing or adjusting specific action plans, where appropriate.

While specific objectives may vary, the goals of such meetings will usually include most or all of the following:

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

#### ***DESCRIPTION***

National integrity meetings or "workshops" should bring together a broad-based group of stakeholders to develop a consensual understanding of the types, levels, locations and causes of corruption, and its potential remedies. At the early stages of the process, such workshops will usually be multipurpose:

- Assessment of the nature and scope of the problem;
- Development of a preliminary assessment of priority areas for attention; and
- Education and, in some cases, reassurance of participants to secure their support and cooperation

Later in the process, the focus will usually shift to:

- Assessment of past efforts;
- Planning of future efforts; and, where necessary;
- Readjustment of priorities to take account of ongoing efforts and developments.

Meetings can be organized at the national or subnational level or for a particular sector in which common issues are likely to arise. Meetings could also be used to bring specific sectors together to facilitate cooperation or help share expertise or experiences. The process component of meetings should maximize learning and communication; the content component should produce new knowledge and stimulate debate leading to new policies. The discussions held at meetings and their outcome should be documented where possible so that they can be used as the basis for assessing future progress and for future meetings.

### **The evolution of meetings as the national strategy proceeds**

Within specific sectors of Government, several meetings may be held in sequence as the strategy is developed, implemented and assessed. For example, municipal or subnational integrity workshops have been held in the following distinct stages or phases.

- **Phase I** seeks to build a coalition to support reform, focusing on discussions with local stakeholders to raise awareness of corruption and assess their perceptions of the problem. Their views regarding priorities and modalities are considered and, where possible, reflected in the applicable action plan. That ensures future cooperation and support for the national strategy, and especially those elements of it that directly affect the sector or region involved.
- **Phase II** focuses on a more objective assessment of the problem in the region or sector concerned, using Service Delivery Surveys (SDS) or similar methods. Information is systematically gathered, recorded and analysed during Phase II.
- In **Phase III**, the results of the SDS are considered, and participants are asked to help develop and consider options for dealing with the problems identified. Priorities may also be set or adjusted at this stage, taking into account not only the seriousness of specific problems but also sequencing issues, in which reforms in one area may be needed at an early stage to support later reforms planned for other areas. An action plan, setting out specific activities and the order in which they should be undertaken, is developed.
- **Phase IV** usually involves implementation of the various elements of an action plan according to an agreed timetable.
- **Phase V** involves the assessment of progress and, where necessary, the adjustment of substantive actions or priorities in accordance with that assessment. Meetings for such purposes could be held regularly or as necessary.

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

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

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

*Other important process components include:*

- Creation of a learning environment;
- Enabling networking and cooperation between participants;
- Generating enthusiasm and motivating participants to take follow-up actions; and
- Encouraging participants to focus on the development of solutions rather than merely dwelling on the problems themselves.

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

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

- A series of preparatory activities is conducted to build organizational capacity, foster broad-based consultation, collect credible data, select key workshop personnel and publicize the meeting and its objectives. Some of those requirements may be met using standardized materials or personnel, while others will be specific to each meeting and to the entity or entities in which it is to be held.
- Most meetings held thus far have been two-day events, which provides sufficient time to explore the issues involved and does not overtax leaders or participants.
- A first plenary session is held to raise general awareness, launch the meeting and build pressure on participants to deliver on the objectives of the meeting. Such sessions usually begin with a keynote address and a review of workshop objectives and methodology. Foreign experts, survey analysts and local analysts may be called upon to offer brief presentations.
- The opening plenary should set the tone for the meeting, with presentations covering the full range of topics within the chosen theme. Content should cover problems and possible solutions. Speakers may include some experts from outside the host country, region or participant group, but domination by "outsiders" should be avoided if possible.
- A series of working group sessions follows the opening session, using small (fewer than 15) groups and trained chairpersons to analyse substantive areas and build consensus on facts and issues. For example, a group may be called upon to examine the causes and results of corruption and/or lack of integrity, and to identify actions to address those problems. A range of separate topics can be developed to allow participants to select those they wish to address. If appropriate, separate groups can be asked to consider similar, related or

overlapping topics to permit later comparison or stimulate discussion between groups when the plenary reconvenes.

- Where separate groups are used, each group should designate a member to report to the plenary on its deliberations to ensure clarity and facilitate documentation.
- A final plenary session should be held to synthesize the results of the working groups. That session is also a forum for publicly presenting the findings of the workshops and other outcomes of the meeting, such as action plans or recommendations. It helps to ensure that the outcome of the meeting is documented and disseminated.

### **Procedural objectives of meetings.**

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

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

### ***PARTICIPATION.***

There should be no more than 15 people per group and facilitators should ensure that all group members have an opportunity to speak. Organizers should ensure that participants do not listen passively to speakers but have the opportunity to ask questions, express their views and actively participate in discussions addressing the workshop objectives. Such participation ensures better understanding, ownership of information and heightened awareness.

Facilitators should also prevent individual participants from dominating discussions. While deliberations may aim at consensus, organizers and participants should recognize that it is not always realistic. An equally valid goal in most cases is the identification, clarification and understanding of differing positions or viewpoints and the reasons they are held. This benefits the participants directly and assists others in adjusting the strategy to take account of and resolve the differences in other ways.

### ***CREATING PARTNERSHIPS.***

Many meetings are used to bring together individuals who do not normally associate. In such cases, a key function is the development of contacts and relationships that benefit the anti-corruption strategy and would not otherwise exist. For example, contacts may be established between those responsible for

anti-corruption measures in relevant public sector departments or agencies or between representatives of the Government, media, religious groups, private sector groups, and non-governmental organizations or other elements of civil society. In processes funded or supported by outside agencies or donors, partnerships can also be created between donors, recipients and other interested parties. In such cases, however, it is important to ensure that the major focus of the meeting is on domestic issues and that foreign donors or international agencies or experts do not unduly impose their views on country participants.

In order to achieve partnership, several options may be considered for the workshop process, for example, asking some participants act as observers only. Such "observers" would not participate in the small-group discussions; they would only listen and offer comments on group feedback during plenary sessions. Another option is to ask participants to discuss identical topics during separate small-group sessions and then to compare findings during plenary sessions.

### ***MANAGING GROUP DYNAMICS.***

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

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

### ***CONTENT OBJECTIVES OF THE MEETING.***

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

### ***WORKSHOP TOPICS, KEY ISSUES AND ELEMENTS.***

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

*General themes or topics that might be discussed include:*

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

*Some possible areas for specific discussions could include the following.*

- Role of the Government in promoting or establishing key elements of the national strategy, such as transparency and accountability structures;
- Role of the political process, including the legislature, the bodies that conduct and validate elections, and the democratic political process in general;
- Role of civil society, such as non-governmental organizations, the media, religious groups and professional organizations;
- Role of the private sector; and
- Role of specific officials or institutions, such as Auditors General, the judiciary, law enforcement agencies and other constitutional office holders.

## **PREPARATION OF MATERIALS**

Careful consideration should be given to the written and oral materials prepared in advance. They help to orient and sensitize participants beforehand, serve as guidelines during discussions, and provide reference information afterwards. It is important that drafters consider carefully the participants for each meeting, framing materials in a style and format that is appropriate to their educational and knowledge level, linguistic, cultural and other relevant characteristics. Content should seek to build upon existing knowledge and complement it by introducing areas that may be new to participants. For example, meetings of groups such as law enforcement officers, prosecutors or judges could be based on the assumption that participants will have some level of legal knowledge but less understanding of social or economic issues. Content could then seek to develop



specialized legal knowledge relevant to corruption, while also raising more general awareness of its social, political and economic effects.

*Materials could include the following.*

- Background papers and other relevant documents distributed in advance or handed out on the first day;
- Short oral remarks by the authors of the papers;
- General comments from a number of speakers on the first morning of the workshop; and
- "Trigger" questions formulated by the facilitators for each small group discussion to help identify key issues and stimulate the interest of participants.

### **MATERIALS PRODUCED BY MEETINGS**

The basic purpose of documentation is to inform those responsible for the overall strategy about the status of efforts in each area, to keep those who may be dealing with similar issues in other areas up to date, and to inform those who plan future meetings or other activities about the history and development of each issue discussed.

Documentation also forms an important source of historical information and, in the case of projects funded or supported by donors, demonstrates the results achieved as a result of the support and provides guidance regarding future support. Generally, organizers should attempt to document as much as possible of the proceedings, keeping in mind the costs of producing and disseminating documents and the fact that texts that are too long or too detailed are less likely to be read.

The format of reports may be determined by the authority convening the meeting, by the meeting itself or by the organizers. Whatever the format, the relevant information should be set out clearly and logically to assist participants in referring back to former proceedings, and to inform those who did not attend. Organization into clear and well titled categories or segments greatly assists the process. To some extent, standardization of format assists anyone charged with obtaining information from many reports. If a series of meetings is planned, organizers may wish to create a template for reports. Strict adherence to a template should not, however, take priority over clarity or the effective organization and labelling of information for ease of access. If possible, reports should be prepared as the meeting proceeds, and reviewed, corrected and adopted by the meeting before it concludes.

Where feasible, documentation should include the following:

- A list of all participants, including their basic "contact information" to enable those involved to meet or discuss after the meeting;
- If the meeting is convened by a specific authority, based on a specific mandate, or as part of a series of meetings, basic historical and reference information about these should be included;
- A statement of the basic purpose of the meeting, the issue or issues taken up and the basic organizational framework or process used;

- The results of discussions, and enough information about the tenor and substance of discussions to indicate how results were reached, or if they were not reached, the reason(s) why;
- Texts of papers or speeches presented during the meeting (full texts, extracts or summaries), edited for uniformity and consistency;
- Observations, reports or other notes provided by presenters or other participants; and,
- Any suggested follow-up actions, conclusions and recommendations<sup>108</sup>.

### **Role of organizers and other personnel**

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

### **Some typical roles are described below.**

#### *Workshop Management.*

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

- The selection and briefing and training of chairpersons, facilitators, rapporteurs and other personnel, as needed;
- Visiting small groups during discussions and supporting or assisting group facilitators where necessary;
- Management of time;
- Passing information between groups; and
- Providing feedback to organizers as the meeting proceeds.

#### *Chairpersons.*

Chairpersons are needed for plenary sessions and for each subgroup conducted. Individuals are usually selected for their ability to interact with large audiences and for their conceptual ability in guiding and summarizing discussions. It is advisable to have one or more vice-chairpersons appointed

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<sup>108</sup>The format of conclusions and recommendations may depend on the organization of the meeting. Meetings convened and mandated by a specific authority generally report back to that authority, often in a format established specifically for the purpose. Other meetings may simply publish recommendations in a more general form.

and briefed to ensure that proceedings are not disrupted if a chairperson becomes indisposed or unavailable. Specific responsibilities include:

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

*Substantive support for assisting chairpersons.*

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

*Secretariat support.*

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

*Media liaison.*

Ensuring that a meeting is well publicized is important both for transparency and to raise awareness of the anti-corruption programme. The media liaison should

be reasonably familiar with the local or other media who are likely to attend, as well as with the theme and topics for the meeting. He or she should be able to prepare press releases or communiqués as needed and assist the media by, for example, obtaining information and arranging interviews. Kits of materials may be prepared, and in-session documents and post-meeting reports may be made available, if appropriate. One means of assisting the media is to set up a "press board" where newspaper clippings and other materials can be displayed on a daily basis.

### ***PRECONDITIONS AND RISKS***

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

- It may be difficult to identify a full range of stakeholders, given the needs of the country or region involved and the specific themes and topics to be covered. It may also be difficult to ensure the maximum possible breadth of representation.
- It is usually difficult to strike a balance between process and substance. Too much emphasis on process results in a well run meeting without substance. Too much emphasis on substance can lead to detailed discussions that produce no clear outcomes.
- Sizes of working groups may be too large or too small. Experience has shown that a maximum of 15 participants works well. Larger groups make it difficult for everyone to contribute, and smaller groups may not have enough participants to represent a good range of knowledge and views.
- It may be difficult to produce output materials, such as action plans, that are reasonable and credible, or to mobilize support for those outputs. The true purpose of meetings and workshops is to consider issues and develop appropriate responses that lead to action. Where the outputs are unreasonable or lack credibility, further action is unlikely.
- Where meetings involve specific groups, a balance of "inside" and "outside" participation is important. Meetings sponsored by foreign donors, for example, could include foreign participation but should reflect the perceptions and priorities of the participants and not the donors. Foreign experts can be used to support discussions, if needed, but should not dominate them. The same principle applies where participants are drawn from smaller communities, such as law enforcement personnel or judges. Outsiders can support the efforts of such groups to identify problems and develop solutions but should avoid the perception of imposing solutions from outside.

### ***RELATED TOOLS***

Tools that may be required before an integrity or action planning meeting can be successfully implemented include:

- A credible agency or body with a formal mandate and necessary resources to organize the meeting;
- Where an action plan or similar instrument is produced, the organization and capacity actually to implement or supervise implementation of the plan. Plans

that are not implemented erode the credibility of the overall anti-corruption effort;

- Tools that raise awareness of the meeting itself and the role of the different stakeholders at the meeting, and that establish appropriate expectations on the part of populations;
- Where a meeting is likely to identify specific complaints or problems, the institutions and mechanisms needed to deal with such complaints should be in place;

**Tools that may be needed in conjunction with integrity and action-planning meetings include:**

- The institution or entity that convened and mandated the meeting should be prepared to receive and follow up on any report or recommendations the meeting produces;
- Where multiple meetings are held, the convening entity should retain and compile reports. A parent agency, such as a national commission or committee, may also be charged with making collective periodic reports synthesizing the information from many meetings to the national legislature or executive; and
- Basic transparency is important to ensure that results are credible and that they are widely disseminated for use by others. An independent media to report on the outcome of the meeting and to monitor the implementation of action plans or recommendations is important. Reports can also be made to public bodies such as legislative assemblies or committees.

## **TOOL #11**

### **ANTI-CORRUPTION ACTION PLANS**

Comprehensive and coherent plans of action set clear goals, timelines and the sequences in which specific goals should be accomplished. Within an overall anti-corruption strategy, that serves several purposes:

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

#### ***DESCRIPTION***

The exact description of an action plan will depend on whose actions are being planned. A national plan is likely to be an extensive document setting out goals in fairly general terms for all segments of Government and society. Its primary functions will be to articulate national goals, set political priorities and serve as the basis of more specific action plans in which the objectives, actions and timeframes for specific agencies or regions are set out with much greater precision.

Plans should always be realistic. Setting unachievable goals will seriously damage the credibility of anti-corruption efforts. To avoid that problem, the development of plans of action will usually require consultations with those expected to take the necessary actions, those who will be affected by them and those who will be asked to monitor and assess successes or failures and to plan future actions.

The views of those who will take the actions are needed to plan realistic actions, identify potential obstacles at the planning stage, and mobilize understanding and support for the proposed course of action.

Consultations with those affected may serve much the same purpose, and help establish expectations of what will be done and when, thus bringing pressure on the actors to deliver accordingly.

Consultations with future evaluators will ensure that, if goals are not achieved, it can be determined whether failure resulted from poor planning, inadequate execution, or both.

The most commonly used means of consultation are the national integrity and action-planning meetings described in Tool #10. Less formal settings can also be used, however, particularly in developing plans that are very narrow in scope or directed at specific agencies or departments. It is important that the views of all three key groups of stakeholders are voiced and considered in the formulation of the plan of action. Setting goals that are too high results in failure and loss of credibility, while setting goals that are too low fails to maximize the potential of the individuals and organizations involved.

### **National action plans**

National action plans should take the following factors into consideration:

- National action plans often involve input and support from outsiders, including donor or other foreign Governments, foreign experts, non-governmental organizations and international institutions such as United Nations agencies, World Bank or International Monetary Fund. Their input can be invaluable, allowing a country to profit from the experience of others before starting its own anti-corruption efforts. Outside input should not, however, be allowed to dominate when an action plan is being formulated or an assessment made of what is feasible for the country concerned. Domestic "ownership" of the process is vital. The most realistic assessment of what must be done and how to avoid obstacles or deal effectively with them is often a combination of the high expectations, demands and pressures of outsiders and the profound knowledge of insiders.
- Within each country, diversity of input and consultation is also important. As noted above, those who are expected to take actions, those affected by the actions and those who will monitor and assess actions should all be consulted. In the case of a national action plan, much wider consultations and much greater transparency are needed to ensure the plan is reasonable and to mobilize popular support and political pressure to achieve the goals. Thus the involvement of the political or legislative and executive elements of Government, as well as most elements of civil society<sup>109</sup>, are all required.
- Substantively, action plans can include elements in five important areas: awareness raising, institution building, prevention, anti-corruption legislation, enforcement and monitoring.

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<sup>109</sup> The judicial branch of government would not usually be involved, since elements of national action plans may well take the form of offences or other legislative changes on which judges would be expected to rule. Judges may be kept informed in a neutral manner, however, and would of course be the primary focus of development for specific action plans directed at the judicial branch itself.

- A high level of coordination will be needed in developing and implementing the action plan. National plans will require coordination with the subordinate plans of specific regions or Government entities and, within each plan, the various actions and actors must be coordinated with one another. The implementation of a national action plan will typically involve actors such as a supreme audit or similar institution, national and regional ombudsmen, prosecutorial and law enforcement agencies, civil-service management structures, "central" agencies or departments responsible for Government planning and budgetary controls, other Government departments, public-procurement agencies, and public-service unions or associations.
- Those expected to take action under the national plan should be held accountable for achieving results.

The major substantive measures in national action plans can be broken down into the following major actions and actors<sup>110</sup>:

- Public sector or executive measures;
- Legislative measures;
- Law enforcement measures;
- Private sector measures;
- Civil society measures; and,
- International measures.

#### **Some action plan objectives for executive and other public sector actors**

- Make Government programmes and activities more open and transparent by inviting civil society to oversee aid and other Government programmes; establish and disseminate service standards; establish a credible and open complaints mechanism;
- Generate transparency and clarity with respect to the delivery of public services by a clear statement of what services are to be delivered, by whom, to whom, to what standard and within what timeframe, thus creating standards for those who deliver services and expectations from service users. As a priority, establish legislative requirements and administrative procedures to ensure appropriate public access to Government information;
- Develop and implement civil service reforms to increase levels of professionalism; increase the focus on integrity and service standards; replace patronage and other irregular structures with clear, codified consumer rights; establish the principle of meritocracy in staffing, promotion, discipline and other areas;

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<sup>110</sup> Petter Langseth, Prevention: An Effective Tool to reduce Corruption. "Best Practices", presentation at the 9th ISPAC Conference in Milan, November 1999.



- For prevention and to mobilize popular support for the national action plan itself, launch projects that educate society about the true nature, extent and harmful effects of corruption and instill a moral commitment to maintaining integrity in dealings with business and Government officials;
- Establish Government agencies, such as specialized anti-corruption agencies, if needed; strengthen all State institutions by simplifying procedures, improving internal control, monitoring, enforcement and efficiency; establish meaningful incentives and remuneration;
- Strengthen the independence and competence of investigative, legislative, judicial and media organizations; and
- Develop legislative and administrative measures that permit and encourage the use of civil remedies and allow those affected by corruption to take direct action against it.

#### **Some action plan objectives for law enforcement**

- Clarify the roles and functions of law-enforcement officers, prosecutors and judges, including judicial and prosecutorial independence and, where applicable, the role of prosecutors in advising law enforcement and reviewing criminal charges.
- Establish basic standards for integrity and professional competence in law-enforcement functions; develop codes of conduct or similar to provide specific guidance to law-enforcement officers and specific target groups, including senior officers and training officers or instructors<sup>111</sup>.
- Establish basic principles and standards for recruitment, training, active service and disciplinary matters, or adjust existing principles and standards to incorporate integrity or anti-corruption elements.
- Establish independent oversight functions within agencies to monitor integrity and competence.

#### **Some action plan objectives for prosecutors**

- Clarify the basic roles and functions of law enforcement, prosecutors and judges, including judicial and prosecutorial independence, and, where applicable, the role of prosecutors in advising law enforcement and reviewing criminal charges.
- Establish basic standards for integrity and professional competence in prosecutorial functions; develop codes of conduct or similar to provide

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<sup>111</sup> See, for example United Nations Code of Conduct for Law Enforcement Officers, GA/RES/43/169 and guidelines for their implementation, ECOSOC Resolution 1989/61. On the use of force and firearms, see Report of the Eight United Nations Congress on the Prevention of Crime and Treatment of Offenders (Havana, Cuba, 1990), A/CONF.144/28/Rev.1, Sales No. E.91.IV.2, Part I.B, Resolution 2 and annex. Both are reproduced in the Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (1992), E.92.IV.1. See also Case Study #8 Bangalore Principles of Judicial Conduct for Judges

specific guidance to prosecutors<sup>112</sup>. In many countries the new codes will supplement codes of professional conduct for the legal profession.

- Establish independent oversight and monitoring functions within agencies to monitor integrity and competence.

#### **Some action plan objectives for legislators and legislative bodies**

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

#### **Some action plan objectives for civil society and the private sector**

Legislatures will usually need action plans to establish clarity and credibility for the overall anti-corruption strategy, while also setting out goals for various elements. Given the broad range of individuals and organizations involved, action plans at the national level will usually set out general areas or objectives within which more specific plans can later be formulated for each institution or sector. Some elements include:

- Establishment of general principles for integrity and ethical conduct suitable for adaptation to specific circumstances, for example, principles

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<sup>112</sup> See, for example, International Association of Prosecutors, "Standards of professional responsibility and statement of the essential duties and rights of prosecutors", April 1999, available on-line at: <http://www.iap.nl.com>.

underpinning ethical practices for Government contractors and other businesses, the media, academic and other institutions, and those who work in them.

- Plans for private-sector institutions could include elements dealing with fiduciary or trust relationships; conflicts of interest; auditing practices and other safeguards; transparency in business dealings, particularly on public exchanges or stock markets; the regulation of anti-competitive practices; and general awareness-raising with respect to topical issues such as corporate criminal liability for corruption offences and the relationship between private-sector corruption and the public interest.
- Plans for civil society institutions could include academic research on corruption and related topics; measures to ensure professional competence; diversity and independence in the media and academic institutions; the consultation, awareness-raising and empowerment of the population groups served by civil society; and the development of the expertise and infrastructure needed to support genuine transparency and open monitoring of public institutions and their functions.

### **The incorporation of international measures into action plans**

A significant amount of corruption involves transnational elements such as organized criminal groups or multinational business concerns. Some predominantly domestic corruption also presents transnational aspects, particularly in activities such as development aid projects and some international commercial activities. To address those issues, national action plans, as well as many plans directed at specific segments of Government and even civil society, should incorporate some of the following elements.

- The stricture that all forms of corruption, whether domestic or transnational in nature should be dealt with appropriately;
- A national commitment to developing, ratifying and fully implementing international instruments against corruption;
- Action plans for legislatures and national Government agencies should encourage and support effective international cooperation in corruption cases through adequate policies, legislation and administrative infrastructure. Major forms of cooperation would include education and other forms of prevention; mutual legal assistance and other investigative cooperation; willingness to prosecute multinational cases, where appropriate; extradition of offenders to other jurisdictions undertaking such prosecutions; and assistance in recovering the proceeds of corruption<sup>113</sup>.
- Plans for public sector, private sector and civil society elements should all provide for exchange of information about the nature and extent of

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<sup>113</sup>The various forms of international cooperation are dealt with in detail in the Revised Draft United Nations Convention on Corruption, which is expected to be finalized in late 2003. For the latest documents, see: [http://www.odccp.org/crime\\_cicp\\_convention\\_corruption\\_docs.html](http://www.odccp.org/crime_cicp_convention_corruption_docs.html). See also the terms of reference for the negotiation of the Convention, GA/RES/56/261, paragraph 3, and the Report of the Open-Ended Intergovernmental Expert Group which prepared the terms of reference, A/56/402 - E2001/105.

corruption, the harm it causes, and various "best practices" or other means of dealing with it.

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

### ***PRIORITIZING MEASURES WITHIN AN ACTION PLAN***

To help stakeholders arrive at consensus regarding the sequencing and prioritization among different measures of the action plan, a selection matrix needs to be developed. Important variables in this selection matrix are the:

- Expected impact of the measure
- complexity of the measure
- cost
- how long it will take to implement
- extent of control over the implementation

### ***PRECONDITIONS AND RISKS***

If clear and transparent goals are established in action plans, the overall credibility of anti-corruption efforts risks being damaged if such public goals are not achieved. As noted, plans that are too ambitious or unrealistic are unlikely to succeed. Plans that are too conservative fail to make the maximum use of existing anti-corruption potential and may be seen as cosmetic or token efforts, which again adversely affects credibility.

Most of the other risks are associated with individual or institutional resistance. For example, elements of action plans aiming to restructure or reform established bureaucratic practices are likely to be confronted with institutional inertia and resistance from persons who feel their interests are being threatened. With time and effort being needed to train officials in the new practices, the risks must be identified and dealt with as they arise. As a general principle, however, the harmful effects of delays and other problems can be minimized by ensuring that plans of action are sufficiently flexible so that delay or failure of one element does not derail the entire plan.

### ***RELATED TOOLS***

Tools that may be required before an action plan can be developed include:

- Consultations and other information-gathering efforts to determine which sectors or subject matter areas require action plans and what can be expected from plans under consideration;
- The development of specific actions that will form part of the plans under consideration, such as codes of conduct, and accountability and transparency structures;
- The development of a broad national plan is needed as a foundation and framework before action plans that are more specific in subject matter or application are developed.

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

## TOOL #12

### STRENGTHENING LOCAL GOVERNMENTS

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

- Assisting planners and policy-makers in adapting tools formulated for general circumstances to meet the needs of action planning and implementation at the local level;
- Facilitating integration of tools used in local communities vertically with national or central programmes and horizontally with programmes of other local communities; and,
- Encouraging and facilitating public participation at the local level.

The implementation of international treaties at the regional, provincial or municipal levels often poses additional challenges, especially in federal systems, where some elements of ratification may fall within the competence of semi-sovereign sub-national governments and not the State itself, which has agreed to and is bound by the treaty.<sup>114</sup> As is generally the case with international treaties, the United Nations Convention against Corruption is a legal agreement between sovereign States Parties, leaving matters of implementation within federal countries and at the local or municipal levels to the individual contracting States Parties. However, it was also clear to the drafters of the Convention that many of its provisions, and especially those dealing with the public sector, public officials and public offices, would not be effective unless applied more or less equally to all levels of government within each State Party. This would follow in many countries as a matter of straightforward interpretation and application of many of the provisions. The definition of “public official”, for example, includes any person holding an office so defined in domestic law or performing a public function or providing a public service as defined by domestic law,<sup>115</sup> which would

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<sup>114</sup> A federal system is one in which regions, provinces and other sub-national entities enjoy some degree of sovereignty, usually in the form of exclusive or primary legislative competence over specific subject-matter, within the national constitution. Views about whether sub-national entities have personality or capacity in international law vary to some degree according to the exact structures and relationships established by the domestic constitution involved, but in most cases only treaties ratified or acceded to by the central or federal state entity create international law obligations. Under Article 29 of the Vienna Convention on the Law of Treaties a treaty, once ratified, is binding on the entire territory of a federal State, unless the contrary is specified, usually either in the treaty or a reservation. The principal problem faced by federal States involves persuading the regional or provincial governments to enact and implement legislation giving effect to the treaty within areas of their exclusive legislative competences. See Aust, A., *Modern Treaty Law and Practice* Cambridge University Press, 2000, at pp.48-52, 160-61, and 169-72, and Shaw, M., *International Law*, 4th ed., Cambridge University Press, 1997, pp.155-59.

<sup>115</sup> Convention Article 2, subparagraph (a).

automatically extend most of the provisions in cases where the relevant domestic definitions applied to all levels of government. In some countries the inclusion of regional or local officials and offices is less clear-cut, however, and to ensure that these were also included, the agreed notes for the *travaux préparatoires* specify that, in the definition of “public official”, the term “office”, and hence the scope of the definition itself.<sup>116</sup>

...is understood to encompass offices at all levels and subdivisions of government from national to local. In States where subnational governmental units (for example, provincial, municipal and local) of a self-governing nature exist, including States where such bodies are not deemed to form part of the State, “office” may be understood by the States concerned to encompass those levels also.

It is therefore clear that, while measures taken in respect of regional or municipal levels of government and their officials or employees may require adaptations or variations to make them effective at these levels and to ensure consistency and coordination with national policies and programmes, such measures as are required at the national-level are equally required at the various sub-national levels. In practical terms, it is likely that in many countries, actions taken at the sub-national level will form a substantial portion of the overall anti-corruption effort, and of the measures taken to implement the Convention. This means that the collection of reports and assessments of sub-national actions will also be important as the basis of information transmitted to the Convention Conference of States Parties under Article 63, paragraph 6.

### **DESCRIPTION**

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

In developing countries, decentralization has increased citizen participation in local decision making. Elected local governments face increasing responsibility for the construction and maintenance of basic infrastructure, delivery of basic services and social services, with all the concomitant financial, managerial and logistical challenges. That local responsibility has advantages and disadvantages for the control of corruption. Decentralization and greater local autonomy can isolate local activities from centralized monitoring and accountability structures that deter and control corruption. If well managed, however, and provided that

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<sup>116</sup> A/58/422/Add.1, paragraph 3.

they can be mobilized to identify and eliminate corruption, they can also place local activities under closer and more effective scrutiny from local people.

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

Action planning meetings and the resulting local anti-corruption programmes will generally deal with the following issues:

#### **Identifying the political will and capacity to execute local reforms.**

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

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

As most corruption has some local component, those active at the national or international levels must bear in mind that local planning will usually have to be flexible enough for local circumstances for effective implementation to take place. Much assessment, particularly of local institutions and political conditions, can be carried out using action-planning meetings. Other information, such as assessments of the local nature and extent of corruption and general public concern about it, may have to be obtained using more detailed and specific measures, such as public surveys. While assessment should precede the development and implementation of action plans, it should also take place during and upon completion of the process to assess progress and adjust actions as necessary (see "evaluation and monitoring", below). Generally, information must be obtained and considered about the following matters:

##### **Assessment of local administrative structures.**

Included will be a general assessment of the basic organization of local government, the identification of sectors affected by corruption, and the identification of institutional capacity that can be used for anti-corruption efforts. Assessments should employ internal sources (those who work in the institutions) and external sources (those who use or are affected by the services or operations involved).



### **Assessment of the nature and extent of local corruption problems and of local priorities for action.**

The basis of any local action plan must be a subjective and objective assessment of corruption to provide some indication of the actual nature and extent of problems, for example which elements of Government are most affected and what the overall impact is. A subjective assessment of how local people perceive the problem will provide further insight and will often form the basis for setting priorities for action. Conflicts between national and local priorities may be encountered and need to be addressed.

### **Assessment of good governance factors.**

General information should be sought regarding the effectiveness, efficiency, transparency, integrity, and accessibility of service delivery. It should be compared with an objective assessment of the same factors, and both sides of the comparison should provide a basis for assessing the impact of future reforms.

### **Assessment of the quantity and quality of citizen-government interaction.**

The assessment should identify major deficiencies in interaction between the population and the local government, structures that facilitate or impede public information and participation, and levels of public awareness as to how local government works in theory and in practice.

### **Assessment of service-delivery.**

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

### **Assessment of other governance indicators.**

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

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

It is important to involve the local population in the ownership process. In adjusting measures developed for other levels of Government or for municipal governments nationwide, local input is needed. That will ensure that reforms are tailored to local circumstances, ensure that local priorities are reflected and that plans optimize local resources and capacity without setting goals or timeframes that are unrealistic or unachievable.

Local participation is also crucial to informing people about the programmes, mobilizing local support for them and providing a sense of credibility and "ownership" at the local level. Action-planning meetings should thus include the right local participants for the subject matter to be considered. That will include

local politicians, officials of local departments and agencies, representatives of civil society and representatives of the public affected by the areas under discussion. "Outsiders", such as representatives of national Governments or anti-corruption programmes, donor countries or institutions and technical experts may be needed to assist in organizing and running the as "tools" and incorporated into local anti-corruption programmes or used as a guide to modify elements of programmes being adapted for use at the local level.

One way of initiating the local process is through the use of meetings similar to action-planning meetings at the national level. Following preliminary research to identify possible agenda elements and participants, a meeting would be held to inform local stakeholders about the national strategy, to discuss local corruption problems, and identify issues and possible courses of action to be taken. In most cases, a series of meetings would be held to gradually refine the issues, set priorities, establish a plan of action and identify the responsibilities of individuals or organizations to implement the plan. The tools dealing with the organization of meetings and the preparation of action plans will generally be valid for activities undertaken at the local level.

### ***ISSUES RAISED AT BY LOCAL ANTI CORRUPTION ACTION PLANS***

Action planning meetings and the resulting local anti-corruption programmes will generally deal with the following issues:

#### **Identifying the political will and capacity to execute local reforms.**

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

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

As most corruption has some local component, those active at the national or international levels must bear in mind that local planning will usually have to be flexible enough for local circumstances for effective implementation to take place. Much assessment, particularly of local institutions and political conditions, can be carried out using action-planning meetings. Other information, such as assessments of the local nature and extent of corruption and general public concern about it, may have to be obtained using more detailed and specific measures, such as public surveys. While assessment should precede the development and implementation of action plans, it should also take place during and upon completion of the process to assess progress and adjust actions as necessary (see "evaluation and monitoring", below).

### ***INFORMATION NEEDED***

Generally, information must be obtained and considered about the following matters:

**Assessment of local administrative structures.**

Included will be a general assessment of the basic organization of local government, the identification of sectors affected by corruption, and the identification of institutional capacity that can be used for anti-corruption efforts. Assessments should employ internal sources (those who work in the institutions) and external sources (those who use or are affected by the services or operations involved).

**Assessment of the nature and extent of local corruption problems and of local priorities for action.**

The basis of any local action plan must be a subjective and objective assessment of corruption to provide some indication of the actual nature and extent of problems, for example which elements of Government are most affected and what the overall impact is. A subjective assessment of how local people perceive the problem will provide further insight and will often form the basis for setting priorities for action. Conflicts between national and local priorities may be encountered and need to be addressed.

**Assessment of good governance factors.**

General information should be sought regarding the effectiveness, efficiency, transparency, integrity, and accessibility of service delivery. It should be compared with an objective assessment of the same factors, and both sides of the comparison should provide a basis for assessing the impact of future reforms.

**Assessment of the quantity and quality of citizen-Government interaction.**

The assessment should identify major deficiencies in interaction between the population and the local government, structures that facilitate or impede public information and participation, and levels of public awareness as to how local government works in theory and in practice.

**Assessment of service-delivery.**

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

**Assessment of other governance indicators.**

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

## ***OBTAINING LOCAL PARTICIPATION AND “OWNERSHIP” OF LOCAL PROGRAMMES***

It is important to involve the local population in the ownership process. In adjusting measures developed for other levels of government or for municipal governments nationwide, local input is needed. That will ensure that reforms are tailored to local circumstances, ensure that local priorities are reflected and that plans optimize local resources and capacity without setting goals or timeframes that are unrealistic or unachievable.

Local participation is also crucial to informing people about the programmes, mobilizing local support for them and providing a sense of credibility and "ownership" at the local level. Action-planning meetings should thus include the right local participants for the subject matter to be considered. That will include local politicians, officials of local departments and agencies, representatives of civil society and representatives of the public affected by the areas under discussion. "Outsiders", such as representatives of national Governments or anti-corruption programmes, donor countries or institutions and technical experts may be needed to assist in organizing and running the meetings but they should not dominate the proceedings.

## ***IMPLEMENTATION OF THE REFORMS***

Based on the consensus of the workshops and the analysis of qualitative and quantitative information, specific reforms can be developed and implemented in ways that address, and are seen to address, factors that may be hampering integrity and service delivery at the local level.

Experience suggests that in an environment of scarce human and financial resources, international institutions may play an important role in supporting municipal implementation through technical assistance. It is also important to develop an appropriate sequence for reforms taking into consideration factors such as direct and indirect economic costs, political costs and benefits, and the need to obtain short-term results to generate longer-term credibility.

The objective is to incorporate "best practices" into municipal public anti-corruption policies through civil society operational committees. If appropriately applied, best practices should produce lower levels of corruption and improved service delivery, combined with the accountability generated by effective social controls. They demonstrate the advantages of combining political will, technical capacity to execute reforms, and a partnership with civil society.

## ***EVALUATION AND MONITORING***

Efficiency, effectiveness, levels of corruption, accessibility, transparency, procedural complexity and other relevant factors must be reassessed from time to time to determine whether local government services have shown an improvement and whether adjustments to anti-corruption programmes are needed. As with the initial assessment, objective indicators of performance and subjective indicators of the perceptions of the public and key service-users should be considered. In analysing the indicators, some consideration should be given, not only to the individual factors, but how these are related and what the relationship says about overall impact. Regarding procedural complexity, for

example, it is important to consider whether complexity in a particular area has increased or decreased, and also whether overall performance has improved or deteriorated and whether the two are linked. Where complexity is reduced but performance does not improve, further enquiry may be needed to determine whether other factors are impeding progress.

### ***THE USE OF LOCAL ANTI-CORRUPTION COMMISSIONS OR COMMITTEES***

The establishment of commissions or committees to develop, implement and monitor anti-corruption efforts is the subject of Tool #9. The elements discussed there can be adapted for use at the local level, where appropriate. Specific mandates for local committees could include the following elements:

- Development of a municipal strategy or action plan combining elements of the national programme with those generated or modified by local needs;
- Translation of national and municipal anti-corruption policies into specific plans of action for the local level;
- Preparation of municipal legislation, where needed;
- Dissemination of information, generation of local support and momentum;
- Monitoring of the implementation of the local programme; and,
- Providing local information and feedback to national, regional, and local anti-corruption entities.

### ***RELATED TOOLS***

Most public services are delivered at the municipal or local level; thus, that level is where most petty and administrative corruption is likely to occur. For municipal anti-corruption initiatives to succeed, additional initiatives also need to be launched. Specific tools that may form elements of local programmes or be used in conjunction with such programmes include:

- Tools that increase public awareness, such as media campaigns, that increase awareness of and resistance to corruption while fostering awareness and support of anti-corruption efforts;
- Tools supporting consultations and the development of strategies, and action plans that reflect local problems and priorities, such as the holding of action-planning or similar meetings;
- Tools involving assessment of the nature and extent of corruption as well as local perceptions and reactions to the problem and efforts to combat it. Tools in this category assist in developing "baseline" information against which later progress can be assessed, ongoing assessments as to whether goals have been achieved and modifications or adjustments to ongoing strategies or actions;
- Tools that develop and establish standards, such as codes of conduct, are often used to provide the basis for efforts at the local level and to generate appropriate expectations from service-users;
- Tools supporting transparency;

- Tools supporting institutional reform, such as the creation of performance-linked incentives for officials, the reduction of official discretion, and the streamlining or simplification of procedures; and
- Tools supporting accountability, such as inspection or audit requirements, disclosure requirements, complaints mechanisms, conflict of interest measures, disciplinary rules and discretion.

## TOOL #13

### LEGISLATURES AND THEIR EFFORTS AGAINST CORRUPTION

The purpose of this tool is to assist legislatures in strengthening the roles they play in areas critical to the fight against corruption. They include general areas, such as transparency and accountability in Government, and specific areas, such as the formulation and adoption of anti-corruption laws and the independent, multipartisan oversight of anti-corruption bodies. While the focus is on anti-corruption efforts, it must be noted that such efforts are often closely linked to the broader concerns of legislatures in areas such as human rights and the rule of law<sup>117</sup>.

#### **DESCRIPTION**

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

#### **Accountability structures.**

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

Holding elected members politically accountable requires that there be transparency with respect to the business of the legislature and the conduct of its individual members. Structures that would hold them legally accountable, as noted in the previous chapter, must take into account the need for some degree of legal immunity and the independence of the legislature itself. As with independent judges, that generally involves bodies or tribunals constituted from within the legislature itself, to ensure that disciplinary proceedings<sup>118</sup> are not

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<sup>117</sup> On the role of parliaments in the fight against corruption, see also the Committee on Economic Affairs and Development of the Council of Europe <http://stars.coe.fr/doc00/edoc8652.htm>

<sup>118</sup> See, for example the Code of Conduct and the Guide to the Rules Relating to the Conduct of Members, approved by the UK House of Commons 24 July 1996, House of Commons Paper 688 of session 1995/96, at <http://www.parliament.uk/commons/selcom/s&phome.htm>. In Uganda, a leadership code requires leaders,

misused by outsiders seeking to improperly influence the conduct of legislative business. Westminster-style parliaments commonly do this by establishing a committee of members to maintain codes of conduct and, where necessary, conduct disciplinary proceedings. Committees are usually established with the same political profile as the legislature. That ensures that while committees are multipartisan, the majority political faction also holds a majority on each.

#### **Other oversight structures.**

The committee system itself provides additional oversight by distributing subject matter among many committees, some of which will have overlapping mandates. For example, matters requiring the support of one committee for the substantive policy being proposed must often also have the approval of committees responsible for the approval of the budgetary allocation it requires. Apart from those assigned to monitor the conduct of individual members, committees may also be called upon to monitor areas such as legislative publications, the finances of the legislature itself, freedom of information and media access to legislative matters, and the multipartisan oversight of key executive functions<sup>119</sup> The efficacy of legislative oversight depends to a large degree on how well informed members are about the subject matter they are called upon to oversee. Government agencies and other bodies may be required to report to legislative oversight committees regularly or on an ad hoc basis, and may be given research capabilities to assist in their work.

#### **Transparency structures.**

As noted, transparency is critical to holding elected officials politically accountable, and this can be supported by, inter alia, open access to information requirements, media access to the legislature, the publication of accounts and proceedings, modern technological aids, such as the establishment of websites for the legislature and individual members, and ensuring that members of the public have as much access to sittings as possible, whether in person or through the broadcast media. Given the partisan political nature of political activities and political accountability, diversity of sources is important; in their desire to seek re-election, members can be expected to put their achievements in the most favourable light, while political adversaries may attempt to discredit them. It is important for voters to have a diversity of views so they can make their own judgments.

#### **Sittings and proceedings of the legislature.**

Important political issues must be raised in legislative bodies, and both substantive and procedural rules are usually tailored to produce such an effect.

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including Members of Parliament, to declare incomes, assets and liabilities annually and prohibits leaders from putting themselves into conflict of interest positions.

<sup>119</sup> On the role of parliaments in the fight against corruption, see also the Committee on Economic Affairs and Development of the Council of Europe <http://stars.coe.fr/doc00/edoc8652.htm>



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

#### **Watchdog institutions.**

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

#### ***PRECONDITIONS AND RISKS***

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

## **RELATED TOOLS**

For the legislature to be credible in its fight against corruption, a parliament must be perceived as having sufficient integrity itself to address the corruption issue. To increase the integrity of parliament, the following additional anti-corruption **TOOL** should be implemented:

- Establish, disseminate, discuss and enforce a code of conduct for parliamentarians;
- Establish a disciplinary mechanism (disciplinary committee or public accounts committee) with the capability to investigate complaints and enforce disciplinary action when necessary;
- Require all parliamentarians to declare their assets and their campaign financing;
- Conduct an independent comprehensive assessment of the Government's levels, cost, coverage and quality of service delivery, including the perceived trust level between the public service and the public;
- Simplify complaints procedures;
- Raise public awareness as to where and how to complain (for example, by campaigns giving the public the relevant telephone numbers to call); and
- Introduce a computerized complaints system allowing institutions to record and analyse all complaints and monitor actions taken to deal with them.

## **CASE STUDY #1**

### **THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC) OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (SAR)** <sup>120</sup>

Hong Kong once a corruption-stricken environment, is now a world city with impressive anti-corruption records<sup>121</sup>. Unimaginable as it now seems, corruption was widespread there during the 1960s and early 1970s, when the public regarded bribery as a "necessary evil", a "way to get things done". Corruption syndicates in the police force were particularly prevalent and bribe-taking was institutionalized.

The last straw was the escape of Peter Godber, a police chief superintendent, in 1973 while under investigation by the police Anti-Corruption Office. Public protests followed. The Independent Commission against Corruption (ICAC) was born in 1974 out of a pressing need to respond to the public call for action against corrupt individuals.

At first, winning the confidence of the public in the commitment of the Government and ICAC to tackle the problem head-on was not easy. Hence, ICAC was made directly accountable to the Governor of Hong Kong (after 1997, the Chief Executive of the Hong Kong Special Administrative Region of China) and was thus separated from the rest of the civil service, a move to help stave off the public crisis of confidence in the anti-corruption efforts.

The Government also realized that such an elusive form of crime could not be effectively checked without tackling the problem at source. As a result, ICAC was given the task of carrying out an integrated three-pronged attack on corruption, involving investigation, prevention and community education. To equip it for the daunting challenges ahead, the Government also entrusted it with the necessary legal powers and supported it with sufficient resources.

Tough and high-profile law enforcement action quickly convinced a sceptical public that the government and ICAC meant business as ICAC made every effort to plug corruption loopholes in both the public sector and the private sector. To foster a culture of integrity, it also launched community education campaigns to impress upon the people that corruption was evil and to enlist their support in reporting on corrupt individuals.

The change in public attitude from accepting bribery as a necessary way of life to actively helping to rout corrupt individuals was achieved through extensive media campaigns and face-to-face contact with various members of the community.

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<sup>120</sup> Based on a paper presented by Dennis Osborne at a UN expert meeting on the elaboration of an anti-corruption tool-kit, Vienna, 13-14 April 2001

<sup>121</sup> Alan Lai, Commissioner, Independent Commission against Corruption, Hong Kong Special Administrative Region of China.

The three-pronged approach has proved successful over the years as the Hong Kong Special Administrative Region has witnessed growing public identification with the anti-corruption cause. One of the strongest indicators of public faith is that some 70 per cent (2001 figures) of those who have reported corruption to ICAC are willing to identify themselves and provide contacts.

Through the persistence and dedication of its staff members, ICAC has survived many difficult times. Nevertheless, it is very aware that it could not have accomplished what it has if it were not backed by the rule of law, an independent judiciary and a credible system of checks and balances. It is conscious of the need to maintain its professionalism and uncompromising approach in tackling corruption.

Corruption used to be endemic in Hong Kong. As mentioned, in 1973, a police superintendent under investigation for corruption fled the colony. The public outrage led the Governor to set up a Commission of Enquiry that found "syndicated corruption" in many organizations, especially the police. ICAC was directed mainly at alleged corruption among the police. According to the Annual Report for 1974, over 3,000 corruption complaints were received during the first 10 months of operation and 108 persons prosecuted, of whom 56 were Government officers. All the major corruption syndicates were thought to have been broken by July 1977.

In the months following its creation, however, ICAC experienced serious tensions with the police. In 1977, following the arrest of scores of police officers and the smashing of several large corruption syndicates, 2,000 policemen marched to ICAC headquarters and caused a near riot. The Governor announced an amnesty.

Between 1974 and 1993, 9,000 people were prosecuted for corruption and it is claimed that 84 per cent of them were convicted. The ICAC Annual Report shows that over 2,500 corruption reports were received in 1998, and that 382 persons were prosecuted for corruption and related offences. Of those, 243 were convicted, 18 acquitted and 98 still had their cases pending at the end of the year. Of the 382 persons prosecuted, 268 were from the private sector. A further 226 persons, mostly from the private sector, were prosecuted for offences under a Prevention of Bribery Ordinance, mainly for deception, false accounting or theft.

ICAC has (1999) a staff of 1,300, of which 800 work in an Operations Department that investigates suspected corruption. From time to time, its staff engage in undercover activities. A Corruption Prevention Department seeks changes in working practice. A Community Relations Department educates the public and fosters support for ICAC.

Committees monitor the work of each department, by receiving reports and complaints. They also ensure that ICAC itself does not abuse its powers or become corrupted.

Operations include investigations into the law-enforcement services, the public service, banking, the private sector and elections. Fraud is a police responsibility, but the receiving of illegal commissions is handled by ICAC. In that respect, ICAC may issue search warrants, investigate bank accounts and arrest and

detain persons in its own centre for up to 48 hours. Evidence is referred to the Department of Justice which brings charges. Operations are conducted in cooperation with agencies elsewhere in the People's Republic of China, and in other countries. Cautions for minor cases for which the offender makes a full admission have been found highly cost-effective. Officers know they will be watched closely after being cautioned and few offend again.

Trials for minor offences are expensive. Publicized court cases and convictions raise awareness, however, and encourage the public to report suspected corrupt practice, thus helping ICAC in further operations. The percentage of anonymous reports is continuing to drop, showing increasing public confidence in ICAC.

Prevention includes making recommendations on good business practice to minimize temptation and risks. Recommendations are mandatory for the public sector and advisory for private businesses. Focus is given to changing systems rather than people. Prevention is claimed to be more cost-effective than prosecution.

The Community Relations Department conducts an intensive education programme in the community. Every year, staff of the Department meet managers of the business sector, head teachers, teaching staff and students of schools and tertiary institutes, Government servants and representatives of organizations elsewhere in China, to educate them on the costs of corruption, anti-bribery legislation, especially relevant past cases, penalties and consequences of corruption. Community relations and education are concerned with helping people to develop attitudes against corruption. Their success depends in part on successful court cases and publicity that provide a credible threat of prosecution. Workshops, seminars, training programmes and various formats are adapted to reach the targets and "prevention packages" are handed out.

The media is used for deterrence and educational purposes. A series of announcements in the public interest" are produced for television and radio, and explain the efforts of ICAC. The TV commercials have three main themes: appeals to the public to report corruption; warnings that corrupt practices are likely to be discovered and that dire consequences will follow; and pleas for honest dealings for the benefit of society. Education packages provide schools with ideas for role play and contain high quality supporting materials. Some teachers say the material from ICAC is the best made available to them, and that it facilitates lessons that are in contrast to the usual "chalk and talk". Training programmes reach over 20,000 public servants a year and courses are available for the private sector.

In 1994, the Community Relations Department launched a Campaign on Business Ethics with the aim of enhancing the image of Hong Kong as a business centre. About half of all corruption reports are against private-sector organizations and the public perceives corruption to be more common in business than in Government.

*ICAC staff members attribute success to:*

- Political will;
- The independence of ICAC;
- The authority of the Commissioner to appoint and manage, and to dismiss staff without explanation;
- The existence of proper, and properly enforced, legislation against corruption;
- Publicity for prosecutions of corruption; and
- A law that obliges public servants to declare their assets and the sources of their funds, when asked.

In December 1994, a review of the powers and accountability of ICAC was completed within the context of political changes and the Hong Kong Bill of Rights Ordinance 1993. The aim was to ensure that ICAC remained effective against corruption without itself being corrupted. The changes introduced as a result of the review included more control of some investigating powers; search warrants, for example, are now issued by the courts and not by ICAC. The power of the Commissioner to dismiss staff without giving reason has been upheld; it was recognized that investigations into corrupt practice may make it necessary for officers to be removed quickly if there is suspicion or complaint.

According to a former Commissioner, the changes include the need for:

- A strong political will; a strong framework of laws; a coherent strategy covering investigation, prevention and education, active community involvement; and adequate funding;
- Videotape recording of all interviews with suspects, with suspects under caution. Three copies are made of the video, of which one is given to the suspect, one is sealed for the court, and one is kept by ICAC. The subsequent admission of the recordings as evidence in court has persuaded many persons to enter guilty pleas, with huge savings in court costs;
- A requirement that all reports of alleged corruption must be investigated;
- Making it an offence for ICAC staff to disclose the names of persons being investigated until a search warrant is given or the persons are charged or arrested; and
- Requiring an "Operations Committee", an oversight body of citizens, to examine any investigation that has not been completed within 12 months.

### **OUTSTANDING RESULTS**

As mentioned above, the groundwork for a forceful assault on corruption was laid on three fronts: investigation, prevention and community education. After decades of hard work, ICAC has been widely recognized as a model of success in bringing the problem to an end. It proved that the battle against corruption can be effective, given sufficient resources, persistent determination and adequate power to pursue criminal prosecutions.

Corruption is a form of crime characterized by "satisfied customers"; there are often no apparent victims. An anti-corruption agency has to rely on members of the public to come forward and report on acts of corruption. Their willingness to report and, better still, to testify in a court of law, hinges on their trust and confidence in the anti-corruption agency. It is therefore essential for ICAC always to be aware of the public mood.

As well as annual opinion surveys that have been continuously refined over the years, smaller-scale quarterly polls are also conducted to keep ICAC informed of any sudden shifts in public sentiment and, thus, any need to adjust its strategic priorities.

In the Hong Kong SAR, the revolutionary change in the public attitude towards corruption has been remarkable. There is evidence of public scorn for corruption, coupled with a readiness to act against it. Some of the findings of surveys commissioned by ICAC are surprising:

- Over 98 per cent of respondents have expressed support for the work of ICAC since the question was first asked in 1994.
- The level of intolerance towards corruption in the public and the private sectors has remained high in recent years. In 1998, about 80 per cent of respondents held such a view and a high of 83.7 per cent was recorded in 2000.
- An important barometer of trust is the percentage of non-anonymous reports of corruption, reports filed by persons willing to provide their identities. That figure increased gradually from a low of 35 per cent in 1974 to 56 per cent in 1980 and 70 per cent in 2000.
- The proportion of respondents agreeing that ICAC was impartial in its investigation rose to an all-time high of 74.6 per cent in 2000, up from 56.4 per cent in 1994. In the 2000 survey, only 8.3 per cent of respondents disagreed with that view.

### ***THE NEED FOR PUBLIC SUPPORT***

Public attitudes can never be taken for granted. In the Hong Kong SAR, the transformation of the public attitude from resigned tolerance to extreme intolerance of corruption has been a slow and painstaking process, punctuated with successes and setbacks. Such a massive social campaign is demanding, yet the lessons drawn from it are invaluable. In the context of the Hong Kong SAR, the shaping of a new social order called for:

- ***Public identification with the cause.*** Sustained community education campaigns are needed to raise public awareness of corruption. People should be made aware that corruption may have dire consequences if left unchecked. They must be convinced that ordinary citizens are in a position to do something about it, for their own interest and the common good. They should be shown in concrete terms that corruption only fuels other crimes to the detriment of the prosperity and economic wellbeing of the people.
- ***Reporting in confidence.*** Fear of retaliation discourages people from reporting. ICAC spares no effort in ensuring that nobody is victimized for

reporting corruption. From the start, ICAC has enforced a rule of silence on all reports of corruption. For highly sensitive cases, a comprehensive witness protection programme is in place that, in extreme cases, enables witnesses to change their identities and relocate.

- ***Making corruption a high-risk crime.*** Justice must be seen to prevail against corruption. Nothing could send a stronger message both to law-abiding citizens and criminals than the ability to bring to justice persons who have committed acts of corruption - regardless of their background and positions.
- ***Credible checks and balances.*** Because of the confidential nature of the work of ICAC and the extensive investigative powers that it enjoys, there is some potential for abuse. Since the inception of ICAC, therefore, an elaborate system of checks and balances has been in place to assure the public that if any abuse were to occur, it would be promptly rectified. The system safeguards the interest of the public by placing prosecution decisions solely in the hands of the Department of Justice. All aspects of ICAC: investigation, prevention, community education and overall management, are supervised by advisory committees comprising respectable citizens appointed by the Chief Executive of the Hong Kong SAR. The committees can discuss with the Chief Executive matters of concern and they publish annual reports on their work. Moreover, all non-criminal complaints against officers of ICAC are vetted by an independent complaints committee that publishes its findings annually.

### ***WINNING PUBLIC TRUST***

ICAC was established at a time when the determination and capability of the government to fight graft was in doubt. It thus had to win back public trust.

The public believes in results, not empty slogans. The first Commissioner of ICAC decided that it was only through quick and forceful action that public confidence could be gained. The civil service as a whole, and the police in particular, were identified as the primary targets. The successful extradition from London of fugitive police officer, Peter Godber, and his subsequent conviction within a year, gave the Commission a promising start.

High-profile arrests and prosecutions continued to make headlines, gradually convincing the public that the government and ICAC meant business. Reports on corruption began to flood in; in the first year, 86 per cent of the reports were against Government departments and the police. Corruption syndicates in the police, high on the list of priority problems, were vigorously pursued by ICAC. In one major operation mounted during that period, 140 police officers from three police districts were rounded up at the same time. More than 200 policemen were detained for alleged corruption in one operation. In all, 260 police officers were prosecuted between 1974 and 1977, four times the total number prosecuted in the four years preceding the establishment of ICAC.

In parallel, corruption prevention specialists were dispatched to various government departments to examine their procedures and practices with a view to removing all loopholes for corruption. Assistance was also rendered when necessary to help departments produce codes and guidelines on staff conduct. The Corruption Prevention Department was also involved in the early stages of



policy formulation and in the preparation of new legislation to close down opportunities for corruption.

At the same time, the community relations department of ICAC has brought about a revolution in the public attitude to corruption. Various publicity and outreach programmes have been organized by the Department to educate the public and strategies have been refined and adjusted to suit the changing social and economic environment.

### ***A DOUBLE-BARRELLED APPROACH IN EDUCATION***

The public education endeavours of ICAC have been in two forms: extensive use of the media and in-depth, face-to-face contact. Over the past 25 years, the approach has proved to be effective in instilling a culture of probity.

#### **Media**

The Hong Kong SAR is reputed for its free press. In 2000, there were about 60 printed dailies and more than 700 periodicals. There are also two free-to-air commercial television stations, one cable network plus other satellite-based television services beaming news and other programmes from more than 40 domestic and non-domestic channels.

ICAC has realized from the beginning that the media is a powerful and indispensable partner in disseminating anti-corruption messages. A news story about a person convicted of corruption has a significant impact on the community. A press information office was one of the first units established by ICAC. Acting as a bridge between ICAC and the press, the office regularly issues press releases on operations, arranges interviews and briefings by ICAC officers to hammer home the message that corruption is evil. Media reports on crime involving corruption demonstrably have a deterrent effect.

#### **Advertising campaign**

ICAC also produces its own announcement of public interest to proactively communicate a culture of probity through advertising campaigns. The messages are tailored to suit the prevailing public sentiment and social climate. The messages of the past 27 years can be put into four different categories:

- ***The era of awakening.*** During its early years, ICAC had to deal with a population that was deeply suspicious of governmental commitment to fighting corruption. People in the lower income bracket, who were more vulnerable to abuse, held a particularly accepting view of such crime. Media campaigns were launched to reach that segment of society and highlight their suffering. Backed with tough law enforcement action, the Commission urged the public to be a partner in fighting corruption by reporting such crime.
- ***Level playing field.*** As syndicated corruption in the police and the civil service had diminished by the late 1970s, ICAC was able to channel more of its energy into dealing with the problem of corruption in the private sector. In the midst of an economic upturn, the Commission emphasized that the fight against corruption was important to continued economic growth. Elements of deterrence and persuasion formed part of those campaigns. The slogan used by ICAC was, "Whichever way you look at it, corruption doesn't pay". The message reverberated loud and clear in the community. Tough action against

some private corporations and their senior managers during the period reinforced the warning by ICAC that it was not making empty threats.

- ***The 1997 jitters.*** During the 1997 jitters, after years of transition leading to the reunification of Hong Kong with Mainland China, some people in Hong Kong worried about the uncertainty ahead. After all, the concept of "one country, two systems" was without precedent anywhere. It was suspected that certain individuals would try to take advantage of the situation and get rich quick, despite the large number of cases involving corruption being reported. There were some doubts in the community as to the ability and the effectiveness of ICAC to keep the Hong Kong SAR one of the least corrupt places in the world after reunification. To counter those concerns, ICAC set out to assure the general public, through media campaigns, that the corruption of the 1960s and 1970s would not return as long as the public continued to cooperate in tackling the problem.
- ***The mission continues.*** After a long period of economic prosperity, coupled with the gradual reduction of reports of corruption, the social ill that once plagued the city has gradually faded. The prevailing social environment is such that there is some danger that the level of alertness may drop, particularly among members of the younger generation who have never experienced corruption. They may take it for granted that corruption is no longer a threat and may have trouble comprehending that parents and grandparents fought a fierce battle to make the Hong Kong SAR corruption-free. To ICAC, it is important that the next generation should be made aware of the need to continue anti-corruption efforts. A large share of educational resources has, in recent years, gone towards fostering integrity and honesty among youth. That will continue to be the case in the years to come.

#### **Television drama series**

ICAC came at a time when television was the most powerful media for reaching the masses. Among many innovative publicity efforts made by ICAC was the production of a television drama series based on real corruption cases. It was an astounding success and, to date, remains one of the most popular television programmes, its ratings comparable to those of commercial productions. In the series, the dire consequences of corruption are vividly portrayed and the professionalism and efficiency of the officers of ICAC are effectively conveyed. To ensure the work of ICAC is accurately reflected, the actors portraying officers are asked to dress, talk and carry out their investigations in a manner that is as close to real life as possible.

#### **The internet**

The cyber revolution has given ICAC another potent medium for interactive communication with the community. Internet surfers can gain access to it in the virtual world. There are "best practice" packages for specific trades and industries, as well as practical guides on dealing with ethical dilemmas and difficult situations in individual branches of industry. Also on the ICAC web site is information on corruption cases that it has dealt with over the years.

As Internet browsing has become one of the most popular hobbies among members of the younger generation, ICAC has also launched a web site for

teenagers that uses interactive games and information to impart positive values to young people.

### **Face-to-face contact**

Despite the immense influence of the media in reaching the masses, ICAC believes that it is no substitute for face-to-face contact with the people it serves to explain its goals and mission and obtain feedback on its work. ICAC uses strategic network regional district offices to maintain direct contact with members of various segments of the community.

The offices have two primary functions:

1. They serve as focal points of contact with local community leaders and organizations with whom the ICAC regional officers organize various activities to disseminate anti-corruption messages. The regional offices hold regular meet-the-public sessions to gauge public views on various corruption issues. Tailor-made briefings and training sessions are offered to civil servants and those practising specific trades in the private sector to raise their awareness of the anti-corruption law and the problems associated with corruption. Educational programmes are arranged to develop an anti-corruption culture among young people and newly arrived immigrants.
2. The offices, manned by people trained to deliver ICAC messages to different sectors of the community, also serve as report centres that members of the public can walk into and lodge a complaint about corruption. Experience shows that people feel more at ease providing such information in these less formal settings .

Community relations officers reach between 200,000 and 300,000 people on average per year through 800 talks, activities and special projects. The 200 staff members meet with members of the community through meet-the-public sessions, training workshops at workplaces, school talks and seminars designed for businesses and professionals.

### ***CURRENT SITUATION REGARDING CORRUPTION***

Corruption in the Hong Kong SAR is under control. While no government can expect to eradicate corruption, improvements in the area of integrity are encouraging. The efficiency and honesty of the civil service have been acknowledged by the world community. Syndicated corruption belongs to the past.

The various types of complaints reveal changes in the social culture and public attitudes. Complaints involving corruption in the civil service accounted for 86 per cent of the total in 1974. That figure dropped to 60 per cent in 1980 and to less than 40 per cent in 2000. Reports on alleged police corruption plunged from 45 per cent of the total in 1974 to 30 per cent in 1984 and to less than 14 per cent in 2000.

Complaints involving corruption in the private sector accounted for 13 per cent of the total in 1974, 37 per cent in 1984 and 54 per cent in 2000. That increase was attributed largely to the growing public intolerance towards corruption in the

private sector and, to an even greater extent, to the realization within the business community that corruption was bad for business.

Despite strong resistance to ICAC in the 1970s, entrepreneurs have gradually come to understand that bribery has had an adverse effect on business. Consequently, their resistance has changed to acceptance and even active support of ICAC. In 1995, six major chambers of commerce together with ICAC, helped found the Hong Kong Ethics Development Centre to promote ethics and corporate governance. Nowadays, nearly one in ten reports of corruption in the private sector is made by senior business managers.

## **CONCLUSION**

Fighting corruption is an ongoing battle. The public needs to be constantly assured that ICAC is capable of carrying out its tasks effectively, without fear or favour. The Commission is keenly aware of the need to maintain its level of professionalism in the face of the growing sophistication of criminal groups, aided in part by the globalization of trade and the digital revolution. The extremely low incidence of corruption in the Hong Kong SAR could not have been achieved solely with the establishment of ICAC. Many other factors are involved.

- **A holistic approach to the problem.** The three-pronged strategy of investigation, prevention and community education has enabled ICAC to tackle the problem at source.
- **A supportive public.** A supportive public makes it possible for the battle against corruption to be fought on all fronts, in every corner of the community. Without a supportive public, regardless of the human and financial resources involved, it would not have been possible to reduce corruption so quickly.
- **The rule of law.** The people of the Hong Kong SAR have treasured, respected and guarded the rule of law, an important factor in convincing the public that justice will be done.
- **Government commitment.** The commitment of the government has translated into sufficient resources and adequate legal powers to hunt down the criminals involved in corruption. The Hong Kong SAR has demonstrated that corruption can be contained. ICAC has been given the task of keeping it under tight control.

## **CAN THE ICAC EXPERIENCE BE USED ELSEWHERE?**

The earlier status of Hong Kong, the accountability of its Governor to the British parliament, and its small size and great wealth have provided a unique environment. Nevertheless, several organizations, and nations, wish to copy the change of Hong Kong from a society entrenched in syndicated corruption to one in which the public does not expect officials to be corrupt, and in which there is determined action against corruption in the private sector.

*Some of the lessons learned by ICAC staff could be useful elsewhere.*

They include:

- The need to win public cooperation in reporting corruption;
- The importance of securing convictions for corruption and publicizing them;
- The cost-effectiveness of cautions and of prevention;
- The value of developing corporate codes of conduct for parts of the private sector; and
- The use of video recordings for interviews with suspects, and their admissibility as evidence in court.

## **CASE STUDY #2**

### **THE ANTI-CORRUPTION AGENCY (ACA) OF MALAYSIA<sup>122</sup>**

The Anti-Corruption Agency (ACA) of Malaysia was founded in 1967 by merging three earlier bodies. The main functions of ACA are to:

- Investigate and prosecute offences of corruption;
- Prevent and curb corruption in the public service; and
- Investigate the conduct of civil servants.

Corruption is defined in the Prevention of Corruption Act 1961 and Ordinance 22, 1971, as including bribery, false claims and the use of public position or office for pecuniary or other advantage. Claims for false expenses are dealt with by ACA, but the police deal with other fraudulent claims.

ACA prosecutes offenders and seeks to prevent corruption. In its early years, it carried out many investigations against members of the public for bribing civil servants. Subsequently, as it instituted preventive programmes to encourage the public to report such corrupt practices, an increasing number of civil servants were arrested. Although much of its present work is concerned with public servants, ACA has also investigated ministers, charged a football player with rigging a match result, and had bank managers convicted for taking a personal percentage in exchange for agreeing to grant bank loans. As at August 1994 there were 150 court hearings a month. A promotional video is used to seek cooperation from the public and to deter those who are tempted by corrupt acts. The ACA also provides advice on management methods to reduce opportunities for corruption.

#### ***ACTIVITIES OF THE ANTI CORRUPTION AGENCY (ACA)***

The activities of ACA include:

- Procuring intelligence and investigating corruption cases;
- Anti-corruption campaigns, education, television programmes and other publicity;
- Prosecuting offenders;
- Studying weaknesses in government administration; and
- Conducting such activities as surprise corruption checks.

ACA investigates conflicts of interest, extortion, false claims and corrupt business transactions. Prevention and deterrence techniques include punishment, management and education, and enlisting public support to fight corruption. One ACA officer has described corruption as a "consensual crime" with its own natural defence mechanisms, and has complained that conviction sentences

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<sup>122</sup> Based on a paper presented by Dennis Osborne at a UN expert meeting on the elaboration of an anti-corruption tool-kit, Vienna 13-14 April 2000.

were often "too light". Between 1985 and 1990, half of those convicted received a one-day imprisonment sentence only, and 85 per cent received sentences of less than six months.

Increasing responsibilities have been given to the ACA. They include the adoption of revised regulations for conduct and discipline of public officers in 1993, a code of ethics for judges in 1994, and increased cooperation with religious organizations. A new division of the ACA was formed in 1996 to provide an early warning system for corruption in large Government corporations. In April 1997, the Government endorsed a three-pronged strategy for the ACA to strengthen its resources and management, further develop its preventive and promotional work, and improve enforcement, including redrafting of laws on corruption. In 1999-2000, the ACA took responsibility for attacking corruption in the private sector, and sought extra staff for that purpose.

The ACA has given special attention to the "top ten" corruption prone agencies in Malaysia, to the setting up of Ethics, Quality and Productivity Committees at State and departmental levels; and to the interests and safety of witnesses and informers. Meanwhile, the civil service has developed a set of values known as "The Twelve Pillars" to which civil servants subscribe:

- 1 The value of time
- 2 The success of perseverance
- 3 The pleasure of working
- 4 The dignity of simplicity
- 5 The worth of character
- 6 The power of kindness
- 7 The influence of example
- 8 The obligation of duty
- 9 The wisdom of economy
- 10 The virtue of patience
- 11 The improvement of talent
- 12 The joy of originating

#### ***MANDATE OF THE ANTI-CORRUPTION AGENCY***

The ACA has the power to investigate, interrogate, arrest and prosecute. Staff members were appointed initially by transfers from the police but are now recruited into a separate administration. They receive public-sector pay plus an incentive allowance. There are six divisions: Prosecutions; Investigations; Information; Prevention; Training; and Administration. Legislation, regulation, operation and motivation are closely linked. Thus, customs officers at the checkpoints and police on the street are allowed to carry only a small amount of cash on their person. Random checks and searches provide evidence of corrupt cash payments and discourage acceptance of bribes.

### ***INCREASED EMPHASIS ON PREVENTION***

The ACA acts on information received: it receives 8,000 reports a year. Only a small number of those reports are found to be mischievous. ACA uses paid informers in ways that are described as being "similar to the FBI". Initially, information is received in confidence but subsequent enquiries are made openly. The three stages are discreet enquiry, preliminary enquiry and open enquiry. Publicity for enquiries may encourage others to come forward with evidence. The aims of investigation are to prosecute, uncover breaches in civil-service discipline, propose improvements to systems to reduce opportunities for corruption, assist other agencies, for example the Inland Revenue, and cultivate future information sources. Informants may be anonymous. Publicity for enquiries as well as for charges, trials and convictions, discourages corrupt practice.

Greater emphasis is now given to preventing corruption than in the past, with a three-pronged strategy of Information, Education and Communication (I, E, C). Efforts to educate the public and discourage people from conducting corrupt practices are based primarily on ethics and religion. The thrust of ACA work on prevention was presented in a promotional video made available in 1994. The video includes quotes from the sayings of the Prophet, "Allah curses the giver of bribes and the receiver of bribes and the person who paves the way for both parties". The underlying causes of corruption are described as living beyond one's income and running heavy debts, with corruption breeding off administrative weaknesses. Efforts are made to appeal to people to avoid corruption and are based on morality ("Corruption is evil"), social pressure ("Would you support your family with money derived from corruption?"), self-respect ("We have an image to keep as Government servants") and loyalty. Corruption is said to be dangerous because it is infectious. The video makes an appeal to the public to cooperate in fighting corruption ("Have you reported an act of corruption to the authorities?"). The video warns that corruption does not pay, and presents a scene of a clanging door bell in a prison, which represents a threat of punishment, and the scene of an arrest in front of a family, which attempts to bring a sense of shame. ACA also uses television dramas.

There is concern about the slow progress of cases through the courts and the lack of severity in sentencing. Other problems listed by the ACA include the transaction of corrupt money in foreign countries, the fact that the public does "not want to get involved", difficulty in getting cooperation from foreign citizens and organizations, fear of vengeance for supporting the authority, difficulties in retaining witnesses and people accepting corruption "as a way of problem solving ... and convenience". Another problem is the allegation that ACA is a tool of the Government, and that it arrests small fish but lets the "whales" get off free. ACA has responded to this allegation by claiming that two State ministers have been prosecuted and a senior cabinet minister investigated and, although the latter was cleared of any criminal offence, he was asked to declare all his assets (ACA Annual Report 1993). It is, however, recognized that the "businessman-politician" is hard to catch.



ACA staff believes that reducing the levels of corruption depends on:

- The political will;
- A Malaysian requirement that public servants may not run their own businesses;
- A requirement that public servants should declare their assets;
- A check to ensure that public servants do not have a lifestyle that is beyond their means; and
- A rule that those that are too heavily in debt may not be promoted.

ACA staff is recruited at levels equivalent to police sergeants, inspectors and assistant superintendents. Initial on-the-job training is provided, followed by specialist courses on prosecution, intelligence gathering, prevention and management. Some staff go overseas to obtain academic qualifications in such fields as criminology. Training opportunities are sought in the United Kingdom and the United States. The ACA manpower and budget come under the Department of the Prime Minister. The Director General is appointed by the King on the advice of the Prime Minister and reports to Parliament. The ACA cooperates closely with similar organizations in many countries.

The ACA is vigilant about the possibility of its own staff being corrupted and checks are made.. The police retain the power to charge people with corruption, including ACA staff. The public may complain about ACA staff to the Public Complaints Bureau.

## **CASE STUDY #3**

### **BOTSWANA, CORRUPTION AND ECONOMIC CRIME ACT 1994**

The Corruption and Economic Crime Act 1994 of Botswana provides for the establishment of a Directorate on Corruption and Economic Crime (DCEC) with an extensive mandate including the investigation of alleged or suspected offences, the alleged or suspected contravention of fiscal and revenue laws; the conduct of any person that may be connected with or conducive to corruption; the examination of the practices and procedures of public bodies with a view to eliminating those that may be conducive to corrupt practices; the education of the public about the evils of corruption; and the fostering of public support against corruption. The Act also creates several offences, including the possession of unexplained property.

The DCEC was set up in the Office of the President and became operational in September 1994 when Botswana was becoming an increasingly important financial centre, with the second highest GDP per capita in Africa and major earnings from foreign investments, diamonds, tourism and beef, as well as a customs union with South Africa.

The early division of responsibilities into Investigation (operations), Prevention (mainly management advice) and Education (including public relations) followed a pattern adopted successfully elsewhere. An Intelligence Group was established to supplement information gained from complaints from the public. A Report Centre for receiving messages from the public became fully operational in March 1995.

By 1998, there were five branches, each headed by an Assistant Director. These are:

- Prosecutions and Training;
- Investigations;
- Intelligence and Technical Support;
- Administration, Development and Financial Investigations; and
- Corruption Prevention and Public Education.

DCEC Annual Reports from 1995 to 1998 show a growth in results, activities and staffing. It has been estimated that one benefit of DCEC was to increase Government income from the recovery of unpaid taxes and associated fines and seizures to an amount that exceeded the DCEC budget. In addition, several individuals were investigated under Section 34 of the Act for the possession of assets or maintaining a standard of living they could not satisfactorily explain. In 1997, 87 arrests and 66 prosecutions began of which 31 were completed and 21 resulted in convictions. In 1998, 79 arrests were made and 39 prosecutions began, of which 29 were completed and 14 produced guilty verdicts. That left 66 cases pending that arose from DCEC work, some of which dated back to 1994. Press releases regarding the charges and trials raised public awareness.

Although DCEC is part of the civil service, it is autonomous. By December 1998, 109 posts had been created.

### ***INFORMATION FROM THE 1995 AND 1996 ANNUAL REPORTS***

It may be instructive to note the difficulties reported during the first years in existence of DCEC. In the 1995 and 1996 Reports, the Director raised a number of concerns, challenging critics of DCEC, and claiming in one report that, "Contrary to the ill informed comments aired in the media and elsewhere, DCEC has had some significant operational successes."

That was linked with a discussion of "operational targeting": whether or not to choose specific target groups for investigation. It was argued that it is not only necessary and right but the actual statutory duty of DCEC to investigate every pursuable report (4). In the 1996 report, the Director claimed that targeting "big fish" alone is morally indefensible and that the whole problem should be targeted.

There has been frustration in the working environment and concern about bureaucratic delays because DCEC is part of the normal Government service.

When it was found necessary for DCEC staff to help conduct prosecutions on behalf of the Attorney General (AG), the Director sought the strengthening of the AG, arguing that a qualified lawyer, rather than an investigator, who may be prone to accusations of bias, can best undertake the role of prosecutor.

A constitutional right to bail had led to suspect expatriates absconding from the country with, among other things, assets that might have been seized.

The Director sought better accountability for DCEC through the creation of a Directorate Review Committee.

The importance of training was stressed, including the value of an officer visiting Hong Kong SAR and another attending a workshop at RIPA International in London. The Director also argued, however, that much more training is still needed.

According to the Director, there is a need to help the law to catch up with technology, including the introduction of video-recording interviews with suspects and the admissibility in court of such evidence.

Although later reports are less defensive, there are significant references to continuing delays in processing cases through the office of the Attorney General, and concern is expressed about difficulties in obtaining information from banks.

The Directorate has, however, secured several significant convictions, as listed in its annual reports, raised awareness of corruption issues, drafted codes and guidelines to reduce corrupt behaviour, and shown the difficulties of operation within the Government bureaucracy and the constraints and delays in having cases processed by the courts.

## CASE STUDY #4

### THE ANTI-CORRUPTION OFFICE (OAC) OF ARGENTINA <sup>123</sup>

The Anti-Corruption Office (OAC)<sup>124</sup> of Argentina is an agency created by law within the Ministry of Justice and Human Rights. Its purpose is to elaborate and coordinate policies to prevent and fight corruption. According to Decree No. 102/99, the OAC is in charge of preventing, investigating and promoting the prosecution of those actions described as illegal by the Inter-American Convention Against Corruption, ratified by Law No. 24.759. (6). The Ministry of Justice and Human Rights, through the OAC, has the primary responsibility for implementing such policies in the national public sector, and to act as petitioner or claimant before the judiciary in the cases it has investigated.

The Public Administration Prosecutor (Fiscal De Control Administrativo) heads the OAC, and has the rank of Secretary of State. The OAC has two main departments, the Department of Transparency Policies (Dirección de Planificación de Políticas de Transparencia) and the Department of Investigations (Dirección de Investigaciones), each headed by an Under Secretary of State.

Specialists in economics, sociology, law, public accounting, international relations and political science form the staff at the Department of Transparency Policies. The Department of Investigations comprises mainly lawyers. Staff of both departments are selected on the basis of background, experience and qualifications. The administration of financial disclosure forms of public officials, a function previously carried out by the former Oficina Nacional de Ética Pública, is now the responsibility of a professional cadre of specially trained career public officials.

#### **PUBLIC ADMINISTRATION PROSECUTOR**

The Public Administration Prosecutor is in charge of the Anti-Corruption Office. The main functions of this position are to:

- Elaborate and submit the anti-corruption programme to the Ministry of Justice and Human Rights for approval;
- Decide whether or not to open and close an investigation;
- Coordinate the actions of the OAC with other Government agencies; and
- Oversee the implementation of the financial disclosure statements of public officials.

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<sup>123</sup> Based on a Paper Presented by Roberto de Michele, Department of Transparency Policies, Anti-corruption Office, Ministry of Justice and Human Rights, Argentina. Paper presented at Workshop on Combating Corruption, X United Nations Congress on the Prevention of Crime and Treatment of Offenders, Vienna, 10-11 April 2000

<sup>124</sup> For full access to the regulations of the OAC, see [www.jus.gov.ar](http://www.jus.gov.ar).

## **THE DEPARTMENT OF INVESTIGATIONS**

The main duty of the Department of Investigations is to carry out administrative enquiries into the behaviour of public officials, in accordance with the Inter-American Convention Against Corruption. The duties include:

- Receiving claims from private parties and public officials;
- Investigating allegations of wrongdoings in the public administration;
- Promoting administrative, civil and criminal actions; and
- Assuming the position of claimant before the criminal courts.

Laws have extended powers to conduct enquiries to the Department of Investigations. For example, the Department can request assistance from any public agency and, in particular, from the police force, the revenue agency and other control agencies. Assistance includes obtaining public records and other sources of information that may help proceedings. The Department can also subpoena public and private parties to give testimony.

In the course of a given investigation or at the request of an interested party, the Department can protect the identity of the parties that declare or provide information.

The Department of Investigations, under the direction of the Public Administration Prosecutor, has the power to select cases for investigation, according to their economic, institutional and social impact. At the end of an investigation, the Director proposes to the Public Administration Prosecutor a course of action: administrative enquiries, sanctions or bringing criminal suit. If the Prosecutor approves, the results of an investigation can be made public. The Department of Investigations is compiling an index to evaluate the caseload of the area.

### **Cases Received per Day between 27 December and 23 March.**

December	January	February	March		
1.0	4.5	5.7	5.8	5.1	Average
0.0	6.7	18.2	8.4	11.5	Variance
3	100	120	99	322	Total

As the variation is not great, it is fair to say that the office has been receiving, on average, five cases per day.

The cases are classified, according to their status, as:

- **Dismissed or archived.** Those that lack any economic, institutional or social significance but placed on hold in case new evidence is produced.
- **Under preliminary enquiry.** Cases with prima facie some economic, institutional or social significance but requiring additional evidence to determine the feasibility of further action.

- **Criminal action promoted with follow-up.** Cases that come before the courts without charges being laid, but with follow-up.
- **Criminal action promoted without follow-up.** Cases that come before the courts without charges being laid and without follow-up.
- **Administrative action with follow-up.** Cases presented before the highest-ranking authority of the agency in which the public official under investigation is employed, with a view to imposing administrative sanctions. OAC in charge of follow-up.
- **Administrative action without follow-up.** Same as above, but without follow-up.
- **Under preliminary investigation.** The available evidence and other elements are verified in advance of a full investigation.
- **Under full investigation.** Cases in which investigators are collecting evidence with a view to criminal prosecution.
- **Criminal charges.** The OAC presents a case before the criminal courts and tries to acquire the position of co-claimant along with the district prosecutor.
- **Cases transferred.** Cases outside the jurisdiction of the OAC, another agency having accepted the case.
- **Cases concluded.** Cases falling within OAC jurisdiction and terminated after investigations or substantive proceedings, such as referring claims to the criminal courts.
- **Improper jurisdiction.** The case presented is not within OAC jurisdiction.

The low percentage of cases either transferred or not falling within OAC jurisdiction shows that the public is relatively aware of the mission and function of the OAC. The figures also show that most cases either have a criminal ingredient or no substance at all. The number of cases that might have been transformed into administrative enquiries is insignificant.

### Status of cases received at 23 March

	Quantity	Percentage
Dismissed or archived	76	24
Under preliminary enquiry	13	4
Criminal action promoted with follow-up	1	0
Criminal action promoted without follow-up	3	1
Administrative action with follow-up	0	0
Administrative action without follow-up	1	0
Under preliminary investigation	136	42
Under full investigation	55	17
Criminal charges	3	1
Cases transferred	9	3
Cases concluded	9	3
Improper jurisdiction	17	5
Total	323	100

The number of dismissed cases points to the decision of the OAC not to remain involved in unpromising investigations. At the same time, a large percentage of the cases are under either preliminary or full investigation (59 per cent). In cases under full investigation, the OAC will not necessarily present itself as co-claimant. The three cases brought to court so far have been partly challenged by the presiding judges. In one case, they did not readily accept the jurisdiction of the OAC. In the other two, the request of the OAC was questioned in terms of substantive criminal law. Definitions are pending the response of the appeal courts.

In the meantime, the OAC is committed to designing new software to classify case data and statistics. The primary objective of the software is to provide strategic information on case files, from opening to resolution one way or another.

It should be noted that cases are received through many different channels, such as telephone and fax, and especially Internet and e-mail. Many cases are set in motion by someone reading the newspaper. On other occasions, public officials and members of opposition parties have brought their claims to the OAC.

One of the advantages foreseen of this software is that it will help categorize cases, for example in terms of economic impact and areas of the State involved. The OAC will also discover which corrupt practices are most widespread, which strategies have been most effective and which strategies have not produced the expected results. Fundamentally, it will provide the Department of Transparency Policies with the information required to achieve its ultimate goal: identification of where preventive measures are most needed.

### ***THE DEPARTMENT OF TRANSPARENCY POLICIES***

The Department of Transparency Policies is responsible for elaborating public policies to prevent corruption. Its main functions are to:

- Elaborate and suggest indicators of corruption that are of institutional, social and economic significance;
- Analyse cases under investigation to determine their structural causes and create prevention policies and actions;
- Recommend and assist national agencies in the implementation of preventive policies or programmes;
- Propose and assist in the implementation of the legal and administrative reforms necessary to improve transparency in public administration; and
- Manage the system of financial disclosure statements of public officials and determine the potential interest conflicts in their actions.

The Department of Transparency Policies is charged with designing and helping to implement preventive strategies within the public administration. Most of the strategies are related to improving access to information and developing techniques to ensure transparency in policy-making procedures.

At the same time, the Department of Transparency Policies is carrying out the first study on transparency and governmental performance from within the public administration. The study takes into account three basic operations of the public sector: human resources administration, budget administration, including procurement, and legal administration.

The aim of the study is not to identify the number of bribes but rather the factors that encourage corruption, whether they be institutional, legal or economic. To acquire such a large body of information, a detailed sector-by-sector analysis is now under way. Eventually, the survey will allow:

- Identification of the practices that promote corruption;
- Recognition of the way in which the actors involved perceive and conceive corruption; and
- Development of an instrument to identify critical areas within the public administration.

The Department of Transparency Policies also actively provides assistance to public agencies to improve performance and accountability. An example of that strategy is the technical assistance agreement between the OAC and the Programme de Asistencia Médica Integral (PAMI), the largest provider of health services in Argentina, with an annual budget of over 20 billion dollars. In the past, PAMI has been identified with systemic corruption and looting. In fact, the former President and most of the members of the Board of Directors have been already criminally accused by the Department of Investigations for racketeering, violations of fiduciary duties and other abuses.

Under the terms of the agreement with PAMI, the OAC is carrying out a series of actions to increase transparency in its procurement operations and to enhance access to information both for beneficiaries and the private sector alike.

Some of those actions include:

- Opening a website for PAMI, ([www.pami.org.ar](http://www.pami.org.ar)) where access to critical information is available and where claims can be filed by those wishing to protect their identity.
- Creating a Citizens' Charter for beneficiaries;
- Creating a system of rule-making, notice and comment for bidding documents;
- Publishing, via the Internet, over 140 bidding documents for contracting every major service provided by the agency; and
- Establishing a monitoring procedure for the performance of the services provided to customers, using Internet, 1-800 lines and other methods of information gathering.

The immediate result of such actions has been to create direct access to the information that the Agency previously handed out on a discretionary basis, particularly procurement documents related to health services. While enhancing transparency, the measures also allow for a better perception of the structural deficiencies of the agency. An internal team of experts is now designing the organizational changes required to avoid a repeat of past practices.



The Department of Transparency Policies is also responsible for the administration of the system of financial disclosure forms for public officials. The system allows for tracking of assets of public officials as well as cases of conflict of interest.

Recently, the office has ruled in some significant conflict of interest cases. For example, a Government minister who declared that he held a position on the board of a private corporation and acted as a consultant for a firm, was asked to resign from those positions and refrain from involving himself in any administrative proceedings involving his previous clients. Similar decisions were handed out in the case of three Secretaries of State.

The system of financial disclosure forms is under reform. The current system, based on paper support, is expensive and provides limited use of the data. There are over 30,000 documents "in the system" and it is estimated that one document costs US\$70 simply to produce, receive and classify; that does not include investigation of its contents. The system is currently being fully computerized, with cost per magnetic form at US\$ 6. Along with cost advantages, use of computers will allow information to be analysed and cross checked with other databases.

## **CASE STUDY #5**

### **JUDICIAL INTEGRITY AND CAPACITY (7)**

In the firm belief that a process to develop the concept of judicial accountability should be led by the judges themselves and not by politicians or public officials, the United Nations Centre for International Crime Prevention (CICP), in collaboration with Transparency International (TI), invited a group of chief justices and high-level judges to a preparatory meeting at Vienna in April 2000 to consider formulating a programme to strengthen judicial integrity.

Recent attempts by some development organizations to reform judiciaries in Latin America and Eastern Europe had not been particularly successful, mainly because they failed to recognize the existence of different legal traditions in the world. It was decided, therefore, to focus on the common law system at the pilot stage.

The group was formed exclusively of common law chief justices or senior judges of seven Asian and African countries: Bangladesh, the Indian state of Karnataka, Nepal, Nigeria, South Africa, Tanzania and Uganda.

#### ***OBJECTIVE OF THE PROGRAMME***

The objective of the programme was to launch at the international level an "action-learning" process, the approach generally used by CICP and TI, for chief justices. The process would assist chief justices in identifying possible anti-corruption policies and measures for adoption in their own jurisdictions and test the measures at their own national level. In subsequent international meetings to refine the approach, they would share their experiences and subsequently trigger the adoption of measures by their colleagues at home.

Under the action-learning process, CICP and TI do not claim to "know all the answers"; nor do they come to countries seeking to impose off-the-shelf solutions or approach a project with preconceived notions. Instead, they work with relevant institutions and stakeholders in each country to develop and implement appropriate methodologies, submitting any conclusions, on a continuing basis, to scrutiny by specialist groups. The entire project is based on partnership and shared learning.

The objectives of the first meeting were to:

- Raise awareness regarding:
- The negative impact of corruption,
- The level of corruption in the judiciary,
- The effectiveness and sustainability of an anti-corruption strategy consistent with the principles of the rule of law, and;
- The role of the judiciary against corruption.
- Formulate the concept of judicial accountability and devise methodology to introduce that concept without compromising the principle of judicial independence; and

- Design approaches that will be of practical effect, have the potential to impact positively on the standard of judicial conduct and raise the level of public confidence in the rule of law.

The following issues were discussed by the group:

- Public perception of the judicial system.
- Indicators of corruption in the judicial system;
- Causes of corruption in the judicial system;
- Developing a concept of judicial accountability;
- Remedial action; and
- Designing a process to develop plans of action at the national level.

### ***THE NEED TO INTRODUCE AN EVIDENCE-BASED APPROACH***

Chief Justices concluded that judicial corruption or the perception of judicial corruption is fuelled in two ways:

- By first-hand experience of judges or court staff asking for bribes; and
- By a lack of professional skills and coherent organization, and a way of administering justice that can be interpreted as being caused by corrupt behaviour.

Indicators of the latter include delays in executing court orders; the unjustified issuing of summons and granting of bail; prisoners not being brought to court; lack of public access to records of court proceedings; files disappearing; unusual variations in sentencing; delays in delivering and giving reasons for judgment; high acquittal rates; apparent conflicts of interest; prejudices for/against a party, witness, or lawyer, whether individually or as a member of an ethnic, religious, social, gender or sexual group; immediate family members of a judge regularly appearing in court; prolonged service in a particular judicial station; high rates of decisions in favour of the executive; appointments perceived as resulting from political patronage; preferential/hostile treatment by the executive or legislature; frequent socializing with particular members of the legal profession, the executive or the legislature, with litigants or potential litigants; and, post-retirement placements.

Chief justices agreed, however, that current knowledge of judicial corruption was inadequate and could not be used as a basis for remedial action. All agreed on the need for more evidence about types, causes, levels and impact of corruption. Even in those countries where surveys had been conducted, the results were not sufficiently specific. Generic questions about the levels of corruption in the courts, for example, do not reveal the precise location of the corruption and will therefore be quickly rejected by the judiciary as a basis for formulating adequate counter measures and policies.

Chief Justices agreed on the strong need to elaborate a detailed survey instrument to allow identification not only of the levels of corruption but also its types, causes and locations. They were convinced that the perception of judicial corruption was, to a large extent, caused by malpractice within other sectors of the legal establishment. For example, experiences from some countries show

that court staff or lawyers, in order to enrich themselves, pretend that the judge has asked for a bribe. Surveys in the past did not sufficiently differentiate between the various branches and levels of the court system. The approach inevitably led to a highly distorted picture of judicial corruption as most contact with the judiciary was restricted to the lower courts. Moreover, the survey instruments used to date probably did not take into account that the perception of corruption may be strongly influenced by the outcome of a court case. Generally speaking, the losing party is far more likely to blame its defeat on the other party "bribing the judge", particularly when its lawyer tries to cover up his own shortcomings.

Furthermore, service delivery surveys usually rely exclusively on the perceptions or experiences of court users rather than using insider information, which could easily be obtained by interviewing prosecutors, investigative judges and police officers. Existing instruments also seldom seek to further refine the survey information by referring it for discussion by focus groups and/ or by conducting case studies on institutions that seem particularly susceptible to corruption.

### ***SET OF PRECONDITIONS NECESSARY TO CURB CORRUPTION IN THE JUDICIARY***

The judicial group agreed that a set of preconditions must be put into place before the concrete measures to fight judicial corruption can be instituted. Most preconditions are directly related to the respect or esteem in which the judicial profession is held.

#### **Fair remuneration and conditions**

The low salaries paid in many countries to judicial officers and court staff must be improved. Without fair remuneration there is not much hope of combating corruption. Fair remuneration would also allow practices, such as the traditional system of paying "tips" to court staff on the filing of documents, to be abolished. Adequate salaries will not, however, guarantee a corruption-free judiciary. Countless examples of public services all over the world prove that, regardless of adequate remuneration, corruption remains a problem. An adequate salary is a necessity but is not, in itself, a guarantee of official probity .

An excessive workload will also hinder the ability of judges to ensure the quality of their work. Eventually, it will make the job less rewarding and make some more susceptible to corruption.

While improving service conditions may improve living standards, examples from some developing countries suggest that the State often tends to provide a large part of the remuneration to judges in the form of extras, such as housing, car and staff, thus advocating a standard of living that exceeds what judges would be to afford on their salary. It perhaps also contributes to the temptation of some to adopt corrupt practices, if only to accumulate sufficient resources to maintain their social status and lifestyle during retirement.

To formulate a realistic, focused, and effective plan of action to prevent and contain judicial corruption, the judicial group recommended the development of a coherent survey instrument to assess the types, levels, locations and remedies of judicial corruption. The group also recommended establishment of a mechanism

to assemble and record the data and, in an appropriate format, to make them widely available for research, analysis and response.

### **Transparent procedures for judicial appointments**

Transparent procedures for judicial appointments were considered necessary by the judicial group to combat the actuality or perception of corruption in that area, including nepotism or politicization. Moreover, candidates for appointment should submit, in an appropriate way, to an examination regarding any possible allegations or suspicions of past involvement in corruption.

Furthermore, the group concluded that a transparent and publicly known, and possibly random, procedure for the assignment of cases to particular judicial officers was needed to combat the actuality or perception of litigant control over the decision-maker. Internal procedures should be adopted within court systems to ensure that assignment of judges to different districts is changed on a regular basis with due regard to the gender, race, tribe, religion, minority involvement and other features of the judicial office-holder. Such rotation should be adopted to avoid the appearance of partiality.

### **Adoption and monitoring of judicial code of conduct**

To ensure correct behaviour on the part of judicial officers, the judicial group urged adoption of judicial codes of conduct. Judges must be instructed in the provisions established by such codes and the public must be informed about their existence, their content and how to complain in case of violation. Newly appointed judicial officers must formally subscribe to a judicial code of conduct and agree, if a breach is proved, to resign from judicial or related office. Representatives from the national judicial association, bar association, prosecutor's office, Ministry of Justice, Parliament and civil society should be involved in the setting of standards for judicial integrity, helping rule on best practices and reporting on the handling of complaints against allegedly errant judicial officers and court staff.

### **Declaration of assets**

Rigorous obligations should be adopted to require all judicial officers publicly to declare their assets and those of their parents, spouse, children and other close family members. Such declarations should be publicly available and regularly updated. They should be inspected after appointment and monitored from time to time by an independent and respected official.

As another pressing field of intervention, the group identified widespread delays causing opportunities for corrupt practices and the perception of corruption. Standards for timely delivery that are practically possible must therefore be developed and made known publicly. It should be noted, however, that reducing court delays has proved extremely difficult even in countries where the mobilization of human and financial resources are far less problematic than in the developing world. For example, the delay-reduction programme of the United States, even though generally seen as a success, did not manage to significantly reduce court delays. It did, however, increase the number of cases concluded by a court decision, with more litigants being willing to sit through lengthy court proceedings if they saw a "light at the end of the tunnel". .

### **Computerization of court files**

According to the judicial group, practical measures such as computerization of court files, should be adopted. Experiences from the state of Karnataka in India suggest that this is of immense help in reducing the work load of the single judge and speeds up the administration of justice. It also helps avoid the reality or appearance that court files are "lost" or require "fees" for their retrieval or substitution.

### **Establishment and monitoring of sentencing guidelines**

The group also supported the notion that sentencing guidelines could significantly help in identifying clearly criminal sentences and other decisions that are so exceptional as to give rise to reasonable suspicions of partiality.

### **Use of alternative dispute resolution**

It was felt that making available systems for alternative dispute resolution would give the litigants the possibility to avoid, where they exist, actual or suspected corruption in the judicial branch. A study carried out for the World Bank on the development of corruption in two South American judiciaries, in Chile and in Ecuador, seems to confirm this assumption .

### **Importance of peer pressure and a public complaints mechanism**

The group also noted the importance of proper peer pressure on judicial officers. Such pressure should be enhanced to help maintain high standards of probity within the judiciary.

The establishment of an independent, credible and responsive complaint mechanism was seen as an essential step in efforts against judicial corruption. The responsible entity should be staffed with serving and past judges and be given the mandate to receive, investigate and determine any complaints of corruption involving judicial officers and court staff. The entity, where appropriate, should be included in a body with a more general responsibility for judicial appointments, judicial education and action or recommendation for removal from office.

In the event of proof of the involvement in corruption in the line of duty of a member of the legal profession, whether a judicial officer or court staff, appropriate investigative means should be in place and, if the allegation is proved, a mechanism for disbarment/dismissal of the person concerned.

Procedures that are put in place for the investigation of allegations of judicial corruption should be designed after due consideration of the viewpoint of judicial officers, court staff, the legal profession, users of the legal system and the public. Appropriate provisions for due process in the case of a judicial officer under investigation should be established, bearing in mind their vulnerability to false and malicious allegations of corruption by disappointed litigants and others.

### **No immunity from obedience to general law**

It should be acknowledged that judges, like other citizens, are subject to the criminal law. They have, and should have, no immunity from obedience to the general law. Where reasonable cause exists to warrant investigation by police

and other public bodies of suspected criminal offences on the part of judicial officers and court staff, such investigations should take their ordinary course, according to law.

#### **Need for an independent inspectorate**

An inspectorate or equivalent independent guardian should be established to visit all judicial districts regularly in order to inspect, and report upon, any systems or procedures that are observed that may endanger the actuality or appearance of probity and report upon complaints of corruption or the perception of corruption in the judiciary.

#### **Important role to be played by the bar association and law society**

The role and functions of bar associations and law societies in anti-corruption efforts in the judiciary should be acknowledged. Such bodies have an obligation to report to the appropriate authorities reasonable instances of suspected corruption. They also have the obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers. Such bodies also have a duty to institute effective means to discipline members of the legal profession who are alleged to have been engaged in corruption.

#### **Need to give litigants timely information regarding status of the case**

To assure the transparency of court proceedings and judicial decisions, systems of direct access should be implemented to permit litigants to receive advice directly from court officials concerning the status of their cases awaiting hearing.

#### **Need to conduct workshops addressing integrity and ethics**

Workshops and seminars for the judiciary should be conducted to consider ethical issues and heighten vigilance by the judiciary against all forms of corruption. A handbook for judges, if not already in existence, should be instituted. The book should contain practical information on all topics relevant to enhancing the integrity of the judiciary.

Judicial officers, in their initial education and thereafter, should be regularly assisted with instruction in the area of judicial bias (actual and apparent) and judicial obligations to disqualify oneself for actual or perceived partiality. To achieve accountability civil society and the judiciary need to recognize that the judiciary operates within the society it serves. Thus, every available means of strengthening civil society as a means of reinforcing the integrity of the judiciary should be undertaken. Moreover, society must be vigilant to ensure such integrity is maintained. To assure the monitoring of judicial performance, the work of the judiciary and the need for maintaining high standards of integrity should be explained to the public. The adoption of initiatives such as a National Law Day or Law Week should be considered.

#### **The important role of the media**

It was agreed that the role of the independent media as a vigilant and informed guardian against corruptibility in the judiciary should be recognized, enhanced and strengthened by the support of the judiciary itself. Courts should be afforded the means to appoint media liaison officers to explain the importance of integrity in judicial institutions, the procedures available for complaint and investigation of

corruption, and the outcome of any such investigations. Such officers should help to remove the causes of misunderstanding of the judicial function.



## **CASE STUDY #6**

### **SINGAPORE: THE TEN COMMANDMENTS APPROACH**

During the last decades, Singapore has made huge efforts to eradicate corruption in all the branches of its public administration. Today, according to various sources (TI Corruption Perception Index, Asian Executives Poll), it is ranked as the least corrupt country within the entire Asian-Pacific Region.

With respect to the judiciary, Singapore has adopted a "Ten Commandment Approach" which is reproduced here:

Commandment One:

**Transparency in the selection of judges**

Commandment Two:

**Adequate remuneration for judges  
and court staff**

Commandment Three:

**An independent yet accountable judiciary**

Commandment Four:

**A coherent system of case management**

Commandment Five:

**Performance indicators for the judiciary and the judges**

Commandment Six:

**Consistent and objective criteria in the administration of justice**

Commandment Seven:

**Clear ethical markers and guidelines for the judges**

Commandment Eight:

**A common vision for the judiciary and leading by example**

Commandment Nine:

**Full transparency in the justice process at all times**

Commandment Ten:

**Learn from lessons of forward-looking institutions.**

## **CASE STUDY #7**

### **NIGERIA: DEVELOPMENT OF A CODE OF CONDUCT**

In the case study below, Jeremy Pope of Transparency International describes how he, with the direct support of the newly elected President of Nigeria, Olusegun Obasanjo, involved all the key stakeholders in developing, from scratch, a code of conduct for Government ministers.

#### ***BACKGROUND***

As he assumed office, the newly elected President of Nigeria, Olusegun Obasanjo, faced a daunting task. For a generation, his country had been plundered by a series of military administrations. During that time, the civil service had become demoralized and dysfunctional. There were few permanent secretaries who had ever written a cabinet memorandum as the Cabinet had not met as such in their professional careers. Moreover, few even knew how a law was enacted as the military had "governed" by decree. While there were some outstanding individuals of probity and dedication to public service, there had really been no democratic "government" at all in the accepted sense of the word: no unity of purpose, no teamwork, no sense of cohesion and certainly little evidence of any commitment to promoting the public interest. There had simply been a succession of appointees who had seen high political office as nothing more and nothing less, than a highway to self-enrichment and the bestowing of favour on friends and relations.

It was in such an unpromising environment that the newly elected President vowed to return his country to democratic rule.

Because of the tradition of self-enrichment, it was widely believed that many of those who had sought election to the national assembly and aspired to serve as ministers were captives of the old ethos; while they might be willing to articulate the new ethos they might not have much belief in it. Furthermore, it was understood that many had borrowed heavily to finance their various campaigns and were effectively in hock to vested interests who were expecting a handsome return on their "investments". Others were the beneficiaries of corrupt practices under previous regimes and were seeking political power in order to protect what they had acquired illicitly.

#### ***CHALLENGES***

It was essential to overcome distorted political values, and make the new Cabinet internalize the "Obasanjo ethic". The challenge was to start a process that, if successful, would completely revolutionize the understanding, deeply entrenched in the political life of the nation, that ministerial office was a "licence" to dispense favours to family and friends without regard to the public interest or the ability of the nation to bear the costs involved. Clearly, whatever else might be involved, the start had to be made at the top.

## **PROCESS**

For that reason, as soon as the senate was selected and confirmed, and before portfolios had been allocated and the new ministers were formally sworn in, the newly elected President convened a "values retreat" for his incoming team. The objective was to create an atmosphere in which the new ministers could reflect on the tasks that lay before them and how they might achieve sustainable and meaningful change to the culture of corruption that gripped most, if not all, of their departments and agencies. Just what this would entail was unknown. The retreat would last for two days, and the President was venturing into uncharted waters.

As the outcomes desired included a code of conduct for ministers and senior advisers, it was decided to draft a code of conduct for the retreat before it was held. As it was vital for the document to be a product of the ministers themselves, and not simply imposed by the President, the "draft" was transformed into a "questionnaire" that asked ministers and advisers how strongly they felt about each proposition contained in the draft. The questionnaire was distributed as the retreat began and it was completed straight away.

As expected, the ministers, in their answers to the questions, almost universally endorsed as the propositions contained in the "draft code", and as a result, when the "draft code", amended somewhat in the light of the responses, was placed before them, it was already a familiar document and chimed well with the opinions they had already expressed.

Before the "draft" was reprocessed in this way, however, the ministerial team and their advisers had to address the "values" issue, and it was uncertain how this could be done. In the event, the options of a rousing "anti-corruption" address from the President and/or an address by someone else, whether Nigerian or an external resource person, were both rejected as simply stating the obvious: that ministers should not act corruptly but discharge public duties in a manner consistent with public trust.

Instead, the strategy was to divide the team into small groups and invite them to answer a series of short but challenging questions in the expectation that they would in effect lecture themselves even more effectively than any platform speaker could. The questions were:

- What particular action by a particular minister in the past did they strongly approve of?
- Why did they strongly approve of it?
- What particular action by a particular minister in the past did they strongly disapprove of?
- Why did they strongly disapprove of it?
- How in a sentence would each of them like to be remembered for their period in office as a minister/senior adviser?

Each group had a highly animated discussion, and it emerged from the conclusions that the most admired ministers were those who were:

- Modest, honest and saw themselves as servants of the people of Nigeria;
- Committed to their portfolios, minimized waste and made a positive difference to the lives of the people that their ministries served;
- Punctual in their own timekeeping and did not waste the time of others by keeping them waiting;
- Respectful of the law and, in particular, did not flout their official positions by, for example, ignoring traffic lights; and
- Respectful of other people in public places and did not, for example, jump the queue at the airport.

## **RESULTS**

Against the background of such conclusions, the groups reassembled to consider the draft code of conduct. It was examined in a plenary session, and the parameters of each paragraph were explored, discussed and revised until universal agreement was reached on the text.

At that point, President Obasanjo, who had deliberately remained absent from the discussions so as not to inhibit the freedom of discussion, rejoined the meeting. He welcomed the adoption of the code and suggested that all of them, including him, should personally sign it. That was done, and they then signed a second copy, that was handed to the President to retain.

Finally, the President indicated his satisfaction with the outcome of the retreat and elicited from the collective meeting the response that those who failed to uphold the spirit and the letter of the code would have let the whole ministerial team down and would thus be required to resign. To facilitate that process, should it prove necessary, the ministers would, prior to being sworn in, sign an undated letter of resignation that the President would hold in safe custody.

The full text of the new code was then released to the media, and it was carried prominently throughout the country, with the more serious newspapers reproducing the text in its entirety.

That was the beginning of the process. The code had been discussed, internalized and adopted by the ministers as their own document. Their individual commitment to its provisions had been personally expressed in writing. The code had been widely published and, by implication, the media and the wider general public had been invited to measure the performance of each and every minister against its provisions.

To enable ministers and senior advisers to seek guidance on any particular dilemmas that they, individually, might face from time to time, the code included provision for the appointment by the President of an independent source of advice, namely a person of high public standing and reputation. Those who sought his/her advice were open in disclosing all relevant facts and, by acting on the advice they received, would have a complete answer to any subsequent allegation of misconduct.

That was the beginning of what was planned to be a sustained and systematic assault on a culture of political and administrative corruption. Starting at the top, the plan was to drive the values down through the management systems, with the leaders secure in the possession of the necessary moral authority that would enable them both to provide leadership and to take disciplinary decisions where these were called for.

The exercise did not end there. Plans have now been advanced for workshops along similar lines, including case studies, to be conducted throughout the highest echelons of the public service. Thereafter, the ethical approach will be institutionalized downwards and throughout the public service.

On a general note, the biggest risk of any code of conduct is that:

- It is not accepted or even known by the stakeholders who are supposed to be governed by it; or
- It might be known to the stakeholders but is not monitored in an adequate manner.
- There are no risks, costs and/or uncertainties associated with breaking the code of conduct.

The approach described in the Nigeria case study tries to address the concerns by:

- Involving the key players in the development of the code of conduct;
- Disseminating the code of conduct to the public to create awareness about what they can expect, and thereby provide some checks and balances; and involving a strong President in the process to make the code of conduct more serious, almost as if it were a social contract.

## **CASE STUDY #8**

### **CODES OF CONDUCT USED BY DIFFERENT TYPES OF INSTITUTION**

The key areas described apply to international and intergovernmental organizations:

- The professions and NGOs;
- The private sector;
- Public officials, including ministers and parliamentarians; and
- Judicial officers.

#### ***A. CODES OF CONDUCT: INTERNATIONAL AND INTERGOVERNMENTAL ORGANIZATIONS***

##### **A1. European Bank for Reconstruction and Development, (EBRD) Code of Conduct 1991**

The Code was adopted by the Board of Governors of the EBRD on 15 April 1991, and is applicable to all officials and staff members of the Bank as well as to experts and consultants where it is incorporated into their contracts. The Code addresses issues such as confidentiality, business affiliations, gifts and honours, political activities, financial interests, investments, trading activities, and disclosure statements.

##### **A2. European Union, code of conduct for the Commissioners**

The treaty article on the European Commission makes special reference to the complete independence enjoyed by the members of the Commission, who are required to discharge their duties in the general interest of the Community. In the performance of their duties, they must neither seek nor take instructions from any Government or other body. The general interest also requires that, in their official and private lives, Commissioners should behave in a manner that is in keeping with the dignity of their office. The object of the code is to set limits to the outside activities and interests of Commissioners that could jeopardize their independence. It also responds to the need to codify certain provisions relating to the performance of their duties. The issues dealt with in the Code include the outside activities of the Commissioners; their financial interests and assets; activities of spouses; collective responsibility and confidentiality; rules for missions; rules governing receptions and professional representations; acceptance of gifts and decorations; and the composition of their offices

#### ***B. CODES OF CONDUCT: PRIVATE SECTOR***

Corporate codes of conduct can differ according to the organization they cover. The following sections summarize codes of conduct developed by Governments, industrial groups and non-governmental organizations.

**B1. Codes of conduct for electoral staff**

Such a code applies to all connected with an election, ranging from couriers, voter educators, mail sorters, material despatchers to senior electoral managers. Election staff enjoy a position of trust, and are expected to adhere to all relevant rules and regulations to ensure the integrity of the election process.

<http://www.aceproject.org/main/english/po/poe03/default.htm>

**B2. Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles**

The Code identifies desirable transparency practices for central banks in conducting monetary policy and for central banks and other financial agencies in conducting financial policies.

<http://www.imf.org/external/np/mae/mft/code/>

**B3. European Bank for Reconstruction and Development, Business Standards and Sound Business Practices: A Set of Guidelines**

The European Bank for Reconstruction and Development has formulated a set of guidelines that bona fide lenders and investors expect companies to follow. The decision to set guidelines was taken in recognition that the success of an organization depends not only on sound strategy, competent management, good assets and a promising market, but also on maintaining a sound relationship with customers, shareholders, lenders, employees, suppliers, the community in which it operates, and Government authorities.

**B4. FMC Corporation, Code of Ethics and Business Conduct Guidelines**

Global chemical company, FMC Corporation, has established a Code of Ethics outlining the principles that should guide all FMC employees in their daily work. The Business Conduct Guidelines reflect the policy of FMC Corporation, nationally and internationally, with respect to political contributions, payments to Government personnel, commission payments, proper accounting procedures and commercial bribery.

**B5. International Chamber of Commerce, Rules of Conduct to Combat Extortion and Bribery, 1996**

The International Chamber of Commerce (ICC) is a global business organization with 63 national committees and over 7,000 member companies and associations in more than 130 countries. It seeks to promote international trade and investments, as well as rules of conduct for cross-border business. The ICC Rules of Conduct are intended as a method of self-regulation by international business. They are of a general nature and, although they have no direct legal force, constitute what is considered to be sound commercial practice in the matters to which they relate. The Standing Committee on Extortion and Bribery, however, established by the ICC seeks, inter alia, to ensure that enterprises and business organizations endorse the Rules of Conduct.

**B6. Lobbyists' Code of Conduct/ Canadian Government, 2 June 1997**

The purpose of this Lobbyists' Code of Conduct is to reassure the Canadian public that lobbying is being carried out ethically and to the highest standards in

order to conserve and enhance public trust in the integrity, objectivity and impartiality of Government decision making.

<http://www.lobbyistdirectory.com/2Ethxnews/general.htm>

**B7. The Defense Industry Initiative (DII), a Code of Conduct for Employees in Private Companies**

DII is a consortium of U.S. defence industry contractors that subscribes to a set of principles for achieving high standards of business ethics and conduct. It includes a summary of major applicable laws and regulations, as well as a statement of more general corporate aspired objectives. After identifying the fundamental principles, the Code addresses specific subjects such as business courtesies, kickbacks, conflicts of interest, confidential information, use of company resources, and the importance of keeping complete and accurate books.

<http://www.dii.org>

**B8. OECD Updated Guidelines on Conduct for Multinationals**

In June 2000, the Organization for Economic Cooperation and Development (OECD) agreed on a revised set of guidelines on responsible business conduct for multinational enterprises. The guidelines, which were adopted by the Governments of 33 countries, cover a variety of areas, including employment and industrial relations.

<http://www.eurofound.ie/2000/09/features/eu0009270f.html>

**C. CODES OF CONDUCT: PROFESSIONS AND NGOS**

**C1. United Nations, Principles of Medical Ethics**

The Principles are relevant to the role of health personnel, particularly physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982. The 6 Principles were adopted by the UN General Assembly by resolution 37/194 of 18 December 1982.

**C2. United Nations, Basic Principles on the Role of Lawyers, 1990**

The Principles were adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, and "welcomed" by the UN General Assembly in its resolution 45/121 of 14 December 1990. The United Nations invited Governments to be guided by the Principles in the formulation of appropriate legislation and policy directives, and to make efforts to implement them in accordance with the economic, social, legal, cultural and political circumstances of each country. In its resolution 45/166 of 18 December 1990, the UN General Assembly invited Governments "to respect them and to take them into account within the framework of their national legislation and practice".

**C3. Charter for a Free Press, adopted by the Voices of Freedom Conference, London, 1987**

The statement of 10 principles was approved by journalists from 34 countries at the Voices of Freedom World Conference on Censorship Problems held in



London in January 1987. The Conference was held under the auspices of the World Press Freedom Publishers, International Press Institute, Inter-American Press Association, North American Broadcasters Association, and the International Federation of the Periodical Press.

**C4. International Bar Association, Standards for the Independence of the Legal Profession, 1990**

The statement of standards was adopted by the International Bar Association in 1990 and is designed to assist in promoting and ensuring the proper role of lawyers. It seeks to complement the UN Basic Principles on the Role of Lawyers and to provide more detail. While the UN principles are addressed to Governments, the IBA Standards seeks to address the question of independence of the profession from the viewpoint of lawyers.

**C5. Code of Professional Conduct of the Uganda Journalists' Association**

The Uganda Journalists' Association promulgated its Code of Conduct as a basis for adjudication of disputes between the press and the public in Uganda, and for disciplinary action when the conduct of a journalist falls below the required minimum standards enshrined in the Code.

<http://transparency.de/documents/source-book/c/cvK/k1.html>

**C6. Transparency International (TI): Code of Conduct**

TI promulgated a Code of Conduct containing principles of administration, provisions about gifts and conflict of interests, and the establishment of an Ethics Committee.

***D. CODES OF CONDUCT: PUBLIC OFFICIALS, INCLUDING MINISTERS AND PARLIAMENTARIANS***

**D1. UN Crime Prevention and Control Division at Vienna: International Code of Conduct for Public Officials.**

The Code provides for the loyalty, efficiency, effectiveness, impartiality and fairness of public officials. It also contains provisions about conflicts of interest and disqualification, disclosure of assets, acceptance of gifts, confidential information, political activity, reporting, disciplinary actions and implementation.

<http://www.uncjin.org:80/Documents/Corruption.pdf>

**D2. Law Reform Commission of Australia: Code of Conduct for all Office Holders**

The Code refers to principles, such as impartiality and honesty, and to conflicts of interest and misuse of power. It also includes provisions relating to members of parliament and their staffs, ministers and ministerial staff, public servants, members of the defence force, staff of the parliamentary departments, consultants, statutory office holders, members of tribunals, and the media.

**D3. Council of Europe: Recommendation No R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials**

The Committee, convinced that raising public awareness and promoting ethical values are valuable as means of preventing corruption, recommends the adoption of national codes of conduct for public officials based on the model code of conduct. This model Code contains, inter alia, general principles and provisions about reporting, conflict of interest, declaration of interests, gifts, misuse of official position, observance of the code and sanctions.

<http://cm.coe.int/reports/cmdocs/2000/2000cm60.htm>

[http://www.greco.coe.int/docs/rec10\(2000\)e.htm](http://www.greco.coe.int/docs/rec10(2000)e.htm)

**D4. Modern Local Government in Touch with the People: New Codes of Conduct for Councillors in England**

A new Model Code of Conduct for Councillors is being promoted under a new ethical framework, where a council embraces the new culture of openness and ready accountability. Elected councillors of local authorities in England are expected to behave according to the highest standards of personal conduct in the performance of their duties.

<http://www.local-regions.detr.gov.uk/lgwp/8.htm>

**D5. Practical Measures to Promote Integrity in Customs Administrations: A Code of Conduct**

By clearly articulating expectations, customs administrations can hold employees accountable for performance and take appropriate action when those standards are not met. The Code refers to maintenance of integrity, confidentiality of information, conflict of interest, appearance and conduct.

[http://www.transparency.de/iacc/8th\\_iacc/papers/crotty.html](http://www.transparency.de/iacc/8th_iacc/papers/crotty.html)

**D6. TI, German Chapter: Code of Conduct for Legislators, Ministers and Public Officials**

Three different codes of conduct relating to the duties of legislators, ministers and public officials are included. The Codes contain provisions about the use of influence, Government property and confidential information, acceptance of gifts, hospitality and sponsored travel.

<http://www.transparency.de/>

**D7. Africa Leadership Forum, Draft Code of Conduct for African Parliaments, 1998**

The draft Code of Conduct was adopted at the African Leadership Conference on Democratization of African Parliaments and Political Parties, held in Gaborone, Botswana in July 1998, and attended by representatives from parliaments across the African continent. It was offered to African parliaments to assist the process of developing national codes of conduct to guide the various democratic institutions in the years ahead.

**D8. Australia, Parliamentary and Electorate Travel: Recommendations for reform, Independent Commission Against Corruption (ICAC), New South Wales, 1999**

The second report of ICAC on the subject of parliamentary entitlements analyses the use by members of parliament of their entitlements and allowances and of the administrative systems operating within the New South Wales Parliament, and makes recommendations for change. The first report, released in April 1998, examined the conduct of seven members of parliament regarding the use of travel entitlements.

**D9. Organisation for Economic Cooperation and Development (OECD), Principles for Managing Ethics in the Public Service, 1998**

On 23 April 1998, the Council of the OECD adopted the Principles and recommended action by Member Countries to ensure well functioning institutions and systems to promote ethical conduct in the public service.

**D10. South Africa: Register of Member' Interests, Parliament of the Republic of South Africa, 1999**

The elected leaders of South Africa are required to disclose shares and financial interests, paid employment outside parliament, directorships and partnerships, consultancies and retainerships, sponsorships, gifts and hospitality, benefits, travel of certain categories, land and property, and pensions.

**D11. South Africa, Code of Conduct for Persons in Positions of Responsibility, Moral Summit, 1998**

The Code of Conduct was adopted and signed by all the participants at a "moral summit" convened by President Nelson Mandela in October 1998 to discuss the "moral crisis" of South African political and social life. The participants included representatives of all major political parties and religious leaders.

**D12. South African Police Service Code of Conduct**

The introduction of the Code of Conduct is probably the best known example of an attempt to improve professional conduct in the police service. Every employee of the service is requested to endorse this Code of Conduct, sign it and strive to live by it. It focuses particularly on abuse of power and State assets, corruption and discrimination.

[http://www.saps.co.za/17\\_policy/priority/code.htm](http://www.saps.co.za/17_policy/priority/code.htm)

**D13. United Kingdom, The Civil Service Code, 1996**

The Civil Service Code sets out the constitutional framework within which all civil servants work and the values they are expected to uphold. It is modelled on a draft originally put forward by the House of Commons Treasury and Civil Service Select Committee. It came into force on 1 January 1996 and forms part of the terms and conditions of employment of every civil servant.

**D14. United Nations, International Code of conduct for Public Officials, 96**

The Code, contained in Resolution 51/59: Action against Corruption, was adopted by the UN General Assembly on 12 December 1996, and was recommended to Member States as a tool to guide their efforts against corruption. The Code enunciates three general principles, then focuses on

conflict of interest, disclosure of assets, acceptance of gifts or other favours, confidential information, and political activity.

#### ***E. CODES OF CONDUCT: JUDICIAL OFFICERS***

##### **E1. Amendments to the Rules of Court: Canons of Judicial Conduct for the Commonwealth of Virginia**

The Canons are designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the Judicial Enquiry and Review Commission.

[http://www.courts.state.va.us/jirc/canons\\_112398.html#canon1](http://www.courts.state.va.us/jirc/canons_112398.html#canon1)

##### **E2. Model Code of Judicial Conduct**

The Model Code of Conduct was adopted by the House of Delegates of the American Bar Association on 7 August 1990.

<http://www.abanet.org/cpr/le-rules.html>

##### **E3. Chief Justices from Africa and Asia Meeting to develop Judicial Code of conduct, India, February 2001 (see Case Study 13)**

According to the Chief Justices, a judicial code of conduct was necessary for all officers, including those newly appointed. It was felt that self-restraint and avoiding unnecessary social contact would preserve judicial independence and that a code of conduct would be useful in avoiding opportunities for corruption.

[http://www.undcp.org/adhoc/crime/corruption\\_judicprocd.pdf](http://www.undcp.org/adhoc/crime/corruption_judicprocd.pdf)

##### **E4. Canadian Judicial Council, Ethical Principles for Judges, 1998**

A working committee including four Chief Justices and an academic prepared the Statement of Ethical Principles for Judges for the Canadian Judicial Council. It was designed to represent a concise yet comprehensive set of principles addressing the many difficult ethical issues that confront judges as they work and live in their communities. It was also intended as a sound basis to promote a more complete understanding of the role of judges in society and the ethical dilemmas they often encounter.

## **CASE STUDY #9**

### **THE BANGALORE DRAFT: INTERNATIONAL PRINCIPLES FOR JUDICIAL CONDUCT (1)**

#### ***PREAMBLE***

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

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

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

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

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to

supplement and not to derogate from existing rules of law and conduct which bind the judge.

**Value 1:  
INDEPENDENCE**

*Principle:*

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

*Application:*

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

**Value 2:  
IMPARTIALITY**

*Principle:*

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

*Application:*

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
  - 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
  - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
  - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

**Value 3:  
INTEGRITY**

*Principle:*

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

*Application:*

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

**Value 4:  
PROPRIETY**

*Principle:*

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

*Application:*

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.



- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
- 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
  - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
  - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
  - 4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

**Value 5:  
EQUALITY**

*Principle:*

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

*Application:*

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

**Value 6:  
COMPETENCE AND DILIGENCE**

*Principle:*

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

*Application:*

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

### **IMPLEMENTATION**

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

### **DEFINITIONS**

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"*Court staff*" includes the personal staff of the judge including law clerks.

"*Judge*" means any person exercising judicial power, however designated.

"*Judge's family*" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"*Judge's spouse*" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

## **EXPLANATORY NOTE**

### **First meeting held in Vienna in April 2000**

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
- (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (f) The Idaho Code of Judicial Conduct 1976.
- (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (h) The Iowa Code of Judicial Conduct.
- (i) Code of Conduct for Judicial Officers of Kenya, July 1999.
- (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- (k) The Code of Conduct for Magistrates in Namibia.
- (l) Rules Governing Judicial Conduct, New York State, USA.
- (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.

- (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- (o) The Code of Judicial Conduct of the Philippines, September 1989.
- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- (z) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6<sup>th</sup> Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

### **Second meeting held in Bangalore in February 2001**

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry,

with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

### **Round-Table Meeting of Chief Justices from the civil law system**

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA).

## **CASE STUDY #10**

### **UN CODE OF CONDUCT FOR PUBLIC SERVANTS**

#### ***BACKGROUND***

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

#### ***ARTICLES***

##### **Article 1**

1. This Code applies to all public officials.
  2. For the purpose of this Code "public official" means a person employed by a public authority.
  3. The provisions of this Code may also be applied to persons employed by private organisations performing public services.
- The provisions of this Code do not apply to publicly elected representatives, members of the government and holders of judicial office.

##### **Article 2**

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

##### **Article 3**

##### **Object of the Code**

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

**Article 4**  
**General principles**

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

**Article 5**

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

**Article 6**

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

**Article 7**

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

**Article 8**

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

**Article 9**

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

**Article 10**

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

**Article 11**

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



## **Article 12**

### **Reporting**

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

## **Article 13**

### **Conflict of interest**

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

## **Article 14**

### **Declaration of interests**

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

## **Article 15**

### **Incompatible outside interests**

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

## **Article 16**

### **Political or public activity**

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

## **Article 17**

### **Protection of the public official's privacy**

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

## **Article 18**

### **Gifts**

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

## **Article 19**

### **Reaction to improper offers**

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

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

## **Article 20**

### **Susceptibility to influence by others**

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

## **Article 21**

### **Misuse of official position**

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

## **Article 22**

### **Information held by public authorities**

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

4. Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading.

#### **Article 23**

##### **Public and official resources**

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

#### **Article 24**

##### **Integrity checking**

1. The public official who has responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required.

2. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice.

#### **Article 25**

##### **Supervisory accountability**

1. The public official who supervises or manages other public officials should do so in accordance with the policies and purposes of the public authority for which he or she works. He or she should be answerable for acts or omissions by his or her staff which are not consistent with those policies and purposes if he or she has not taken those reasonable steps required from a person in his or her position to prevent such acts or omissions.

2. The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his or her staff in relation to his or her office. These steps may include emphasising and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his or her staff, and providing by his or her personal conduct an example of propriety and integrity.

#### **Article 26**

##### **Leaving the public service**

1. The public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service.

2. The public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment.

3. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body.

4. The former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorised to do so.

5. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service.

#### **Article 27**

#### **Dealing with former public officials**

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

#### **Article 28**

#### **Observance of this Code and sanctions**

1. This Code is issued under the authority of the minister or of the head of the public service. The public official has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments. He or she should seek advice from an appropriate source when he or she is unsure of how to proceed.

2. Subject to Article 2, paragraph 2, the provisions of this Code form part of the terms of employment of the public official. Breach of them may result in disciplinary action.

3. The public official who negotiates terms of employment should include in them a provision to the effect that this Code is to be observed and forms part of such terms.

4. The public official who supervises or manages other public officials has the responsibility to see that they observe this Code and to take or propose appropriate disciplinary action for breaches of it.

5. The public administration will regularly review the provisions of this Code.

## **CASE STUDY #11**

### **NATIONAL INTEGRITY WORKSHOP IN TANZANIA**

The workshop on the National Integrity System in Tanzania was designed to achieve a balance between process and content<sup>125</sup>. On the one hand, it began a process that maximized learning and communication through the exchange of experiences and the assignments given to working groups. On the other, it presented enough material content to produce new knowledge and form the basis for debate.

While, initially, the workshop proceeded according to plan, it responded to the needs and desires of the participants as the days went by. The ability to adapt in such a way took preparation, with human, physical and technological resources prepared and at the ready to deal with new situations as they emerged. Such flexibility was possible only if all the participants, officials and resource people were clear about their responsibilities and the workshop objectives right from the beginning.

In the past, there had been a striking upsurge in public concern about levels of corruption in Tanzania. Although there are varying levels of illegal behaviour in any free society, there were increasing complaints that corruption in the country had reached intolerable and unsustainable levels.

Upcoming elections presented an opportunity for all Tanzanians, of every political persuasion, to get together to produce a transparent and accountable system with less corruption and enhancements in the decision-making process and in Government administration. An opportunity to put the whole system of governance under scrutiny and to launch major initiatives for constitutional reform from clear platforms occurs very infrequently in the life of a nation.

The workshop was convened not to cast aspersions or attribute blame, nor to debate specific causes célèbres. Rather, it aimed to develop the outline of a National Integrity System that would help curb corruption in the future, by drawing on all spheres of society and establishing a platform for a continuing dialogue between civil society and Government.

#### ***WORKSHOP OBJECTIVES***

The main objectives of the workshop were to develop a general outline of a national integrity system geared to help curb corruption and establish a strategy through which the various components of civil society could work to complement the efforts of Government against corruption.

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<sup>125</sup> Participants at the workshop on the national integrity system in Tanzania requested that the workshop design be documented in order for them to use it as a guideline in planning and designing their own workshops. This case study contains a description of the workshop design. It also points to those areas where the design could be improved, and provides reasons for this. Participants were informed that the design of the national integrity system workshop was an example of only one of the various ways in which a workshop could be designed as well as facilitated. Those interested in other types of designs were instructed to contact the Workshop Management Group.

The workshop addressed the issue of integrity and ethics and their relation to corruption control. As part of the dialogue, Transparency International (TI) summarized its experience of working with societies addressing comparable problems, notably in Latin America. TI also summarized current moves at the international level, especially within the OECD, to constrain transnational corruption and its impact on countries in the south. Specifically, the participants were invited to:

- Discuss the needs of post-election Tanzania in the context of building a workable national integrity system and in the light of the experience of contemporary corruption in the country;
- Prepare an outline document, drawing on best practice, which could serve as a focus for informed public discussion and political debate in the run-up to the elections;
- Determine how Tanzanian society as a whole might participate in continuing debate on the issue of integrity and work with like-minded political players in a creative and constructive fashion; and
- Establish ownership of, and commitment to, the conclusions and action plan on the part of the participants.

Discussions were based on the "Chatham House Rules" (whereby statements cannot be attributed to individuals outside the meeting room), and the final document was adopted by consensus.

### ***WORKSHOP ORGANIZATION***

The expectations of the organizers were as follows:

- That Tanzanians are generally concerned for the future of their country and see the containment of corruption as a priority for the incoming administration;
- That their concern about the menace of corruption transcends all divides, including those of party politics; and
- That leaders within Tanzanian society, both in civil society and official positions, will wish to work together in cooperative ways to develop effective approaches.

The workshop was organized by Transparency International (TI), TI-Tanzania and the Prevention of Corruption Bureau.

### ***PARTICIPATION***

In an endeavour to gather together a cross-section of informed interests across Tanzanian society, invitations were sent to the following categories of participants:

- Prevention of Corruption Bureau;
- Religious bodies (e.g. CCT, TEC, BAKWATA);
- National Electoral Commission;
- Newspaper reporters (including TAMWA);
- Office of the Auditor-General;
- The judiciary;

- The police force;
- Tanganyika Law Society;
- University of Dar Es Salaam;
- Members of Parliament
- Chamber of the Attorney General, Director of Public Prosecutions;
- The business community (The Chambers TCIA, CTI and Dar Merchants);
- Members of civil society interested in forming anti-corruption Pressure groups;
- Political parties;
- Chairman, Public Accounts Committee; and
- Chairman, Permanent Commission of Enquiry.

### ***WORKSHOP DURATION AND SESSIONS***

The meeting spanned two days with three sessions per day. Each session comprised a short plenary (20 minutes) followed by working groups (75 minutes), followed by a plenary session reporting back (45 minutes), totalling two and a one half hours for each session.

### ***PLENARY AND WORKING GROUPS***

A minimum amount of time was spent in the plenary sessions, so as to maximize intensive working group debate rather than making presentations. A short opening plenary to each session provided concise scene-setting before the working groups began. The plenary heard the reporting back and a rapporteur drew together an analysis of the conclusions of the groups.

The working groups made most of the contributions. Each selected its own rapporteur. The working groups had facilitators, rather than chairs, who consolidated the discussions. The reporting back was based on those consolidations. Members of working groups were selected randomly to achieve a good cross-section of interests in each group.

The working sessions summarized and consolidated, and a drafting group, drawn from the participants, structured the collective findings of the groups into a draft document. The document covered areas for action and identified who should take the action. Where appropriate, indications of priorities were included.

#### **Drafting group**

A small drafting group drawn from the participants was responsible for preparing a short document which captured the points made in the discussions and encapsulated them in the framework document which was to result from the meeting. The document was drafted throughout the meeting, at the end of each session. A member of the drafting group acted as a plenary rapporteur at the close of each session.

#### **Papers**

Short, sharply focused papers, designed to assist and provoke discussion, were provided for each agenda item,



## **Report and follow-up**

A report of the meeting was prepared and circulated to the interested parties after the meeting, together with the conclusions and recommendations. Subject to the wishes of the meeting, the document was made available to the press. Follow-up action was monitored and fostered by TI-Tanzania and others who wished to be involved.

## **Workshop ground rules and responsibilities**

Four working groups met to discuss six different topics during the workshop. Each working group had 60 minutes to discuss the assigned topics and five minutes to present the findings and recommended action of each group in plenary. Each group had the following office bearers:

1. Chairperson, responsible for:
  - Managing the process in the group discussion;
  - Organizing the substantive discussion of the group by presenting the issues described in the Draft Agenda;
  - Facilitating the election of the plenary presenter;
  - Ensuring balanced participation in the group deliberations;
  - Facilitating a short process to identify all the issues members wished to raise, and allocating time to each issue;
  - Starting the first group session by asking group members to briefly introduce themselves, to make everybody feel at ease;
  - Assisting with the formulation of issues, without influencing the content;
  - Assisting both the group facilitator and the presenter to capture the essence of the points made on flip-charts; and
  - Providing feedback on each day's proceedings to the Workshop Management Group.
2. Facilitator/consolidator, responsible for:
  - Helping the chairperson to keep a check on the time allocated for discussion of the relevant issues;
  - Capturing the deliberations and the issues raised on flip charts and bringing conceptual clarity, without imposing personal views;
  - Assisting the group plenary presenters in preparing the group feedback to the plenary sessions; and
  - Assisting the group chairperson and the workshop management team as necessary.
3. Presenter, responsible for:
  - Presenting the group's response in a logical and clear way during the plenary session within the five minutes allocated; and
  - Fielding and posing questions during plenary sessions.

## **CASE STUDY #12**

### **QUEENSLAND, AUSTRALIA: THE ROLE OF THE LEGISLATURE IN EFFORTS AGAINST CORRUPTION**

#### ***PARLIAMENTARY COMMITTEES***

In an October 1992 report on the Review of Parliamentary Committees, the Queensland Electoral and Administrative Review Commission on Public Administration Committees in Parliament, recommends the establishment of five Standing Committees with power to enquire into and report on any aspect of public administration in Queensland. The five committees are in respect of: finance and administration, legal and constitutional affairs, community services and social development, resources and infrastructure, and business and industry. The report details the specific functions of each committee and can be viewed at:

<http://www.transparency.de/documents/source-book/contents.html>

#### ***THE OPPOSITION***

In 1998, the Commonwealth Secretariat issued a report entitled, The Role of the Opposition. The report is the result of a workshop on the rights and responsibilities of the opposition organized by the Commonwealth Secretariat and held in London in June 1998. The issues addressed included:

- Holding the executive to account;
- The opposition as the "alternative Government";
- The legislative function;
- The opposition, consensus and the national interest;
- The opposition, the people and civil society; and
- The opposition in decentralized democracies.

The report can be viewed at:

<http://www.transparency.de/documents/source-book/contents.html>