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FOREWORD

There is no question about the negative impact of corruption on development. Corruption reflects a democracy, human rights and governance deficit that negatively impacts on poverty and human security. Corruption endangers the stability of democratic institutions, discriminates in the delivery of government services and thus violates the rights of the people, the poor in particular. Corruption also poses a major obstacle to the achievement of the Millennium Development Goals (MDGs). As such, the United Nations Development Programme (UNDP) considers its activities in the area of anti-corruption as essential to the strengthening of democratic governance in support of poverty alleviation and human rights protection. This also follows the broad consensus in the international community that good governance is essential to achieving sustainable development and poverty reduction. Reducing corruption also increases the effectiveness of aid in UNDP's partner countries.

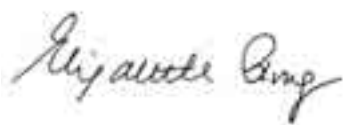
Since 1997, UNDP has been involved in accountability, transparency and integrity (ATI) programmes as part of our interventions to strengthen democratic governance. In past years, UNDP's interventions in the area of ATI and anti-corruption have evolved from principally supporting awareness-raising and advocacy to advising partners through holistic approaches grounded on early lessons and internally developed policy tools.

A significant recent development is the entry into force of the United Nations Convention Against Corruption (UNCAC) in 2005. As the United Nations agency that takes the lead on governance issues, UNDP will collaborate closely with the United Nations Office on Drugs and Crime (UNODC) as well as with national, bilateral and international organizations to support capacity development in support of UNCAC implementation. One of the obligations on State Parties to the Convention is that they make the necessary institutional arrangements to prevent and combat corruption. This comparative study of institutional arrangements to combat corruption, which covers 14 countries, is aimed at providing an overview of the various options available in this regard as well as discussing the advantages and disadvantages of these various options.

The idea for this comparative study resulted from an initial request made by the parliamentary working group on anti-corruption of the State Great Hural in Mongolia to provide them with a series of options on how to design the institutional framework that will support future implementation of the national anti-corruption programme. The study provides a useful overview of different modalities used in different countries, and thus offers a menu of options and solutions for other countries in the region and beyond, based on a thorough understanding of the local political, social and economic situation. The study precedes and complements another study that is currently being undertaken by the Bureau for Development Policy (BDP) on anti-corruption laws in a selected number of countries.

The comparative study on institutional arrangements to combat corruption is the result of a joint initiative by the UNDP Regional Centre in Bangkok (RCB), UNDP Mongolia and the Democratic Governance Group of the BDP. The paper was prepared by Patrick Keuleers (Regional Advisor on Public Administration Reform and Anti-Corruption, Democratic Governance Practice Team, RCB) and Nils Taxell (Research Officer, Democratic Governance Practice Team, RCB). Inputs to the paper were provided by Pauline Tamesis (Anti-Corruption Advisor, BDP, New York), Turod Lkhagvajav (Programme Specialist, UNDP Mongolia) and Ryratana Suwanraks (Manager of the Governance Unit, UNDP Thailand).

We would like to express our gratitude to the UNDP colleagues who have contributed to the research and writing of this knowledge product, which we hope will be very useful to all anti-corruption practitioners.



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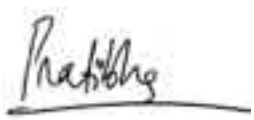

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PART ONE

OVERVIEW AND POLICY RECOMMENDATIONS

ACRONYMS

ACA	Anti-Corruption Agency
ATI	Accountability, Transparency and Integrity
BAI	Board of Audit and Inspection
BDP	Bureau for Development Policy
CPCB	Corruption Prevention and Combating Bureau
CPIB	Corruption Prevention and Investigation Bureau
DCEC	Directorate on Corruption and Economic Crime
ICAC	Independent Commission Against Corruption
KICAC	Korean Independent Commission Against Corruption
KPK	Commission for Eradication of Corruption
MDGs	Millennium Development Goals
NCCC	National Counter Corruption Commission
PCB	Prevention of Corruption Bureau
PJC	Parliamentary Joint Committee on the ICAC
PSAC	Public Service Anti-Corruption Unit
RCB	Regional Centre in Bangkok
SIS	Special Investigation Service
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime

INTRODUCTION

1

As stated in the *2005 Human Development Report*, based on present trends, most poor countries will miss almost all the Millennium Development Goals (MDGs) and extreme poverty will not be halved by 2015, in any region except East Asia. There are many reasons for these sobering facts. One is the significant distributional implications that widespread corruption has on growth, equity and poverty. Corruption causes social disintegration and distorts economic systems; it implies discrimination, injustice and disrespect for human dignity; it endangers the stability of democratic institutions, discriminates in the delivery of government services and thus violates the rights of the people, and the poor in particular. Where corruption reigns, basic human rights and liberties come under threat and social and economic contracts become unpredictable. Corruption remains thus one of the main obstacles to achieving sustainable pro-poor development in support of the MDGs. A comprehensive attack on corruption remains a challenge for many countries, developing and developed alike.

In the 1990s, the focus on good governance and the rise of democracy and empowerment of civil society that resulted from it created hope for a more open and transparent society, in which corrupt practices would no longer be tolerated. Since then, there have been promising trends, fuelled by successful awareness-raising campaigns organized by international civil society organizations, with Transparency International playing a leading role. An increasingly dynamic media helped to bring corruption into the open.

But despite new legislation and the establishment of more anti-corruption and integrity institutions, overall results remain disappointing, with intentions still outnumbering accomplishments and tangible successes remaining sparse. The current wave of decentralization raises additional concerns that corruption will spread further to the local levels of government.

Corruption is considered a failure of institutions, in particular those in charge of investigation, prosecution and enforcement. Much attention now goes to the implementation of the United Nations Convention Against Corruption (UNCAC), which was signed in December 2003 by 95 countries and entered into force in 2005 following the 30th ratification of the Convention. The Convention provides a comprehensive framework for dealing with international and domestic corruption in the public and private sectors. The Convention also promotes the mutual exchange of relevant experiences and specialized knowledge and stimulates the discussion on problems of mutual concern and successful practices for preventing and combating corruption.

One such crucial issue is to decide on the institutional arrangements for combatting corruption i.e., the choice regarding the kind of agency(ies) or commission(s)/ committee(s) that need to be established or strengthened in order to ensure a successul fight against corruption and related decisions on legal matters, policy, resources and other issues that need to be taken into consideration.

This comparative research on institutional arrangements to fight corruption resulted from initial work done with United Nations Development Programme (UNDP) Mongolia and a s ubsequent request from the Mongolian parliamentary working group on anti-corruption to the UNDP Country Office in Ulaanbaatar to conduct an in-depth comparative study. Given the centrality of the institutional problem in a number of other countries where UNDP is involved or becoming involved in anti-corruption work, it was decided that the Regional Centre in Bangkok (RCB) would take the lead in conducting this study, in collaboration with UNDP Mongolia and the Anti-Corruption Advisor in the Democratic Governance Group in UNDP's Bureau for Development Policy (BDP).

This paper is composed of two parts. The first part provides an overview and analysis of various institutional arrangements for combatting corruption, lessons learned and conditions for success. The second part contains 14 country briefs that describe the key institutional mechanisms for fighting corruption in each of these countries. The countries have been chosen in an attempt to provide as wide a cross section as possible of the various existing institutional arrangements for combating corruption that exist today. Several of the countries have also been chosen as they are widely perceived as having been successful in coming to terms with corruption. The attached comparative table provides a summary overview of the different systems in each country.

1.1 The importance of effective anti-corruption bodies

Despite the increased emphasis that is being given to fighting corruption, many anti-corruption efforts have failed for multiple reasons. One of the reasons is the apparent imbalance between prioritizing short-term, immediately visible targets that attack the symptoms rather than the root cause of corruption, over deeper, more difficult, as well as time and resource intensive systemic reforms (UNDP, 2004:6). A well-thought through anti-corruption reform strategy requires a long-term vision and a clear understanding that fundamental change can take place, at the earliest, in the next and not in the present generation[1].

One crucial element of an anti-corruption strategy is to decide on the institutional models for fighting corruption and on the policies and capacity development efforts that will allow these institutions to effectively play their role.

Whether to establish a separate institution such as an anti-corruption agency (ACA) to deal exclusively with corruption problems, to modify or adapt existing institutions, or to decide on some combination of both, remains an issue of debate in many developing countries. Each of these options brings along a number of legal, policy, resource and other factors that need to be carefully weighed. Equally, if not more important, is to ensure clear rules of engagement that will guide the interaction and collaboration between the various institutions involved in the holistic fight against corruption.

While it is argued by some that it would suffice to merely copy the successful Hong Kong or Singapore models to curb corruption, the fact remains that there is no one-size-fits-all solution to fighting corruption. While 'best practices' exist and can provide useful guidelines, they are not automatically applicable to any one country's specific context[2].

1.2 The UN Convention Against Corruption and institutional arrangements for combating corruption

As stated in the UNCAC:

> *Each State Party shall ensure the existence of a body or bodies, as appropriate, which **prevent** corruption. Each State Party shall grant these bodies the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided (Article 6).*

In addition to the articles dealing with prevention, Article 36 of the Convention stipulates that:

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

The UNCAC thus requires the establishment of such institutions, unless they already exist in some form, in two specific areas:

(i) preventative anti-corruption bodies; and
(ii) bodies specialized in combating corruption through law enforcement.

Yet, according to the proceedings of the preparatory meetings, State Parties may establish or use the same body to meet the requirements of both provisions.

State Parties to the Convention thus will need to decide whether to establish new entities or to reform/improve existing ones, and whether to grant responsibilities to a single organization or to divide responsibilities between various prevention and law enforcement institutions. It will also be necessary for State Parties to decide on the mandates and powers of these institutions, their level of autonomy, the resources they will be entitled to and the rules of engagement that will guide the interaction and collaboration between these various institutions. The following chapters provide an overview of different models used in various countries, and looks at advantages and disadvantages of these different models.

[1] Singapore took 15 years to set up the CPIB as an independent agency beginning in 1952, outside the purview of the police. Hong Kong required 26 years for the creation of the ICAC beginning in 1974 (Corruption and Anti-Corruption Strategies Research Project, 1999).

[2] A study on factors affecting the fight against corruption in post-communist countries in Eastern Europe revealed that 'best practices' have been deemed useful but difficult to transfer to other contexts. Using ready-made models thus requires caution and the development of sufficient locally designed safeguards to 'get things right' (Anusiewicz, 2003).

A SPECIAL ANTI-CORRUPTION AGENCY OR COMMISSION

2

Several countries have opted for or are currently considering creating an independent commission or agency charged with the overall responsibility of combating corruption. However, the creation of such an institution is not a panacea to the scourge of corruption. There are actually very few examples of successful independent anti-corruption commissions/agencies. The most cited success stories are those of the Hong Kong Independent Commission Against Corruption (ICAC), Singapore's Corrupt Practices Investigations Bureau (CPIB), Botswana's Directorate for Economic Crime and Corruption (DCEC) and New South Wales' Independent Commission Against Corruption (ICAC). But as mentioned, these models are not easily replicable because of the specific contexts in which they operate (and the particular history of their creation and evolution). Establishing an ACA should thus be based on a systematic assessment of the local (political) context, and the particular needs and priorities of the country.

2.1 Independence of the anti-corruption agency

The independence of an ACA is considered a fundamental requirement for its effectiveness as it allows the institution to act free from influence of powerful individuals or factions, and to investigate suspected corruption in all sectors and at all levels of society (Kpundeh and Levy, 2004). A constitutional amendment providing for the independence of the ACA is useful, however, it is not sufficient. But are the currently existing institutions really independent? Reality shows varying levels of autonomy, and even some of the most successful agencies or commissions are not fully independent of those in power[3]. For example, the DCEC in Botswana reports to the President, and the Director and staff fall under the Public Service Act. Singapore's CPIB is located within the Prime Minister's Office and its Director is directly responsible to the Prime Minister. Hong Kong's ICAC reports to the Chief Executive. So what makes these organizations more effective than others? Part of the answer lies in the design of appropriate checks and balances and the fact that they are constantly scrutinized through various oversight mechanisms that ensure their unbiased functioning. Hong Kong's ICAC, for example, has its activities scrutinized by four independent committees, including representatives from civil society, as well as the independent ICAC Complaints Committee, which receives, monitors and reviews all complaints against the Commission.

Another way to enhance the autonomy of the ACA is to ensure that the selection and appointment of the executive(s) of the ACA is a shared responsibility of several institutions[4]. Security of tenure for the senior officials of the agency and appropriate immunity against civil litigation are also essential. Indonesia's Commission for the Eradication of Corruption (KPK) is appointed by Parliament from a list of candidates provided by the President[5]. The list of candidates is prepared by a Selection Committee appointed by the Government. In other countries, the head of the ACA is appointed by the President (Tanzania), the Governor (New South Wales), or President or Prime Minister with the consent of or on the recommendation of Parliament (Lithuania and Nigeria), or by Parliament on the recommendation of the Cabinet (Latvia), or by the King on the recommendation of the Prime Minister (Malaysia). In the Republic of Korea, the President appoints the chairman and the standing members

[3] Their independence is first from the police and to a lesser extent from the government.

[4] The public credibility of a commission or agency will depend largely on whether the public perceives that its members have integrity, are competent, and that all relevant interests in society are represented.

[5] It is essential that there is someone at the top who is the authority and who is accountable for the conduct of that body. Experience elsewhere suggests that a body that operates on the basis of collective decision-making processes has difficulties in acting quickly and decisively.

of the Korea Independent Commission Against Corruption (KICAC). In addition, the Parliament and the Chief Justice of the Supreme Court recommend three members each.

To avoid manipulation by the main institutional host of the ACA, a number of countries have established multiple reporting lines or have shifted the reporting line to the people's representatives.

But increased independence also requires built-in checks and balances to ensure that the autonomy is not abused. As mentioned above, Hong Kong's ICAC has four advisory committees (Corruption Prevention Advisory Committee, Citizens Advisory Committee on Community Relations, Operations Review Committee and Corruption Prevention Advisory Committee). Composed of specially appointed members drawn from the larger community, these committees meet regularly to review the ICAC activities. The ICAC in New South Wales is held accountable to citizens through the multiparty Parliamentary Joint Committee (PJC), which monitors its activities; through the Operations Review Committee[6], which includes members of the public and various government agencies; and through its obligation to report regularly to the public and annually on its major investigations. The PJC reports to both Houses of Parliament on any matter related to the ICAC, which, in the opinion of the PJC, should be directed to the attention of Parliament. Tanzania's Prevention of Corruption Bureau (PCB) also has a Committee of Control and Evaluation that supervises its performance, but the composition of the committee hardly guarantees independent scrutiny (the Committee is chaired by the Chief Secretary of the President's Office and composed of the PCB Director General, the Director General of the Tanzanian Intelligence and Security System and the Private Secretary of the President).

Multiplying the reporting lines of the ACA is also a way to enhance oversight by making the ACA accountable to more than one authority. In Indonesia, the KPK is considered an independent state agency that reports on its activities to the President, the National Assembly and the State Auditor. Lithuania's Special Investigation Service (SIS) is accountable to the President and to the Parliament; it is obliged to report, at least twice per year, in writing to the President and to the Chairman of the Seimas. Thailand's National Counter Corruption Commission (NCCC) reports to the Senate. However, its annual report is also submitted to the House of Representatives and the Cabinet.

Other countries have decided to shift reporting lines from a single-person institution, such as the President or the Prime Minister, to the legislative body representative of the people, hence allowing various parties in the parliament to scrutinize the activities of the ACA. Recent amendments to legislation in Uganda and Zambia have directed the Inspector General and the Anti-Corruption Commission, respectively, to report to Parliament rather than the Head of State.

2.2 Mandate

The mandate of the special anti-corruption body will depend on several factors; in particular, the mandates of other relevant entities involved in areas such as policy-making, legislative change, law enforcement and prosecution, the existence of internal anti-corruption bodies (e.g. special investigation units within the police force) and whether the mandate is intended to deal with corruption at all levels of government (i.e. central, regional and municipal or local) (UNODC, 2004:92).

To varying degrees, the following five key functions can be assigned to a special anti-corruption body:

1. **Investigation;**
2. **Prosecution;**
3. **Education and awareness-raising;**
4. **Prevention; and**
5. **Coordination.**

Most of the ACAs apply the three-pronged strategy of **prevention, investigation and education** (e.g. Botswana, Indonesia, Hong Kong, Latvia, Lithuania, New South Wales and Thailand).

The investigation function is central to the mandate of many of the ACAs covered in the country briefs. However, not all agencies are mandated to carry out investigations into alleged acts of corruption, as is currently the case for KICAC. For anti-corruption bodies that do have such a function, there is a variation in when they can initiate an investigation into alleged or suspected acts of corruption. Ideally, the ACA can initiate investigations into complaints received as well as on its own accord, regardless of whether a complaint has been received. In some cases, an investigation may also be prompted by a request from other institutions (e.g. by the Houses of Parliament in the case of the New South Wales ICAC).

Typically, there is a structure within the ACA for assessing whether or not an investigation should be launched based upon a report received. In some cases, however, the ACA is required to investigate every report that is received (e.g. the Hong Kong ICAC). As reports from the general public are often one of the main sources of information, many ACAs have put mechanisms in place to ensure accessibility and ease of reporting. In Hong Kong, the ICAC has established regional district offices (as it has been found that individuals feel more comfortable in less formal settings) and the KICAC

[6] The ICAC must consult the ORC before deciding on whether to discontinue or not to commence an investigation or a complaint or to discontinue an investigation already in progress.

in the Republic of Korea has established a dedicated **Corruption Report Center**. In contrast, the complicated procedures for lodging complaints with Nigeria's Independent Corrupt Practices and other Related Offences Commission have been given as an explanation for the low number of complaints that the Commission has received.

Fear of reprisals for reporting corruption acts as a serious deterrent to public involvement in the fight against corruption and hinders its potential for success. Thus, the ability to report anonymously and the protection of witnesses are seen as important elements of a successful strategy to counter corruption. Most, but not all, ACAs (e.g. the NCCC in Thailand) do consider anonymous reports. Several ACAs (e.g. the Hong Kong ICAC, the KICAC in the Republic of Korea and the KPK in Indonesia) have an explicit mandate to ensure the protection of witnesses and whistleblowers. Where witness protection has been seen as being successful, it has also led to a decrease in the number of anonymous reports of acts of corruption.

The officers and staff of the various ACAs covered in the country briefs have varying degrees of investigative powers. These include the search of individuals and premises; arrest and/or detention; powers to request individuals or institutions to provide information; powers to request bank books; deploy surveillance measures e.g. wire taps; and seize property, among other things. Often, these powers of investigation require that the investigating officer seek prior written approval from a prosecutor (e.g. Malaysia, Singapore) or a judge/court (e.g. Thailand) and in some cases from the head of the anti-corruption body (e.g. Nigeria, Tanzania).

An important part of the investigation function is the monitoring of the **asset and liabilities declarations (and lifestyle)** of senior officials, which also has a powerful prevention effect. Thailand's NCCC in particular has a broad and well-defined mandate in this area[7]. This is also the case with the Corruption Prevention and Combating Bureau (CPCB) in Latvia[8], tasked with monitoring the observance of the law on Prevention of Conflict of Interest in Activities of Public Officials. Where there is an obligation to maintain confidentiality, the ability to investigate a large number of asset declarations may be compromised, as it renders impossible the outsourcing of additional work to outside investigators (as has been the case in Botswana). But other agencies may also be involved in the investigation of asset declarations. In Bulgaria, the National Audit Office holds the register of asset declarations of senior officials. In Lithuania, senior officials need to file their asset declarations with the Official's Ethics Commission, which is tasked to analyse these declarations. In the Philippines, public servants are required to file a sworn statement of their assets and liabilities every year[9] and lifestyle checks can be conducted by the Ombudsman or by the Presidential Grafts Commission. In Lithuania, responsibility lies with the Chief Officials Ethics Commission, which analyses asset declarations and ensures that holders of public office make decisions solely in terms of the public interest, securing the impartiality of the decisions made and preventing the emergence and spread of corruption in the public service. In Tanzania, it is the Public Leaders' Ethics Secretariat, headed by the Ethics Commissioner (appointed by the President), that has the duty to receive asset declarations.

In all cases, the relationship between the ACA and the body in charge of monitoring asset declarations and income tax filings is crucial. Increasingly, the burden of proof is being reversed. While the traditional legal doctrine embodies the principle of a 'presumption of innocence' until the prosecutor can prove an illicit act, corruption laws now increasingly presume illicit enrichment unless the accused can provide a satisfactory explanation for his unusual lifestyle. Whether asset declarations should be done by all civil servants or only selected officials remains an issue of debate[10]. To avoid overload of asset declarations and excessive cost of investigation[11], a selective approach may be more appropriate. Where expertise and capacity is limited, it would be recommended to target only specific groups of public officials (e.g. elected or appointed political officials, high-level civil servants) as well as those that are employed in sectors that are prone to high levels of corruption (e.g. procurement officers, tax and customs officials).

Not all ACAs have been granted a **mandate to prosecute,** a function that usually remains the responsibility of the judiciary[12]. After investigation by the ACA[13] or one of the law enforcement agencies (e.g. the police), if there is grounds for prosecution, the matter is typically referred to the general prosecutor to bring the case to court. Based on the evidence

[7] Persons holding political positions as well as high-ranking (central and local) government officials need to submit to the NCCC the account of their assets and liabilities, as well as those of their spouses and (dependent) children (every three years, as well as upon assuming office, upon leaving office and one year after leaving office). The NCCC has the responsibility to define the categories of positions that that are subject to asset inspection and to proscribe related rules and procedures. The NCCC can inspect any case where there is reasonable cause to suspect a state official (even if that person is not a high-ranking official) and order that state official to submit such a declaration.

[8] The CBCB in Latvia also monitors observance by the political organizations of the party financing regulations.

[9] The lifestyle probe/check will eventually cover all government officials, but initially, it will focus on high-ranking government officials (whether elected or appointed) as well as on officials of the following reportedly most graft-prone agencies: Bureau of Internal Revenue; Bureau of Customs; and Department of Public Works and Highways.

[10] In Singapore for example, all public officers are required to make a declaration of non-indebtedness as well as a declaration of assets and investments at the time of appointment and subsequently once per year.

[11] In the Philippines, it was estimated that the cost of investigation per case was around US$2,000. In 2004, the average time-frame for investigation of a case was around three months plus ten months of Ombudsman proceedings (reduced from the previous average of two years).

[12] In Hong Kong, the power to prosecute after completion of investigations is vested with the Secretary for Justice, thus ensuring that no cases are brought to the courts solely on the judgement of the ICAC.

[13] The Republic of Korea's KICAC is not mandated to carry out investigations. Singapore's CPIB can only investigate with the consent of the Prosecutor.

provided, the latter exercises discretion over whether or not to bring criminal proceedings. There are, however, some interesting arrangements that merit attention. In Botswana, the Attorney General is mandated under the Constitution and the Criminal Law to direct all criminal prosecution, including the prosecution of cases related to corruption. But due to heavy workload of the Attorney General, the DCEC is increasingly taking on prosecution itself. In Lithuania, the Investigation Divisions of the SIS report directly to the Prosecutor General; they cannot be influenced by the director of the SIS. The police in Lithuania have a general obligation to investigate any crime brought to their attention, including corruption cases, but the latter are usually submitted to the SIS or the prosecutor. In Tanzania, prosecution is normally the mandate of the Director of Public Prosecution. However, the PCB may prosecute cases itself, pending approval by the Director of Public Prosecution, in which case it is the Legal and Prosecution Section within the PCB that is responsible for prosecuting corruption offences. In doing so, the section is to work closely with the Police and the Director of Public Prosecution.

However, the exercise of prosecutorial discretion is itself susceptible to corruption. There are situations where the ACA should have priority of investigation and even be empowered to act itself as a prosecutor, subject to appropriate judicial review. In Thailand, the NCCC acts as prosecutor in cases that are brought before the Constitutional Court (Asset Declaration). It can also act as the prosecutor in the case when the accused is a Prosecutor General. Finally, when the Prosecutor General considers that the report of the NCCC is not complete and does not justify prosecution and no further agreement can be reached, the NCCC can decide to act itself as prosecutor in the case. In Indonesia, the KPK is empowered to take over an indictment or prosecution in a corruption case being carried out by the police or the Prosecutor's Office (who then need to hand over all relevant documentation). This takes place in any case where the police or the Prosecutor's Office are unable to carry out the case in a responsive and adequate manner[14]. In Latvia, the CPCB is also entitled to take over from other investigation institutions cases which fall within its mandate. This is also the case in Tanzania, where the Director General of the PCB may assume the responsibility for any investigation or prosecution commenced by the police for an offence involving corruption.

In countries where the police and the prosecution services are considered highly corrupt, these measures are crucial. Where high-level officials are implicated in corrupt activities, the ACA may well be the only body with sufficient independence to bring the case to court. But where the existing prosecution service is functioning properly, a separate prosecution mandate may not be required (UNODC, 2004:92).

A special case relates to the impeachment of high-level officials. An ACA typically cannot prosecute Presidents in office or other high-level officials as they often have immunity under the country's Constitution. Impeachment proceedings are thus in principle a matter for the national legislature. Nonetheless, legal provisions could allow the ACA to provide reports to the Speaker of the House/President of the National Assembly whenever there are reasonable grounds to believe that the President or another high-level official has committed an offence and if there is prima facie evidence admissible in a court of law (Pope, 1999). It is then normally the responsibility of the Legislature to proceed with impeachment in accordance with constitutional provisions.

Many anti-corruption programmes have been considered instruments of the state, mainly targeting the civil service and/or other relevant regulatory institutions. The Hong Kong experience has shown that the **education and awareness-raising** function is crucial in each anti-corruption strategy. Transparency is needed to establish a minimal level of credibility for prevention purposes and as a measure of success. Hong Kong's ICAC is noted for its unique outreach programme. It has used press releases, public information announcements, interviews, documentaries, posters, informational leaflets, meetings, public speaking and worked with schools and universities to convey an anti-corruption message to the public. It sponsors sporting, cultural and entertainment events that are aimed at youth and that emphasize anti-corruption themes. In 1995, it spearheaded a collaborative effort with six major chambers of commerce to found the Hong Kong Ethics Development Centre to promote ethics in corporate governance[15]. The ICAC in New South Wales also has an extensive mandate in this area. New South Wales' ICAC holds public hearings to expose corruption. These hearings also serve to increase the public's confidence in the integrity of the investigations. Malaysia is now also focusing its anti-corruption efforts on the family as a core social nucleus within society. The focus on families also brings in the youth, which are the next generation of leaders. In the framework of Malaysia's National Integrity Plan, which is based on the results from a national survey on public perceptions of corruption completed in January 2003, the

[14] Article 9 of the Law on the KPK provides that the KPK shall take over an indictment or prosecution if: a report by a member of the general public about an act of corruption has been ignored; the processing of a corruption case goes on for too long or is delayed without a valid reason; the handling of the corruption case has been manipulated in order to protect the accused; the handling of the corruption case has been subject to corrupt acts; there has been executive, legislative or judicial interference in the case; or any other circumstances where the Police or the Prosecutor's Office are unable to carry out the case in a responsible and adequate manner.

[15] Today, nearly one in ten reports of corruption in the private sector is made by senior business managers (ICAC website – Hong Kong).

Government has established the Malaysian Institute of Integrity, through which it aims to enhance awareness about corruption and the need for transparency in the public service (ADB/OECD, 2004:55).

Apart from general education measures, the ACA should also be in a position to develop, propose and, where appropriate, implement **preventive measures**, and/or to collaborate closely with other agencies that have a mandate to do so. Hong Kong's ICAC has an extensive mandate in this area[16]. This is to examine the practices and procedures of government departments and public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of work methods/procedures which may be conducive to corrupt practices. Further, it is to instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated and to advise heads of government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of their duties which the Commissioner thinks are necessary to reduce the likelihood of corrupt practices. Botswana's DCEC, Singapore's CPIB and New South Wales' ICAC have similar mandates. Indonesia's KPK also has a broad mandate to monitor the governance of the State. It can conduct reviews of the management system of all state institutions; if the recommendations made by KPK are not adhered to, the KPK is to report this to the President, the Parliament and the State Auditor. Tanzania's PCB (Research, Control and Statistics Division) carries out research on various policies, laws, regulations and operations of different institutions in order to detect loopholes that lead to corruption. It also conducts research on methods for combating corruption adopted in other countries.

Part of these preventive measures is the ability to take account of lessons learned and use them to propose amendments to laws, regulations and procedures. In some countries the ACA is authorized to make such recommendations to both administrative and legislative bodies, publicly if necessary. The CPCB in Latvia and the SIS in Lithuania are entitled to analyse legal acts and make proposals for review. The SIS has the power to propose legislation to the President and to Parliament.

A related area is also the capacity for **research** on corruption-related issues as well as **knowledge management.** The capacity to conduct research into public opinion on as well as trends and the nature of corruption is essential in order to devise effective strategies for combating corruption. In its assessment, the European Commission found that lack of research capacity in Latvia and Lithuania was a concern, and it was recommended that capacity be developed in this regard. In New South Wales, it was concluded that the most efficient and effective placement of the capacity for research was within the ACA itself. In several of the countries studied below, the ACA does indeed have research functions. However, this is a role that, in many countries, is also carried out by other institutions as well as by civil society.

2.3 Summary: Advantages and disadvantages of an independent anti-corruption body

As the corrupt have become more sophisticated, conventional law enforcement agencies are becoming less able to detect and prosecute complex corruption cases. The experiences of the CPIB in Singapore, the DCEC in Botswana, the ICAC of New South Wales and the ICAC in Hong Kong demonstrate the effectiveness of a single anti-corruption commission/agency in implementing the anti-corruption policies and legislation. All these experiences demonstrate the need for the ACA to be separated from the police, especially when the latter is perceived to be corrupt.

A growing number of countries in the Asia region have opted for a centralized anti-corruption agency. Hong Kong, Malaysia, Nepal, and Singapore have been working with this model for decades; Indonesia, Kyrgyzstan, the Republic of Korea, and Pakistan have established them more recently; and Cambodia and Mongolia are taking steps towards creating such an institution. In Bangladesh, an act establishing an independent Anti-Corruption Commission was passed in 2004, but a commission has yet to be established (ADB/OECD, 2004).

The successful cases also stress the importance of strong political determination and leadership. Where they have been successful, the ACAs have enjoyed high levels of political and public support, had sufficient resources, adequate research abilities, and have adopted both rigorous investigative methods and creative programmes of prevention and public education. The need for a special committee(s) charged with monitoring its activities has also proven indispensable.

[16] Prevention (and the community education and awareness-raising that goes with it) has been a core activity of the Hong Kong model, often informed by the revelations of investigators working on the enforcement side. This enabled the Commission to develop a coherent and coordinated set of strategies, with results that are the envy of many. Those who have tried to copy the model have largely failed because they have lacked both this coherent approach and the resources necessary to carry it through.

In contrast, insufficient focus on prevention and education, weak legal enforcement, lack of resources, lack of political will, lack of independence and related political interference[17] and inadequate laws are considered the main reasons for most of the failures[18]. There is also an opportunity cost in creating new institutions in a context of low state capacity, which characterizes most of the Least Developed Countries in the region.

Prevention is better than prosecution and an effective ACA with investigation and monitoring/coordination responsibilities and with sufficient authority and independence from politicians is considered best placed for that task (Pope, 1999). The box below summarizes the advantanges and disadvantages of having an independent anti-corruption body (summarized from UNODC, 2004).

Advantages and disadvantages of having an independent anti-corruption body

Advantages:

- Sends a signal that the government takes anti-corruption efforts seriously;
- High degree of specialization and expertise can be achieved;
- 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;
- There will be greater clarity in the assessment of its progress, successes and failures;
- 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; and
- It incorporates 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.

Disadvantages:

- 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;
- Possible reduction in perceived status of existing structures that are excluded from the new institution;
- May generate competing political pressures from groups seeking similar priority for other crime-related initiatives; and
- May also be vulnerable to attempts to marginalize it or reduce its effectiveness by under-funding or inadequate reporting structures.

[17] For example, when attached to the Office of the President, the agency often will not be in a position to tackle serious corruption involving actors close to the President (Pope, 1999). This was also said to be the case of the PCB in Tanzania.

[18] Adapted from Bertrand de Speville (2000).

OTHER INSTITUTIONS INVOLVED IN ANTI-CORRUPTION

3

A general conclusion that can be derived from the various country briefs is that a single institution alone cannot claim victory for a successful anti-corruption strategy. Even in countries where agencies or commissions were well-resourced and established under model legislation, they have all relied on the interaction and effectiveness of other institutions. This section will provide an overview of some of the key complementary governing institutions (e.g. prosecutor, ombudsman, auditor and courts)[19] that play (or have the potential to play) an important role in combating corruption. The text box below (extracted from the UNDP Practice Note on Anti-Corruption) provides an overview of the different types of institutional reforms that need to be considered to strengthen the enforcement of anti-corruption incentives.

Institutional reforms to be considered to strengthen the enforcement of anti-corruption incentives

- Establish **independent investigators, prosecutors, and adjudicators** that ensure 'equal' enforcement of the laws and regulations.
- Strengthen capacity and integrity of the **police as the frontline investigative agency** for criminal infractions.
- Strengthen and ensure **independence and accountability of the judicial system.**
- Provide **adequate powers of investigation and prosecution** consistent with international human rights norms.
- Integrate transparent mechanisms, which **eliminate privileges** that have no relations with the needs of the public, and which high public officials enjoy by reason of their office, into the reform of enforcement measures.
- Develop **effective complaints mechanisms and procedures for appeals,** whether internally by a public servant or by a member of the public.
- Develop mechanisms to **protect whistleblowers:** encourage the development of institutions, laws and practices, which ensure that responsible citizens can report corrupt practices without fear of reprisals, and to **ensure that the media is empowered to play its pivotal role** in holding relevant individuals and institutions accountable.
- **Tackle special sectors that are known to be breeding corruption** (e.g. in Georgia, the fight against corruption started in the Ministry of Education, considered to be one of the most corrupt systems).
- Impose **powerful deterrents for the would-be corrupt**, such as civil penalties, blacklisting of corrupt firms, extradition arrangements, and other legal provisions that enable the profits of the corrupt to be seized and forfeited, inside or outside the country.
- **Strengthen the ministry in charge of civil service reform and establish a close relationship between it and other anti-corruption agencies** (enforced codes of conduct; increased supervision; results-oriented enforcement, management-based measurable performance indicators; empowering the public through citizens' charters; a credible public complaints system; access to information.

[19] Although the police force also has an important role to play in combating corruption, this institution will not be covered separately; where relevant, it will be discussed in relation to the other institutions covered.

3.1 Prosecutor

Prosecutors play a key role in the process of bringing corrupt activities before the courts, moving the process from investigation to prosecution. A country must have legislation that ensures the political independence not only of the ACA but also of the judiciary and the public prosecutors. The interaction between the anti-corruption body and the prosecutor has been described in each of the country briefs.

The relationship between the ACA and the Public Prosecutor is a critical one. In principle, there is no binding framework within civil or common law countries about who is to retain investigation and prosecution powers (unless there is a Constitutional provision for it). Where the Constitution prescribes that the prosecutor has sole oversight for all prosecutions, s/he is usually empowered to intervene in all criminal proceedings initiated by any other person or authority. However, the question in many developing countries is whether the prosecutor effectively enjoys sufficient independence to decide to bring a case to court. Very often, the weakness of the anti-corruption machinery becomes visible at the crossroads of investigation (by the ACA or a similar body) and prosecution by the judiciary and/or court proceedings.

There are also examples of countries that have chosen not to establish a special anti-corruption agency, instead establishing a special anti-corruption unit under the Public Prosecutor. This is currently the case in Mongolia[20] (Special Investigation Unit), in Nicaragua (Investigations and Advice Unit), in Mozambique (Central Anti-Corruption Unit) and in Colombia. In Colombia, the 1991 Penal Code grants significant investigatory powers to the Attorney General[21]. Similarly, in Tajikistan, the general prosecutor is responsible for the implementation of the *Law on Fighting Corruption.* In Mozambique, the new *Anti-Corruption Act* (2001) outlines a structure whereby "the Public Prosecutor and the Criminal Investigation Police are responsible for the prevention and fight against the crimes foreseen in the law". The Unit will have specially trained prosecutors and police to work in the area of corruption. The Unit will work under the Attorney General's Office[22]. Japan has created specialized investigation departments within the prosecutors' offices in major cities.

But in countries where corruption is widespread, there is serious scepticism against an internal anti-corruption unit within the Prosecutor's Office. In addition to the existing enforcement problems, it remains to be seen whether the prosecutor would have the capacity and moral authority to undertake preventive measures such as coordinating with civil society and youth organizations and interacting frequently with the media and the education system.

Where there is a special anti-corruption body, it should, under certain conditions, have the power and the capacity to launch prosecutions independently of the Attorney General. Examples of this have been provided in an earlier section of this report (e.g. Indonesia, Nigeria and Thailand). But whatever the relationship with the prosecutor, the ACA should be entitled to enjoy all the rights of law enforcement officers and thus have full access to government documents and civil servants (Pope, 1999).

3.2 Auditor General

The UNCAC treats audit requirements as elements of prevention of corruption, 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 (UNODC, 2004:100).

Audit institutions play a critical role, as they help promote sound financial management and accountable and transparent government and thereby contribute to both preventing and detecting corrupt practices. Full independence of audit institutions – in terms of personnel and budget, wide-reaching authority and adequate investigative powers, including calling witnesses and seizing documents – are essential to the proper functioning of such institutions (ADB/OECD, 2004:17).

The role of the Audit Office in fighting corruption is not to be underestimated. Regular audits prevent corruption and economic crimes by making them riskier and thus reduce opportunities for corruption. Audits support the anti-corruption efforts because they verify information and analysis, identify weaknesses, malfeasance or other problems that insiders may be unable or unwilling to identify; **identify strengths and weaknesses in administrative structures and procedures; report on their activities** and thus generate political pressure to act in response to problems identified.

[20] There is now a majority in Parliament working on anti-corruption that is in favour of establishing an independent ACA, and a revised draft of the anti-corruption law has been finalized. The draft law gives the anti-corruption body a mandate to investigate allegations of corruption, prevent corruption and educate and mobilize the public. The prosecution and trial of offences is left to other organs of state. It remains to be seen, however, whether there will be sufficient political support in Parliament and in the government for the ACA option.

[21] This official is appointed to a four-year term by the Supreme Court and cannot be dismissed or reappointed. Operating within administrative and budgetary autonomy, the office investigates and brings charges before judges, directs and coordinates the functions of the Judicial Police and protects victims, witnesses and others involved in proceedings.

[22] There are mixed views regarding Mozambique's decision to strengthen the Attorney General's Office as the primary anti-corruption mechanism instead of establishing some form of an anti-corruption commission. There are serious questions regarding the Unit's capacity for oversight and coordination and outreach and civic awareness functions.

But there are important differences depending on the appointing authority and reporting lines. This could be either the executive (in which case they are part of the internal, self-policing function of the governance pillars) or the legislature (in which case they are part of a process of 'horizontal accountability' or oversight), or both. The oversight function of the Auditor General is often also hampered by the weakness of parliamentary oversight committees. It is not unusual for parliament to ignore the audit reports that were submitted to them. The positions of Auditor Generals in most South Asian countries are constitutional. But there are cases where the independence of the Auditor General is compromised since the position is, in practice, subordinate to the Ministry of Finance (e.g. Bangladesh).

The Board of Audit and Inspection (BAI) in the Republic of Korea has an extensive mandate including undertaking investigations pertaining to the use of public funds[23]. Prior to the establishment of the KICAC, a Commission for Prevention of Corruption was created to advise the BAI on the fight against corruption.

The New South Wales Audit Office also provides advice to Parliament, the Government and public sector agencies on public sector performance.

The case of Bulgaria is particularly interesting because of the primary role given to the Auditor in the fight against corruption. The National Audit Office in Bulgaria is composed of a President and ten members elected for a nine-year term by the National Assembly. The Bulgarian Auditor not only holds the register of asset declarations submitted by senior public servants; the Auditor also audits the financial activities of political parties. However, the Auditor has no enforcement role. Should it uncover criminal acts, it is obliged to submit these acts to the Public Prosecutor.

Auditors usually report to the National Assembly. There are examples, as mentioned above, where the latter has failed to act on the recommendations made in the reports (e.g. Botswana and Bulgaria). In a number of countries, the annual report of the ACA is shared with the Auditor. In Indonesia, the KPK is required to report on its activities to the Audit Board; the latter also falls within the supervisory mandate of the former. It is thus equally essential to ensure that the ACA has access to the audit reports. Because of the secrecy acts that still prevail in many developing countries, reports may need to be transmitted solely to senior officials to prevent broader disclosure of sensitive information. Experiences from countries that have been successful show a close collaboration between the ACA and the auditor general, as well as with the Office of the Ombudsman (see below).

Reviews of corruption allegations are also undertaken by the Inspector General in Uganda. In many cases, these audit offices function like an Ombudsman registering citizen complaints on corruption. In other cases (e.g. Bolivia), they coordinate anti-corruption activities among agencies. Still others have investigatory and prosecutorial powers (e.g. Peru's Tribunal for Public Ethics and Uruguay's Public Prosecutor).

3.3 Public Service Reform Agency or Public Service Commission

Public sector reform is imperative to any kind of anti-corruption strategy. The ACA should work closely with these institutions as the reform of the public service is an essential element of the anti-corruption prevention measures.

Organizational culture cannot be controlled from the outside, and it has thus proved necessary that public sector managers themselves take responsibility for integrity within their respective workplaces. It is also essential to monitor management responses to preventive measures and recommendations made by the various anti-corruption and audit bodies.

One of the main reasons for Singapore's success in combating corruption has been the government's efforts to remove the opportunities for corruption – through a sustained focus on streamlining cumbersome administrative procedures, cutting down red tape and enacting procurement reforms. The leading-by-example policy in Singapore's public service has been a decisive factor in its anti-corruption strategy. The high wages in the public service are usually considered one of the main contributing factors to the low levels of corruption in Singapore, but it must be remembered that these high salary levels are a main outcome of the anti-corruption policies, rather than an explanatory factor for their success[24]. What is key in the Singapore case is that the primary responsibility for preventing corruption lies with the respective departments. The Permanent Secretary in each ministry is responsible for ensuring that each department has a committee tasked with reviewing anti-corruption measures as well as to ensure that adequate measures are taken to prevent corrupt practices. This also includes putting in place strict conflict-of-interest policies.

[23] The BAI in the Republic of Korea reports to the President, the National Assembly and the Government.

[24] In 1959, when the anti-corruption strategy was launched, GNP per capita in Singapore was only US$443. Thirty-eight years later, that figure had grown by more than 11 percent annually, mainly due to gains in revenue and productivity that resulted from the anti-corruption policy and from rapid growth-oriented development policies, including high investments in human development. By 1994, the public sector wages ranked among the highest in the world, nearing private sector wage levels.

In South Africa, the anti-corruption mandate has been divided between the Police, the Prosecutor, the Auditor General, the South African Revenue Services and the Public Service Commission (among others). They all have as their core function to strengthen employee integrity, financial management and the quality of administration within the public service. In the absence of a special anti-corruption agency, South Africa relies very much on its civil service and the public sector managers to maintain a culture of integrity in government. Within the Department of Public Service and Administration, the Public Service Anti-Corruption (PSAC) Unit also has a coordinating function and is responsible for the development and implementation of the Public Service Anti-Corruption Strategy. The PSAC Unit also provides advisory and support services to the public sector on implementation of anti-corruption policies and legislation as well as convenes the Anti-Corruption Coordinating Committee. The Unit does not, however, carry out any corruption investigations itself. In addition, in its efforts to prevent and combat corruption, the government has enacted that all departments and institutions in the Public Service must establish a minimum capacity to undertake risk assessments, implement fraud plans, investigate allegations of corruption, manage whistle-blowing and promote ethical behaviour among their employees. It appears, however, that many agencies do not have the policies and procedures in place to comply with these obligations.

In Thailand, the Civil Service Commission as well as the Public Sector Development Commission play key roles. The former acts as the central agency in protecting the merit system and encouraging results-based management, transparency and accountability in the public service. The latter monitors the implementation of the *Decree on Rules and Procedures for Good Public Administration*. Also important is that citizens in Thailand can file a complaint with the Office of the Official Information Commission in case of non-compliance by a public agency to disclose information.

The *Prevention of Corruption Act* in Lithuania provides that all state and municipal agencies may establish internal units for the prevention of corruption within their respective mandates.

The Public Service Commission in Fiji established a special unit not only to investigate reports of corruption but also to make inquiries if there is a suspicion of corrupt activity. A Code of Conduct Bill is to be tabled in the House of Representatives that will apply to all the holders of high state office, including the President, the Vice President, Ministers, Members of Parliament, Chief Executives and those who hold statutory appointments or executive positions in statutory authorities. The legislation will demand exacting standards of integrity.

Where there is an ACA, it usually has a mandate to make recommendations on how to improve public management to reduce opportunities for corruption as part of its preventive mandate. In some countries, the recommendations of the ACA to government agencies are binding. In other countries, public agencies are not required by law to follow the recommendations of the ACA. In those cases, the ACA should, however, be allowed to give recommendations in its annual report to Parliament, the government and the Auditor, which can hold the departments accountable if no improvements are made.

3.4 Ombudsman

The importance of the Ombudsman lies in the fact that, as an independent institution, it can be considered an additional instrument for preventing and combating corruption, covering a different area of activities than those of already existing institutions in that the Ombudsman protects citizens from abuse by the public administration. Most importantly, the Ombudsman should be independent[25] of other branches of the government/administration, but should work in cooperation with other autonomous regulators, such as courts and audit bodies (World Bank, 1999).

The mandate of the Ombudsman generally goes beyond corruption cases and includes incidents of maladministration attributable to incompetence, bias, error or indifference that are not necessarily corrupt. In Botswana, the main mandate of the Ombudsman is to investigate complaints received from the public of injustice or maladministration in the public service[26]. This can be an advantage as the complainant in many cases will not know of or suspect the presence of corruption. Instead, the Ombudsman will determine if corruption is present and, if necessary, refer the matter to an ACA or prosecutor for further action. In other countries, the Ombudsman can also directly investigate complaints of corruption. In the Republic of Korea the Ombudsman does not have statutory power to investigate on its own initiative, nor are its recommendations binding. Its strength lies in the publication of its reports. In New South Wales, the Ombudsman also monitors the activities of the Police Integrity Commission[27], established to prevent, detect and investigate serious misconduct within the police. The Ombudsman also has the power to review existing legislation.

[25] In Lithuania, the Ombudsman can only be removed from office by a majority vote in Parliament.

[26] Should the recommendations of the Ombudsman not be followed, the Ombudsman is obliged to make a special report to the national Assembly.

[27] The ICAC cannot investigate or deal with a matter involving the conduct of police officers, even when this involves the conduct of public officers who are not from the police. ICAC has not been successful in combating corruption and misconduct in the New South Wales Police Force, which is the reason why the Police Integrity Commission was established. Nonetheless, corruption within the Police Force apparently remains a serious problem.

In certain countries, the Office of the Ombudsman operates as the anti-corruption body (e.g. in Papua New Guinea and Uganda). Latvia has no Ombudsman, but the functions are carried out by the State Office for the Protection of Human Rights (the establishment of the Ombudsman is being considered). Others would argue that there is a clear distinction between the two roles: that the Ombudsman is there to promote administrative fairness, and that this is best achieved by winning the confidence of the bureaucracy. An agency or commission that is also charged with the investigation and prosecution of public servants is more likely to be feared than trusted (Pope, 1999).

In Papua New Guinea, the Philippines and Vanuatu, the Ombudsmen have a mandate similar to that of the ACAs. The Philippines' ombudsperson is also equipped with the requisite investigative means. India has set up decentralized vigilance institutions responsible for the prevention and investigation of corruption cases (ADB/OECD, 2004:41).

In Sri Lanka, the ombudsman, known as the Parliamentary Commissioner for Administration, has been created to investigate complaints against government departments, statutory boards, corporations, government authorities and other local government institutions. The Commissioner also examines the infringement of fundamental rights, general public maladministration, failure to afford access to public information and acts of administrative abuses. Negligence and omissions are the subject matters of most complaints.

3.5 The Courts

The competence, professionalism and integrity of judges are critical to the success of anti-corruption efforts. The unique importance of judicial institutions is recognized in the UNCAC, which devotes a specific provision (Article 11) to the issues in this area. This article calls for measures which strengthen integrity and prevent opportunities for judicial corruption itself to be taken without prejudice to judicial independence. Article 11 also calls for similar action in respect to prosecutors in systems where they enjoy a similar degree of independence.

Yet, as is evident in several of the country briefs, the judiciary is often the weakest part of the institutional arrangements put in place for combating corruption, thus impacting on the credibility of the national integrity system as a whole. In Botswana, there have been several instances where trials have been delayed, thus affecting the conviction rate of the cases brought before the courts by the DCEC. Cases have also been delayed within the Prosecutor's Office, prompting the DCEC to develop its own capacity to prosecute corruption cases (see above).

Apart from the fact that the judiciary itself is being perceived as highly corrupt, in Bulgaria, a further concern has been the lack of judges, prosecutors and investigators specialized in corruption offences.

If the judicial system is weak and unpredictable, efforts to provide remedies through the courts will be less than effective. Therefore, some countries have established a special court to judge corruption cases. Indonesia, for example, has a Court of Corruption mandated to appraise and decide on criminal cases of corruption, including those committed outside the jurisdiction of Indonesia (if the perpetrator is of Indonesian nationality).

Whether there is a special anti-corruption court or not, part of the anti-corruption efforts should be to strengthen the integrity of the judiciary to ensure appropriate professional development to combat corruption and to establish adequate accountability structures.

While reforms of 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 (UNODC, 2004:51).

COUNTRIES WITHOUT A SPECIAL ANTI-CORRUPTION AGENCY

4

Not all countries have opted for a special ACA. Bulgaria and South Africa are examples of two countries that decided not to establish such a body but rather to strengthen existing institutions. They have set up alternative institutions to assure specialized competence in detecting and investigating corruption.

In Bulgaria, a central role is played by the National Service of the Police, the National Security Service, the National Service on Combating Organised Crime, the Financial Intelligence Agency and the Financial Control Agency. The Ombudsman and the National Audit Office also play a key role in corruption prevention.

The South African government also decided to maintain the current structures for combating corruption and opted for incremental improvements to existing agencies. But an Anti-Corruption Coordination Committee was established to coordinate the work of the different agencies. The anti-corruption mandate has thus been divided between the Police, the Prosecutor, the Auditor General, the South African Revenue Services and the Public Service Commission. A key role lies with the National Prosecuting Agency. The Internal Complaints Directorate investigates alleged misconduct within the police force.

Dedicated anti-corruption institutions are more likely to be established where corruption is widespread or is perceived to be so widespread that existing institutions cannot be adapted to develop and implement the necessary reforms, or where the existing institutions are themselves considered corrupt. 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. This results in fewer disadvantages in the coordination of anti-corruption efforts with other law enforcement cases (UNODC, 2004). However, as is evident in the case studies, in the countries that have not established an ACA and instead rely on existing institutions, coordination appears to be one of the main problems, requiring special institutional solutions.

COORDINATION 5

As the various institutions involved in combating corruption often have a complementary role, the success of the ACA largely depends on good cooperation and communication with, and the proper functioning of, other law-enforcement agencies, especially the police, Public Prosecutors and the courts. Regardless of the institutional setup a country has chosen, effective cooperation of the involved actors determines whether the fight against corruption will be successful. Improvement of cooperation between existing law enforcement agencies is thus a priority for many countries in the Asia region. In the Philippines, formalized information exchange has been established between relevant law-enforcement agencies so as to enhance their cooperation, and the establishment of inter-agency consultative bodies and ad hoc task forces and/or the organization of joint training programmes has been carried out. Papua New Guinea is setting up an anti-corruption alliance that pools and coordinates resources of different law enforcement agencies. The Republic of Korea is operating an anti-corruption policy coordination body composed of ten related agencies, such as ministries and supervisory bodies (ADB/OECD, 2004:41-42).

Examples of mechanisms established in countries without an ACA include the Commission for Coordinating Actions Against Corruption established in Bulgaria in 2002. It is an inter-ministerial commission with representatives from the Ministry of Finance, the Ministry of Interior, the Ministry of Justice and the Audit Office. The main function of the Commission is to coordinate and control the implementation of the national anti-corruption strategy and to analyse the effectiveness of the efforts to combat corruption. The Commission does not have investigative powers of its own and is not allowed to intervene in corruption cases. In addition, a Parliamentary Commission was also established to identify gaps in enforcement practices and propose amendments to existing laws.

Following on the recommendations of the Public Service Anti-Corruption Strategy, South Africa established the Anti-Corruption Coordination Committee, composed of those agencies that have anti-corruption functions, including national as well as provincial departments. Notwithstanding this committee, coordination remains problematic because of overlapping legislative mandates.

But coordination is not only a problem in countries that do not have a special ACA. The oversupply of institutions, often with conflicting mandates, is a problem that is common to many countries. Coordination is needed, and as mentioned above, a clear mandate needs to be granted to the institution that will take up this responsibility.

In Indonesia, the KPK has been charged with coordinating and supervising all institutions involved in anti-corruption activities. The KPK may request the Police or Prosecutor's Office to investigate a case further if it is not able to find enough evidence. The Police and Prosecutor's Office may carry out indictments in relation to corrupt cases but they must inform KPK within 14 days. The KPK is mandated to coordinate their activities. KPK is also empowered to take over an indictment process from the Police or the Prosecutor's Office.

Latvia's CPCB also has a clear mandate to coordinate the implementation of anti-corruption measures in State and local government institutions. All other bodies with investigative mandates are required to assist the bureau in carrying out its investigations. In practice however, many problems remain, in particular because of the multiplication of the law enforcement agencies (Finance Police, Security Police, State Police, and Prosecutor). This explains why a Parliamentary Crime and Corruption Prevention Council was established, headed by the Prime Minister and tasked with coordinating and supervising all State Authorities' activities in the field of crime and corruption prevention.

In Lithuania, it is the Prosecutor who is tasked with distributing criminal cases taking into account the specific area of competence of the various law enforcement bodies. The SIS is usually charged with corruption cases, but the Police also has a general obligation to investigate any crime brought to its attention, including corruption cases. Lack of coordination thus forced the government to clarify the responsibility for the distribution of corruption cases.

Thailand also seems to be struggling with a coordination problem. Thailand has designed a complex institutional web of organizations involved in combating corruption, whereby corruption can be tackled from different angles. But with the increase in the number of agencies involved in anti-corruption activities, there is an increasing risk of overlap and duplication, hence the need for effective coordination mechanisms.

When deciding on the number of institutions involved in anti-corruption activities and related distribution of responsibilities, the challenge will be to allow just enough redundancy – and even rivalry – to expose corruption if the primary ACA fails to do so (UNODC, 2004). 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 become diminished. In Zambia, for example, the Police, the Anti-Corruption Commission and the Electoral Commission each have been denying that it was their responsibility to enforce the electoral law, resulting in a complete lack of enforcement of the Electoral Law and related regulations (Tamesis, 2004:6).

To solve the problem, the ACA or another agency may be responsible for coordinating anti-corruption efforts, either in a comprehensive manner or in certain areas (e.g. the Prosecutor may be responsible for coordinating all investigations).

Where coordination remains problematic, a special committee or commission may be established. Members of such a committee/commission can include representatives from the executive branch, judiciary, legislature, civil servants in key departments such as customs, procurement and revenue collection and law enforcement, and from local governments. It can also include members from outside Government (e.g. representatives of religious groups, relevant non-governmental organizations, business leaders, the media and the academic community).

CONCLUSION

6

No society is totally free of corruption. However, with the appropriate institutional and legislative measures, corruption can be kept within acceptable limits. The UNCAC invites countries to share their experiences and techniques with fellow professionals and policy makers in order to mutually benefit from international good as well as bad practices. As a broker of knowledge, UNDP has an important role to play in this process. The UNCAC, which came into force in 2005 upon the receipt of the 30th instrument of ratification, provides strong guidance on the issue of anti-corruption as an international standard, and countries that have ratified it are bound by its content. However, to date, Azerbaijan, China, Kyrgyzstan, Mongolia, Sri Lanka and Turkmenistan are the only Asian countries to have become parties to the convention.

This comparative study has analysed institutional arrangements for combating corruption in a variety of countries. The study provides a number of lessons to be taken into account when designing reforms of the institutional arrangements, for which there are several provisions in the UNCAC.

It was mentioned on several occasions that the creation of an ACA is not in itself a panacea for solving the problem of corruption. If the existing criminal justice system is perceived as being capable of fighting corruption, there may be little added value in creating an ACA. However, should an ACA be established, there are several considerations that must be taken into account (see also UNDP, 2004):

- The ACA must be **independent** (politically as well as operationally) from outside influence in order to enable it to pursue corruption allegations at all levels (this can be achieved through constitutionally guaranteed independence or through the establishment of adequate accountability/ oversight mechanisms);

- The ACA (as well as other agencies involved in the fight against corruption) needs to operate on the basis of **solid and comprehensive legal frameworks**[28];

- The ACA must have **strong political backing** at the highestlevels of government;

- The ACA must have **adequate financial**[29], **human**[30] **and technical resources** and organizational capacity to effectively combat corruption; it must operate under exemplary leadership which must be of the highest integrity;

- The ACA must have **adequate powers of investigation**, i.e. to question witnesses, access documents, etc. as well as the possibility to prosecute as and where required;

- The ACA must have a **coherent and holistic strategy** for combating corruption, focusing on prevention, investigation and awareness raising. (It is essential that attention is given to all three elements. In some of the countries, studied institutions that have focused on investigation and enforcement have been less successful than those who have adopted a more holistic approach); and

[28] Without enforceable and effective laws, an agency is hamstrung. In Hong Kong, the authorities recognized the value of a legal framework within which the ICAC should operate. Similarly, CPIB in Singapore and the New South Wales ICAC also have the backing (after repeated amendments) of strong enabling legislation.

[29] For example, the budget for Hong Kong ICAC was US$94 million in 2002/US$90 million in 2001; The ICAC in New South Wales operates with an annual budget of about US$8.7 million; Singapore's Corrupt Practices Investigation Bureau's budget is not published but was reported to be around US$4.3 million in 1986. Botswana's Directorate on Corruption and Economic Crime has a US$2.4 million budget.

[30] Hong Kong's ICAC has a manpower of 1,300 staff for a total population of 6.8 million. Thailand's NCCC has a manpower of approximately 500 for a total population of 65 million. It explains some of the difficulties the NCCC encounters in covering its mandate.

- The ACA must have the **support of society at large** in order to be successful (further emphasizing the importance of awareness raising).

Across all the country briefs, it is evident that for any effort to combat corruption to be effective, there needs to be a **systematic, comprehensive and long-term approach.** This means that the institutions charged with combating corruption must be given adequate time, in addition to resources, to be successful. This also supports the position that in addition to providing a deterrent to corruption, the institutions charged with combating corruption must also work to raise awareness of corruption and, through prevention, work towards eliminating opportunities for corruption.

Further, no institution will be successful in combating corruption without the existence of an **enabling governance framework** as well as a coherent and **functioning national integrity system.** As discussed above, this includes the judiciary, police, audit institution, ombudsman, police, etc. **Of particular importance is the relationship between the institution(s) charged with combating corruption and the prosecution and judiciary.** They are essential for corruption cases to be brought to court and tried. Thus, if attention is not paid to strengthening the capacity of the prosecutors and the courts, efforts to combat corruption are likely to be a failure.

The role of the **audit institution** as well as the **ombudsman** must also be seriously considered as these institutions have an important complementary role to play in combating corruption, fulfilling functions that the institution primarily charged with corruption may not be able to do.

Whether a country opts for establishing an apex institution (such as an ACA) to combat corruption or opts for using the existing institutional and criminal justice system, it is essential that there be effective **channels and mechanisms for ensuring cooperation and coordination** between the various institutions involved in combating corruption in order for them to be effective.

However, regardless of the institutional arrangements that a country chooses to adopt, it must be emphasized that **what looks good in theory may not be as good in reality.** As stated above, the institutions must have full political backing as well as be equipped with adequate powers and resources. But they must also be supported by an appropriate **legislative** framework. Also, in several of the countries covered in this study, an important factor in the success of the efforts to fight corruption has been the **example set by the leaders** of that country. Where the political leadership is not perceived as being corrupt and corruption is not accepted amongst members of government, efforts to combat corruption appear to have been more successful.

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PART TWO

COUNTRY BRIEFS

Australia (New South Wales)

Key institutions of the national integrity system

- Attorney-General's Department of New South Wales *www.lawlink.nsw.gov.au/agd*
- Audit Office of New South Wales *www.audit.nsw.gov.au*
- Independent Commission Against Corruption (ICAC) *www.icac.nsw.gov.au*
- New South Wales Ombudsman *www.nswombudsman.nsw.gov.au*
- New South Wales Treasury *www.treasury.nsw.gov.au/index.htm*
- Office of the Director of Public Prosecutions *www.odpp.nsw.gov.au*
- Operations Review Committee (ORC) *www.icac.nsw.gov.au/go/the-icac/what-is-the-icac/independence/-accountability/the-operations-review-committee-(orc)*
- Parliamentary Joint Committee on the ICAC (PJC) *www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/A0A166D9395ADD4D4A2563E000050563*
- Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission *www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/847F90F3F57A066A4A2563E000050573*
- Police Integrity Commission (PIC) *www.pic.nsw.gov.au*
- Supreme Court *www.lawlink.nsw.gov.au/sc*

Main legislation

- *Director of Public Prosecution (DPP) Act (1986), http://www.austlii.edu.au/au/legis/nsw/consol_act/doppa1986343*
- *Independent Commission Against Corruption* (ICAC) *Act* (1988), *http://www.austlii.edu.au/au/legis/nsw/consol_act/icaca1988442*
- *Ombudsman Act* (1974), *http://www.austlii.edu.au/au/legis/nsw/consol_act/oa1974114*
- *Police Integrity Commission* (PIC) *Act* (1996), *http://www.austlii.edu.au/au/legis/nsw/consol_act/pica1996312*
- *Public Finance and Audit* (PFA) *Act* (1983), *http://www.austlii.edu.au/au/legis/nsw/consol_act/pfaaa1983189/#pfaaa*

Background

In 1988, a new Government was elected in New South Wales (NSW) promising to establish an independent commission to tackle the problem of corruption, in which they were also supported by the opposition. The introduction of the needed legislation thus became necessary and, consequently, *the Independent Commission Against Corruption Act* was passed by both Houses of Parliament in 1988. A Commissioner was appointed in 1988 and the Independent Commission Against Corruption (ICAC) began operating in early 1989 with the commencement of the ICAC Act (ICAC, 1997). The decision to establish the ICAC resulted from serious and ongoing scandals in the public sector also extending into the political arena, which had given rise to widespread public concern (O'Keefe, 2002:2-3). The ICAC adopted a three-pronged approach towards combating corruption similar to that adopted by the Independent Commission Against Corruption in Hong Kong S.A.R. after which the NSW ICAC is modelled. This entails a strategy that focuses on investigation, prevention as well as education.

The ICAC is seen internationally, together with the anti-corruption commissions in Singapore and Hong Kong S.A.R., as a model for the establishment of anti-corruption bodies and the model is being adopted, e.g. in South Korea, or is being considered by other countries. The high economic and political cost of establishing such an independent commission has, however, resulted in slow implementation (Transparency International, 2001:14).

Although the ICAC is considered an example for others to follow the 1996 Royal Commission into the New South Wales Police Force found widespread corruption within the NSW Police Force. The Royal Commission found that the ICAC was not sufficiently equipped to deal with corruption in the Police Force and recommended the establishment of an independent body dealing solely with misconduct in the Police Force. This led to the adoption of the *Police Integrity Act* in 1996, subsequently leading to the establishment of the Police Integrity Commission (PIC) in 1997 (Wood, 2004).

There is no equivalent to the ICAC at the national level in Australia. Similar agencies do exist at the state level e.g., the Crime and Misconduct Commission in Queensland and the Anti-Corruption Commission in Western Australia. This is considered by some to be a clear omission in the arrangements for combating corruption at the national level (Doig and McIvor, 2004:16).

Australia ranked 9th out of 159 countries on Transparency International's *Corruption Perception Index 2005*. Although this indicates that Australians perceive that there is little corruption in their country, the picture is different at the state level. The 2003 survey conducted by the ICAC, *Community attitudes to corruption and the ICAC,* found that 82 percent of those surveyed perceived corruption to be a problem in NSW and 42 percent believed that they or their families were affected by corruption in some way. Corruption was perceived to affect the whole community through poorer services and/or people having to pay more for services. Examples of corruption given by respondents mainly involved local government, police, other government departments or employment opportunities.

Mandate and institutional links of the key anti-corruption institution

The **Independent Commission Against Corruption (ICAC)** is a standing commission of inquiry focusing specifically on investigating and preventing corrupt conduct in the public sector. The Commission was established in 1989 by virtue of Subsection 4(1) of the ICAC Act. The ICAC Act further defines corruption; sets out the functions of the ICAC; describes referral responsibilities; constitutes and sets out the function of the **Parliamentary Joint Committee on the ICAC (PJC)** and the **Operations Review Committee (ORC)**; and makes provisions for referrals from and reports to the Houses of Parliament. In addition to the ICAC Act, the Governor may also make regulations consistent with the Act, with respect to, for example, appointments, conditions of employment, discipline, code of conduct and termination of employment of staff of the ICAC, etc. (ICAC Act, Section 117).

The ICAC operates independently of the NSW Parliament, Government and judiciary, and the ICAC Act confers significant powers and discretions to the ICAC to undertake its principal functions. Consequently, "there is a comprehensive [internal as well as external] governance framework in place to ensure that the ICAC is accountable and transparent" (ICAC, 2004:51). The framework will be discussed below as well as under the heading *Operational Arrangements.* In accordance with Section 76 of the ICAC Act, the Commission shall deliver to the Presiding Officer of each House of Parliament an annual report on its operations. The Commission is accountable to the **NSW Treasury** in relation to funding and expenditure.

The ICAC is headed by a Commissioner appointed by the Governor (ICAC Act, Section 5) after the person to be appointed has been referred to the PJC (ICAC Act, Subsection 5A[1]), together with an Assistant Commissioner appointed by the Governor on the concurrence of the Commissioner (ICAC Act, Section 6). The Commissioner's term is for five years and is non-renewable (ICAC Act, Schedule 1, Section 4) and s/he can only be removed on the address of the Houses of Parliament (ICAC Act, Schedule 1, Section 6[3]). In accordance with Subsection 104(1) of the ICAC Act, the Commission may employ staff as necessary in order to exercise its functions. All members of the ICAC are under the control and direction of the Commissioner (ICAC Act, Subsection 104[7]). In accordance with Subsections 107(1-2) of the ICAC Act, the Commissioner as well as the ICAC may delegate any of their respective functions to an Assistant Commissioner or an officer of the Commission, except as provided by Subsections 107(4-5).

The organizational structure of the ICAC consists of one executive unit and five divisions, namely:

- The **Assessments Section**, which receives all reports and complaints, registers each matter and makes additional enquiries as necessary. All matters are then reported to the **Assessment Panel**, an internal review committee that has the responsibility of determining what action is to be taken in regard to each matter received;
- The **Corporate Services Division**, which provides customer-focused business services and solutions as well as strategic policy advice in the areas of business planning, human resources, learning and staff development, finance administration, risk management, procurement and office services and information management and technology;

- The **Corruption Prevention, Education and Research Division**, which provides advice, education and training resources and guidance to public sector agencies, as well as educates public officials and the wider community about corruption and how to report it;
- The **Legal Division;** and
- The **Strategic Operations Division**, which has primary responsibility for conducting ICAC investigations. The Division consists of two units, the Investigations Unit and the **Strategic Risk Assessment Unit**, which is further divided into three sections: **Surveillance, Product Management and Intelligence.**

Internal coordination as well as governance within the Commission is ensured through two management groups:

- The **Prevention Management Group**, which oversees the corruption prevention, education and research work of the Commission and ensures that that work is coordinated with other activities of the Commission; and
- The **Investigation Management Group**, which provides direction, advice and oversight on investigations undertaken by the Strategic Operations Division.

The ICAC has adopted a strategy towards combating corruption, similar to that of the Independent Commission Against Corruption in Hong Kong S.A.R., focusing on investigation, prevention and education. Section 13 of the ICAC Act provides that the principal functions of the Commission are:

- In the field of investigation (Subsection 1[a-c]):
  - To investigate any allegation or complaint or any circumstance which, in the Commission's opinion, imply that any of the following may have occurred, may be occurring or may be about to occur:
    - corrupt conduct; or
    - conduct liable to allow, encourage or cause the occurrence of corrupt conduct; or
    - conduct connected with corrupt conduct;
  - To investigate any matter referred to the Commission by both Houses of Parliament; and
  - To communicate to the appropriate authorities the results of the investigation.

Corrupt conduct as defined by the ICAC Act is any conduct by any person, whether or not a public official, that adversely affects or could affect the exercise of official functions in NSW (Section 8). For conduct to be considered corrupt, however, it must be of a type that would constitute or involve: a criminal offence; a disciplinary offence; or reasonable grounds for dismissing a public official. In the case of a Minister or Member of Parliament, it must be a substantial breach of the applicable code of conduct or involve a breach of the law (ICAC Act, Section 9). It should also be noted that the ICAC may only investigate suspected acts of corruption in the private sector when it relates to or impacts on the public service.

- In the field of prevention (Subsection 1[d-g]), the principal functions of the Commission are:
  - To examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures, which in the opinion of the Commission, may be conducive to corrupt conduct;
  - To instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated;
  - To advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct; and
  - To cooperate with public authorities and public officials in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct.

- In the field of education (Subsection 1[h-k]), the principal functions of the Commission are:
  - To educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct;
  - To educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration;
  - To enlist and foster public support in combating corrupt conduct; and
  - To develop, arrange, supervise, participate in or conduct such educational or advisory programmes as may be described in a reference made to the Commission by both Houses of Parliament.

In addition to this, the ICAC is, in accordance with Subsection 13(2), to conduct investigations in order to determine:

- Whether any corrupt conduct has occurred, is occurring or is about to occur;
- Whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct; and
- Whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.

In addition to this, the principal functions of the ICAC also include the power to make findings and form opinions on the basis of the results of its investigations, in respect to any conduct, circumstances or events with which its investigations are concerned. This may be done whether or not the findings or opinions relate to corrupt conduct, and the power to formulate recommendations for the taking of action that the ICAC considers should be taken in relation to its investigations (ICAC Act, Subsection 13[3]).

As noted above, the ICAC may conduct investigations on its own initiative as well as on a complaint or report made to it as well as on a reference made to the Commission. In accordance with Subsection 10 of the ICAC Act "any person may make a complaint to the Commission about a matter that concerns or may concern corrupt conduct". It is at the discretion of the Commission whether or not to investigate a complaint or to discontinue an investigation (ICAC Act, Subsections 10[2-3]). The ICAC must, however, consult the ORC before deciding on whether to discontinue or not commence an investigation of a complaint or report (ICAC Act, Subsection 20[4]). Principal Officers of public authorities are required by the ICAC Act to report to the Commission any suspected act of corruption that is brought to their attention (Subsection 2). The ICAC may instruct the appropriate authority to take measures to protect witnesses and persons assisting the ICAC (ICAC Act, Section 50).

The importance of investigation is considerable as there is no presumption of guilt based on a complaint or a report received. It is the role of the ICAC to prove that corrupt conduct has occurred (ICAC, 2004:30). Thus, the Commission has been provided with extensive powers of investigation under the ICAC Act, exceeding those given to the police. These include: the power to require a public authority or official to provide information or produce documents (ICAC Act, Sections 21 and 22); the power to enter public premises with the written authorization of the Commissioner (ICAC Act, Section 23); as well as with search warrants to enter premises, conduct searches and inspect, copy and seize documents or other evidence (ICAC Act, Sections 41 and 47). Search warrants may be issued by a judge or the Commissioner (although the Commissioner rarely uses this power) (ICAC Act, Subsections 40[1-2]). ICAC investigators may also obtain warrants to use listening devices and intercept telephone calls. In accordance with the *Listening Devices Act 1984*, listening device applications have to be approved and granted by a Justice of the Supreme Court. In accordance with the *Telecommunications (Interception) Act 1979,* telephone intercept applications have to be approved or granted by a member of the Administrative Appeals Tribunal. In order to ensure compliance with statutory requirements, the **Ombudsman** inspects ICAC records of telephone intercepts and controlled operations. The ICAC also reports on its use of listening devices to the **Attorney-General's Department.**

The ICAC also has an internal approval policy before any application is made for a warrant of any type. In accordance with this policy, ICAC investigators must submit the application to the Legal Division for review. The application must then be submitted to the Executive Director of the Strategic Operations Division before being submitted to the appropriate authority.

For the purpose of an investigation, the Commission may also hold hearings to be conducted by the Commissioner or an Assistant Commissioner as determined by the Commissioner (ICAC Act, Subsection 30[1-2]). The hearings may be held in public, in private or a combination of both (ICAC Act, Subsection 31[1]). Public hearings are seen as an important tool in exposing corruption and can also serve to increase the public's confidence in the integrity of investigations. In connection to the holding of hearings, the Commission is empowered to summon witnesses (ICAC Act, Subsection 35[1]). Should a witness summoned to appear before a hearing fail to show, the Commission may issue a warrant for the arrest of the witness (ICAC Act, Subsection 36[1]).

The Commission has adopted the **ICAC Code of Conduct,** which sets out the principles that ICAC staff are expected to uphold as well as prescribing specific conduct in areas considered central to the exercise of the ICAC's functions. Complaints about the conduct of ICAC staff are treated seriously and are investigated by a member of ICAC senior management. The investigation and any proposed action will usually be reviewed by the Commissioner. In particularly serious cases, an investigator from outside the ICAC may be engaged to conduct the investigation, which will be reported to the ORC.

In order to foster transparency, the administrative, research and educational matters of the ICAC are covered by the *Freedom of Information Act.*

Operational arrangements

As mentioned above, an elaborate framework has been established in order to ensure the accountability of the ICAC to the public of NSW as well as its transparency. This is of particular importance considering the extensive powers conferred on the Commission by the ICAC Act. In addition to the ones already covered above, the two most important oversight bodies are the **Operational Review Committee (ORC)** and the **Parliamentary Joint Commission (PJC) on the ICAC.**

The **ORC** is constituted under Section 58 of the ICAC Act in order to provide a mechanism which ensures that the ICAC properly deals with complaints received by the public. The functions of the ORC are: to advise the Commissioner on whether the ICAC should investigate a complaint made under the ICAC Act; to discontinue an investigation of such a complaint; and to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the ORC (ICAC Act, Subsection 59[1]). In accordance with Subsection 60(1) of the ICAC Act, the ORC shall consist of eight members: the Commissioner, as the Chairperson; an Assistant Commissioner, nominated by the Commissioner; the Commissioner of Police; a person appointed by the Governor on the recommendation of the Attorney General and with the concurrence of the Commissioner; and four persons appointed by the Governor on the recommendation of the Minister and with the concurrence of the Commissioner to represent community views.

Section 63 of the ICAC Act provides for the establishment of the **PJC**. The functions of the PJC, as provided by Subsection 64(1) of the ICAC Act, are:

- To monitor and to review the exercise by the Commission of its functions;
- To report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the ICAC or connected with the exercise of its functions to which, in the opinion of the PJC, the attention of Parliament should be directed;
- To examine each annual and other report (often conducted as public hearings before the PJC) of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- To examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the PJC thinks is desirable to the functions, structures and procedures of the Commission; and
- To inquire into any question referred to it by both Houses of Parliament in connection with its functions and report to both Houses on that question.

As mentioned above, the PJC also has the power to veto a proposal for appointment of the Commissioner of the ICAC (ICAC Act, Section 64A). The PJC may not, however, investigate a matter relating to particular conduct, or reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or reconsider the findings, recommendations, determinations or other decisions of the ICAC in relation to a particular investigation or complaint (ICAC Act, Subsection 64[2]). In accordance with Subsection 65(1) of the ICAC Act, the PJC shall consist of 11 members, three of which shall be members of, and appointed by, the Legislative Council, and eight of which shall be members of, and appointed by, the Legislative Assembly. The Chairperson and the Vice-Chairperson of the PJC are elected by and from the members of the PJC (ICAC Act, Subsection 67[1]).

The **Supreme Court** has both the inherent and statutory jurisdiction to supervise the functioning of administrative tribunals such as the ICAC to ensure that it acts in accordance with the law.

The ICAC is, in accordance with Subsection 16[1] of the ICAC Act, required to, as far as practicable, work in cooperation with **law enforcement agencies** as well as other agencies such as the **Auditor-General** and the **Ombudsman** when conducting investigations. This includes the secondment of members of the Police Force to the ICAC, in accordance with provisions of Subsection 104(5) of the ICAC Act. The ICAC may also, before or after investigating a matter, refer the matter for investigation or other action "to any person or body considered by the Commission to be appropriate in the circumstances" (ICAC Act, Subsection 53[1]).

It is the role of the ICAC to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against a law of NSW and furnish any such evidence to the **Director of Public Prosecution.** Where there is sufficient evidence, the ICAC will recommend to the Director of Public Prosecution that consideration be given to criminal prosecution or to the supervising authority (principal officer), that disciplinary action be taken against a specified person. The Director of Public Prosecutions or the principal officer of the relevant department or authority is then responsible for considering whether prosecution or disciplinary action is appropriate.

The Director of Public Prosecution – appointed by the Governor (DPP Act, Subsection 4[1]) upon the approval of the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (DPP Act, Subsection 4A[1]) – is head of the **Office of the Director of Public Prosecution (ODPP).** The independence of the Director is provided by the DPP Act in that, although the Director is responsible to the Attorney General for the due exercise of the Director's functions under the Act, the Director is independent in respect to the preparation, institution and conduct of any proceedings (Subsection 4[3]). In accordance with Subsection 7(1) of the DPP Act, the Director is responsible for instituting and conducting prosecutions for indictable offences under NSW laws in the Supreme Court and the District Court; i.e., it is the Director who decides whether or not to institute a prosecution. Within the ODPP, a special unit has been instituted, Group 6, which prosecutes police officers and prosecutes matters referred to the ODPP by the PIC and the ICAC, as well as other high-profile matters.

In accordance with Subsection 129(1) of the PIC Act, ICAC cannot investigate or otherwise deal with a matter involving the conduct of police officers if the matter does not also involve the conduct of public officials who are not police officers. The ICAC is required to refer to the Ombudsman all complaints received by it involving police officers, whether or not they involve conduct of other public officials. However, such a complaint may instead be referred by the ICAC to the PIC if the ICAC is of the opinion that the complaint involves serious police misconduct. A complaint referred to the Ombudsman under this section must be referred by the Ombudsman to the PIC if the Ombudsman is of the opinion that the complaint or matter involves serious police misconduct (PIC Act, Section 128).

The **Police Integrity Commission (PIC)** is an independent agency established by virtue of Subsection 6(1) of the PIC Act. The Commission is headed by a Commissioner, who is appointed by the Governor (PIC Act, Subsection 7[1]). The Commission may not appoint any staff which serve or have served with the NSW Police Force. The **Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission** monitors and reviews the PIC in the exercise of its functions (PIC Act, Section 95). The Commission is required to report on its operations annually to the Houses of Parliament (PIC Act, Subsection 99[1]). The principal functions of the Commission, in accordance with Subsection 13(1) of the PIC Act, are:

- To prevent serious police misconduct and other police misconduct;
- To detect or investigate, or manage other agencies in the detection or investigation of, serious police misconduct; and
- To detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as the PIC may see fit.

The PIC has similar extensive powers as the ICAC to conduct investigations into police misconduct or corruption.

The **NSW Audit Office**, established by virtue of Subsection 33A(1) of the PFA Act, is headed by the **Auditor-General** who is appointed by the Governor for a non-renewable term of seven years (PFA Act, Subsection 28[1]) upon the approval of the **Public Accounts Committee** (PFA Act, Subsection 28A[1]). The Audit Office provides advice to Parliament, Government and public sector agencies about public sector performance. The Audit Office also conducts audits under the PFA Act and other NSW Acts and may conduct an audit of all or any of the particular activities of a public authority concerning the efficiency, economy and compliance with relevant laws. As such, the Audit Office also reviews the ICAC's financial statements contained in the Commissions annual report. The ICAC also engages the Audit Office to provide the Commission with an internal audit function.

The **Office of the Ombudsman** was established upon the appointment of the first Ombudsman in 1975, in accordance with Subsection 6(1) of the Ombudsman Act, which provides that the Governor may appoint an Ombudsman on the recommendation of the Minister upon the approval of the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (Ombudsman Act, Section 31BA). The Committee also monitors and reviews the Ombudsman in the exercise of his/her functions (Ombudsman Act, Section 31B). In accordance with Section 33 of the

Ombudsman Act, the Ombudsman shall deliver to the Presiding Officer of each House of Parliament an annual report on his/her operations. The primary role of the Ombudsman is to act as an independent review body. As such, the functions of the Ombudsman include performing:

- Administrative reviews, including dealing with complaints about the administrative conduct of public sector agencies and officials, and equivalent bodies and persons.
- Compliance reviews, including:
  - Reviewing compliance with the law and good practice, e.g. compliance with procedural fairness and good practice in investigations, use of police powers, controlled operations, auditing of telecommunication interception records;
  - Reviewing the handling of and response to allegations and complaints; and
  - Reviewing standards of service provision.
- Legislative review, i.e. reviewing implementation of certain legislation that expands the powers of police and correctional staff.

The Ombudsman may initiate investigations into cases whether or not a complaint has been made (Ombudsman Act, Subsection 13[1]). It should, however, be noted that the Ombudsman does not have any power to enforce compliance with recommendations s/he may make.

Lessons learned

One of the main features of the ICAC is the existence of an elaborate framework, both internally and externally, to ensure the accountability and transparency of the Commission. These measures are essential to ensure that the public perceive the Commission as being just that – accountable and transparent. This is particularly significant because, as is concluded in an early report by the ICAC, much of the success of the Commission was a result of the help and information provided by the members of the public, and that the ICAC cannot fulfil its functions without the help and support of the public (ICAC, 1991:17-18).

The three-pronged approach to combating corruption is also considered fundamental to the success of the ICAC in addressing the issue of corruption in the public sector. One lesson learned by the Commission is that focusing on systems and organizational culture is more effective than focusing on the individual. Investigating individual allegations is not sufficient. Prevention has proven to be an integral part of combating corruption, further emphasizing the importance of focusing on systematic and organizational changes (Gorta, 1999).

Part of the success of the ICAC also lies in its collaboration with other agencies. No agency, regardless of resources, will on its own be able to effectively address the issue of corruption. There must be a shared responsibility for ensuring a corruption-free public sector. Furthermore, organizational culture cannot be controlled from the outside, and it has thus proven necessary that public sector managers themselves take responsibility for integrity within their respective workplaces. Related to this is the importance of monitoring outcomes. It has been found that it is important to measure management responses to prevention measures and that if monitored, measures and recommendations are more likely to be implemented (Gorta, 1999).

The ICAC realized at an early stage that it is necessary to have the appropriate data in order to carry out proper risk analysis and assessments. In the opinion of a former Commissioner of the ICAC, the most appropriate and effective and efficient placement of research capacity is within the anti-corruption agency itself. The ICAC has also come to significantly expand its research capacity. The research unit has provided the ICAC with valuable data which has been seen as assisting significantly in the allocation of resources in the area of proactive investigations as well as guiding the allocation of resources in regard to corruption prevention (O'Keefe, 2002:9).

The ICAC also conducts surveys of the view of public sector employees as it is considered that employee or workplace attitudes to corruption are more salient in governing behaviour than formally imposed definitions; employees are in the best position to observe and respond to potentially corrupt conduct that may occur in their workplace. Thus, it is essential to foster a common understanding of what constitutes corrupt behaviour (Gorta, 1999).

The ICAC's power to hold public hearings has been seen by some as an effective way to expose questionable patterns of behaviour, and the idea behind the hearings is that they will 'shame' those involved in the hearing to change their ways. It also provides an opportunity to highlight and expose areas which require changes in procedures, policy or legislation. It is also an

effective tool for enlightening the public to what exactly is taking place. During the hearings, the ICAC may summon witnesses to give evidence. The evidence given, however, is not admissible in court. This is an aspect of the hearings which has come to be highly criticized as the individual, if ever brought to court on charges of corruption, can plead that s/he does not have access to a fair trial. It has been argued that this mechanism may be more suited to countries experiencing widespread corruption as it could be a tool to identify areas that require reform, although it allows the individual to go free (Hakes Drielsma, 55).

Although there is an improving confidence among the public that people who report corruption will not suffer negative consequences, 60 percent of respondents in the ICAC survey believed that people who report corruption are likely to suffer as a consequence. In relation to this, it has been highlighted by Transparency International that the legislative framework will need to be strengthened in order to improve public confidence (2004:156).

Although the ICAC is widely seen as successful in combating corruption in the public sector, in 1996, the Royal Commission into the New South Wales Police Force found that the ICAC had not been successful in combating corruption and misconduct in the NSW Police Force. This was explained in part by the wide mandate of the ICAC, covering all public agencies and officials in combination with limited staff and resources. A further complicating factor was the dependence of the ICAC on investigators seconded from the NSW Police Force, who would later return to the Police Force, as well as the lack of a specific division within the ICAC with the competence to address the issue of police corruption. The Royal Commission also found that the ICAC had emphasized corruption prevention and education at the expense of its investigative role. These findings led the Royal Commission to recommend the establishment of the independent Police Integrity Commission, a recommendation which was implemented in 1997 (Wood, 2004). However, according to Transparency International's *Global Corruption Report 2003,* corruption within the NSW Police Force remains a problem (2004:117).

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Information was also gathered from the websites of the various institutions listed above.

Botswana

Key institutions of the national integrity system

- Attorney General's Chambers *www.gov.bw/government/attorney_generals_chambers.html*
- Directorate on Corruption and Economic Crime (DCEC) *www.gov.bw/government/directorate_on_corruption_and_economic_crime.html*
- Office of the Auditor General (OAG) *www.gov.bw/government/office_of_auditor_general.html*
- Office of the Ombudsman *www.gov.bw/government/ministry_of_state_president.html#ombudsman*

Main legislation

- *Corruption and Economic Crime Act* (No. 13) of 1994 (Act No. 13)

Background

Corruption was relatively unknown in Botswana politics until the early 1990s and the public service prided itself on being free from corruption. The early 1990s, however, saw the revelation of several cases of high-level corruption uncovered by three consecutive Presidential Commissions (Frimpong, 2001:11). These revelations prompted the Government in 1994 to establish the Directorate on Corruption and Economic Crime (DCEC) within the Office of the President, by virtue of Section 3(1) of Act No. 13. The decision to create the DCEC followed on a Government review of different approaches taken towards combating corruption across the world. Hong Kong's Independent Commission Against Corruption and its 'three-pronged attack'[1] on corruption was seen as being of particular interest, and the DCEC came to adopt a similar approach also focusing on investigation, prevention and public education.

Since its inception, the DCEC has received increasing numbers of reports on suspected or alleged corruption. In 2001, the DCEC received 1,841 reports of corruption, a 24.8 percent increase from the previous year, and the number of investigations resulting from these reports increased by six percent over the previous year (DCEC, 2002:18). In order to deal with its high caseload, the DCEC has introduced a Case Management System, which in 2001 resulted in the caseload per officer decreasing from 13 to an average of seven (DCEC, 2002:13). At the end of 2001, the DCEC had completed 42 cases[2] and 52 cases were uncompleted, showing a continuing increase in cases completed each year (DCEC, 2002:16). Sixty-three cases were also referred to the Attorney General's Chamber.

An additional encouraging development is that the national assembly in 2001 adopted legislation requiring comprehensive asset disclosure by members of Parliament, although this register remains confidential (Transparency International, 2003:253).

Botswana experiences relatively low levels of corruption, placing 32nd out of 159 countries on Transparency International's *Corruption Perceptions Index 2005*. Although not devoid of corruption, Botswana nevertheless stands out in Southern Africa in that major corruption scandals are rare and the government is generally perceived as accountable and transparent (Transparency International, 2001:57). The incidence of high-level systematic corruption, which initially prompted the government to establish the DCEC, appears to have subsided. Some allegations have, however, been made that the DCEC is

[1] For further information on the ICAC and the institutional arrangements put in place to combat corruption in Hong Kong, please refer to the Hong Kong S.A.R. coutry brief.

[2] Out of the 42 cases completed, 24 resulted in convictions and six were withdrawn.

simply not going after the 'big fish'. The cases investigated by the DCEC now typically involve low-level corruption, with the suspects being low-level government officials (Frimpong, 2001:14-15). However, although a number of convictions have been handed down in corruption cases by the Courts, the DCEC has expressed concern that the sentences for these crimes have been to lenient (DCEC, 2002:17).

Mandate and institutional links of the key anti-corruption institution

The **Directorate on Corruption and Economic Crime (DCEC)** was established in September 1994 by virtue of Section 3(1) of Act No. 13, enacted the previous month. In addition, Act No. 13 also provides for the functions of the DCEC, the powers and duties of its Director and the procedures to be followed in dealing with corruption cases. Organizationally, the DCEC is placed as an autonomous Directorate under the Office of the President and reports directly to the President.

The DCEC is headed by a Director, together with a Deputy Director. The Director is responsible for the direction and administration of the DCEC (Section 4[2], Act No. 13). The President appoints the Director "on such terms as he sees fit" (Section 4[1], Act No. 13). By virtue of Section 3(2) of Act No. 13, the DCEC is designated as a public office and thus the Director and the staff of the DCEC are regulated under the Public Service Act. As such, the Director does not have security of tenure and is formally and directly responsible to the President.

The DCEC is made up of seven branches: Prosecution; Investigation; Intelligence Analysis; Corruption Prevention; Public Education; Administration and Human Resources; and Personnel Management Systems and Training.

Section 6 provides that the DCEC has a wide range of functions, namely:

- To receive and investigate any complaints alleging corruption in any public body;
- To investigate any alleged or suspected offences under Act No. 13, or any other offence disclosed during such an investigation;
- To investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws;
- To investigate the conduct of any person that, in the opinion of the DCEC Director, may be connected with or conducive to corruption;
- To assist any law enforcement agency of the Government in the investigation of offences involving dishonesty or cheating of the public revenue;
- To examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which may be conducive to corrupt practices;
- To advise heads of public bodies of changes in practices or procedures in order to reduce the likelihood of corruption;
- To educate the public about the evils of corruption; and
- To enlist and foster public support in combating corruption.

In fulfilling these functions, Section 7(1) of Act No. 13 mandates that the Director authorize any officer of the DCEC to carry out inquiries and investigations into any alleged or suspected offences as outlined in Part IV of Act No. 13. Officers are also mandated to request that any information relevant to a case of suspected corruption be presented to him/her from individuals as well as from banks or other financial institutions (Sections 7 and 8, Act No. 13). The Director may also request that a Magistrate revoke the travel documentation of any person suspected of a corrupt act (Section 16, Act No. 13). An officer authorized by the Director of the DCEC may also arrest a person if that person has committed or is about to commit an offence under Act No. 13 (Section 10, Act No. 13).

It should noted that the DCEC, by virtue of Section 34 of Act No. 13, may investigate any person maintaining a standard of living not corresponding to his income or who has wealth or property that is disproportionate to his/her present or known sources of income or assets. A person is considered to be guilty of corruption if s/he is not able to give a satisfactory explanation as to how his/her wealth or assets were acquired.

Section 39 of Act No. 13 provides that if, after an investigation, the DCEC has reason to conclude that an individual has committed an offence as outlined in Part IV of Act No. 13, the Director of the DCEC is to refer the matter to the Attorney General for his decision. No prosecution of an offence may be instituted except by or with the written consent of the Attorney General (see the section below on the relationship between that DCEC and the Attorney General's Chamber).

In fulfilling its mandate, the DCEC has worked effectively to raise public awareness of its existence and function as well as to educate the public on the ills of corruption. Activities in this regard have also included visiting villages in rural areas to alert local people of their rights and to ensure that teachers and other public servants do not take bribes for providing services that the Government funded and intended people to receive freely. The DCEC also publishes regular press releases to inform the public of trails that have been raised to public awareness and the outcome of these.

Operational arrangements

As noted above, it is the Attorney General who decides on whether or not to initiate the prosecution of a suspected case of corruption. The Attorney General is head of the **Attorney General's Chamber,** which forms an extra-ministerial department. The Attorney General is mandated under the Constitution and the *Criminal Procedure and Evidence Act* to direct all criminal prosecution, including the prosecution of cases related to corruption. All cases are prosecuted in the general court system. The Police and DCEC, however, are also empowered to prosecute for and on behalf of the Attorney General. Thus the Attorney General may direct the DCEC to undertake the prosecution after deciding upon a prosecution. Yet, although the Prosecution Branch of the DCEC was initially intended to serve as a liaison between the DCEC investigators and the Attorney General, it has increasingly been necessary for the DCEC to itself undertake prosecutions due to the heavy workload of the Attorney General's Chamber. This has also required that the DCEC acquire personnel that are qualified to undertake this additional function.

The **Office of the Auditor General (OAG)** was established by virtue of Section 124 of the Constitution, which provides that there shall be an Auditor General. In the exercise of his/her functions, the Auditor General is not subject to the directions or control of any other person or authority. Although the Auditor General is appointed by the President, his/her independence is safeguarded in that his/her removal from the office is not within the prerogative of the executive. The Office is only to be vacated when the Auditor General reaches the age of 60 years. The Auditor General audits the public accounts of Botswana and all officers, courts and authorities of the Government as well as the accounts of parastatal organizations and local government. The Auditor General submits reports to the Minister responsible for finance, who causes them to be laid before the National Assembly. The OAG undertakes, on behalf of the Auditor General, the duties of the Auditor General and is therefore the Supreme Audit Institution of Botswana. The prime objective of the Auditor General, and therefore the OAG, is to enhance the socio-economic development of the country through the promotion of sound financial management and proper accountability for public funds and assets.

The **Office of the Ombudsman** was established by the **Ombudsman Act** of 1995 and the first Ombudsman was appointed in 1997. The Ombudsman is appointed by the President. The Office of the Ombudsman is an extra-ministerial body under the Office of the President. In discharging his/her functions the Ombudsman is not to be under the control or direction of any other person or authority. In addition, the Ombudsman's proceedings shall not be questioned in any Court of Law. The main mandate of the Ombudsman is to investigate complaints of injustice or maladministration in the public service received from the public. If such complaints are found to be valid, the Ombudsman makes recommendations to the appropriate authority on the matter. Should these recommendations not be followed, the Ombudsman is obliged to make a special report to the National Assembly.

Lessons learned

The DCEC distinguishes itself from other similar bodies in Africa primarily in that it has not merely replicated the three-pronged approach of investigation, prevention and education of Hong Kong S.A.R. but has also achieved successful outcomes in complementing the other institutions within the country that have been established with the purpose of improving governance and fostering accountability and transparency. Several reasons have been given for this, including that the statutes of the DCEC specify that it is an independent agency that also provides community outreach programmes to public and private sectors on the cost of corruption; that the other core bodies making up the National Integrity System work relatively well; and that political and incentive structure in Botswana contributes to the important role the agency plays in complementing the core institutions. Additionally,the DCEC has a predictable operating budget (US$2.4 million allocated in 2001-2002 vis-à-vis US$2.2 million the previous year).

A number of factors, however, have contributed towards hindering the effectiveness of the DCEC. Although the judiciary is considered to be fully independent and free to discharge its responsibilities without fear or favour and have fulfilled their responsibility of convicting and sentencing those guilty of corruption, there are several instances when trials have been delayed, which has come to affect the conviction rates of the cases brought before them by the DCEC (Frimpong, 2001:17). Cases have also been delayed within the Attorney General's Chamber, further compounding the problem. As noted above, this has prompted the DCEC to develop its own resources and capacity in order to prosecute corruption cases (Frimpong, 2001:18). In both cases, these shortcomings can be attributed to a lack of staff as well as resources. However, this has serious implications in that it negatively impacts the public's perception of the efforts made in combating corruption. Also, the DCEC would need to increase its staff in order to meet its increasing workload (Frimpong, 2001:23). As mentioned above, allegations have also been made that the DCEC is going after the cases of low-level corruption while ignoring the 'big fish' (Frimpong, 2001:14).

The placement of the DCEC within the Office of the President has raised the question of whether or not the DCEC is sufficiently independent to carry out its mandate. This could be addressed by requiring the DCEC to report to the National Assembly rather than as now to the President. A further issue that has been raised is that the Director of the DCEC does not have security of tenure (Frimpong, 2001:6). Also, regarding the Office of the Ombudsman – also part of the public service like the DCEC – it has been claimed that it does not have sufficient independence to fulfil its mandate effectively and calls have been made for the legislation to be amended (Frimpong, 2001: 5).

As opposed to the DCEC and the Office of the Ombudsman, the Auditor General is independent and enjoys security of tenure. It is perceived that the Auditor General has been very active and effective in reporting on and exposing cases of corruption and misuse of public funds. It has, however, been claimed that the National Assembly has failed to act on the recommendations contained within these reports (Frimpong, 2001:12-13).

A discussion which has been held within the DCEC is whether or not to adopt a system of 'operational targeting' that would lead to the DCEC focusing its investigations on specific target groups. It was decided, however, that it was necessary for DCEC to continue to investigate any accurate report that it receives. Nonetheless, DCEC does give priority to investigating corruption that has affected the poor.

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Information was also gathered from the websites of the various institutions listed above.

Bulgaria

Key institutions of the national integrity System

- Commission for Coordinating Actions Against Corruption
- Financial Intelligence Agency (FIA*) www.fia.minfin.bg/index_en.php?main=1*
- Judiciary (includes the Courts, the Public Prosecution Service and the National Investigation Service)
- Ministry of Interior (in particular, the National Service of Police [NSP], the National Service of Security [NSS] and the National Service on Combating Organised Crime [NSCOC])
- National Audit Office (NAO) *www.bulnao.government.bg/en*
- Ombudsman
- Permanent Parliamentary Commission
- Public Internal Financial Control Agency (PIFCA) *www.advfk.minfin.bg/en*

Main legislation

- *Judicial System* (JS) *Act* (State Gazette No. 59, 1994 up to Amendment No. 74, 2002) *http://www.legislationline.org/view.php?document=59751*
- *Law on the Ombudsman* (State Gazette No. 48 of May 23, 2003) *http://www.anticorruption.bg/ombudsman/eng/legframe_eng.htm*
- *National Audit Office* (NAO) *Act* (State Gazette No. 109 December 18, 2001 up to Amendment No. 38, May 11, 2004) *http://www.bulnao.government.bg/en/pages.html?catID=50*
- *Public Internal Financial Control* (PIFC) *Act* (January 1, 2001), *http://www.advfk.minfin.bg/pdf_doc/Public_Internal_%20Financial_Control_Act.pdf*

Background

Corruption in Bulgaria is an important problem and is seen as being widespread in most areas of public life (GRECO, 2002:3). Customs authorities, occupations linked to the judicial system, police and the health sector are considered to be among the most corrupt groups (EC, 2003:19). Since the 1997 elections, the issues of corruption and its prevention have been important political issues for the government as well as civil society, who are actively working to put corruption at the top of the national agenda. In this regard, a number of laws relevant to the fight against corruption were passed. Some reforms, however, have remained ineffective and there has been a lack of coordination of anti-corruption efforts (OSI, 2002:82).

An important reason for the increased focus on corruption and anti-corruption measures has also been the EU accession process. In the National Anti-Corruption Strategy, the Government explicitly states that its adoption is a significant prerequisite for guaranteeing membership in the EU (2001:1). The approval of the National Strategy by the Government in 2001 in itself represented a first attempt to place anti-corruption efforts within a systematic framework (OSI, 2002:91). The strategy places greater emphasis on preventive measures for combating corruption.

A further step was the creation of an inter-ministerial commission to coordinate and consolidate the institutional setup for the fight against corruption and coordinate and control the implementation of the National Strategy. A permanent parliamentary commission on corruption was also established in 2002. A number of other reforms, discussed below in the section on *Lessons*

learned, have also been instituted that should improve the effectiveness of the fight against corruption and address existing weaknesses in the national integrity system. The eventual appointment of the Ombudsman should also be a further improvement in the fight against corruption.

Although the government of Bulgaria has made progress in addressing the problem of corruption, it is stated in the European Commission's 2003 *Regular Report on Bulgaria's progress towards accession* that "corruption remains a problem, and Bulgaria should maintain concerted efforts to implement measures in this respect" (2003:121). It has further been stated that Bulgaria has "made more progress in developing a legal framework for combating corruption, than is the case with the implementation of the laws" (GRECO, 2002:21). Bulgaria places 55th out of 159 countries on Transparency International's *Corruption Perceptions Index 2005*. A corruption assessment carried out by Coalition 2000[1] in 2003 found that there had been no significant changes in the levels of corruption in the country over the previous year and that corruption is still seen as one of the gravest problems of society. It was further concluded that "this lack of development signals that the anti-corruption measures undertaken so far have been exhausted" (Coalition 2000, 2004:5).

Mandate and institutional links of the key anti-corruption institutions

There is no specialized agency which deals with corruption per se. Instead, a number of dedicated units, divisions, departments and agencies have been established within various ministries, the judiciary and the police in order to combat corruption.

The various police functions are carried out under the direct responsibility of the **Ministry of Interior.** The ministry is headed by a Minister together with Deputy Ministers and the Secretary General – the most senior civil servant within the Ministry. The Secretary General is appointed and dismissed by the President on the proposal of the government.

Although all services which sort under the Ministry of Interior take part to some extent in the fight against corruption, those that play the most central role are the **National Service of Police (NSP), National Service of Security (NSS)** and the **National Service on Combating Organised Crime (NSCOC).** There are specialist units within all regional and provincial police departments for dealing with economic crime, including corruption. At the Ministry of Interior level, the NSP has five units within the Economic Police Department that deal with various corruption-specific offences (GRECO, 2004:5). The NSS is tasked with countering and preventing criminal offences against national security, including that of corruption, where foreign services or organizations are involved (GRECO, 2002:10). Within the NSCOC there is a Department on Combating Corruption for which the fight against corruption has been placed amongst its priority tasks. The activities of the Department include detection of corruption within the public and private sector as well as within the Ministry of Interior itself (GRECO, 2004:5).

Within the **Ministry of Finance**, the **Financial Intelligence Agency (FIA)**[2] and the **Public Internal Financial Control Agency (PIFCA)** perform functions relevant to the national integrity system.

FIA is an independent state administration headed by a Director. The main function of the Agency is to receive, preserve, examine, analyse and disclose to the relevant law enforcement bodies information connected with money laundering[3].

The activities of PIFCA are defined by the PIFC Act and the Agency is headed by a Director appointed (and dismissed) by the Minister of Finance with the approval of the Prime Minister (Articles 6 and 7). Apart from the appointment of the Deputy Director, for which the Director needs the approval of the Minister of Finance, the Director is responsible for personnel management within the PIFCA (Article 7) as well as for managing and supervising the activities of the Agency (Article 9[1], PIFC Act). The principal goal of PIFCA, as provided by Article 2(2) of the PIFC Act, is the prevention, discovery and recovery of damages within the state. The main functions of the PIFCA include planning, managing and implementing an integrated policy in the public internal financial control; developing risk assessment mechanisms; and providing guidance and recommendations on the establishment of financial management and control systems and to check their correct application; as well as provide oversight on the spending of financial resources under EU programmes and funds.

In addition, the independent **Ombudsman** and **National Audit Office (NAO)** play or are expected to play a role in the prevention of corruption.

[1] Coalition 2000 is an initiative launched in April 1998 with the aim to fight corruption in Bulgarian society through process of cooperation among Non-governmental Organizations and Governmental Institutions. For further information see *http://www.csd.bg/en/c2000.*

[2] FIA was established in 2003, replacing the previous Bureau for Financial Intelligence (FIA, 2004:3).

[3] FIA is also tasked with preventing financing of terrorist activities.

An Ombudsman was elected by the National Assembly in April 2005 following the 2003 Law on the Ombudsman[4]. The Ombudsman is elected for a five-year term (Article 8).The Law provides for the legal status, organization and activities of the Ombudsman. Article 3 of the Law provides that the Ombudsman is to be independent and that s/he shall intervene by the means provided by the Law when citizen's rights and freedoms have been violated by actions or omissions of the state and municipal authorities and their administrations as well as by individuals within the public services (Articles 2 and 3[1]). State and municipal authorities and their administrations, legal persons as well as citizens are obligated to inform the Ombudsman of any information entrusted to them officially and assist the Ombudsman in relation to complaints received by him/her (Article 7). The Ombudsman is to submit an annual report to the National Assembly (Article 22). Public Mediators have also been appointed in a number of municipalities across Bulgaria (CSD, 2004).

The NAO, established by virtue of Article 91 of the Constitution, consists of a President and 10 members elected (and dismissed) for a nine-year term by the National Assembly (Article 10[2], NAO Act). The powers, structure, organization and activities of the NAO are regulated by the NAO Act (Article 1[2]). As provided by Article 2 of the NAO Act, the NAO is independent with accountability to the National Assembly and has its own budget (Article 3, NAO Act). The President of the NAO is responsible for the personnel management of the NAO (Article 15, NAO Act). The NAO consists of a number of functional departments together with Regional Offices established on a territorial basis (Article 16, NAO Act).

The NAO is a state body for external audit of the budgetary and other public funds and activities as provided by this Act. Its main task is to contribute to the sound management of budgetary and other public funds and to provide the National Assembly with reliable information on the use of these funds (Articles 1[2] and 4, NAO Act), as well as to audit the financial activities of political parties (OSI, 2002:100). In addition, the NAO holds a register of asset declarations submitted by all civil servants occupying senior positions (OSI, 2002:99).[5] The NAO is given certain powers in order to execute its duties (Article 31[1], NAO Act). The NAO may make recommendations for improvements in the management of budgets and/or other public funds and the audited entity is required to implement these recommendations (Articles 41[1] and 42[1], NAO Act). Should these recommendations not be implemented, the NAO forwards a report with recommendations for taking relevant action to the relevant superior institution (Article 42[2], NAO Act). The NAO does not, however, perform an enforcement role. Should the NAO uncover criminal acts, it is obligated to submit these facts to the Public Prosecution Service or to the superior institution responsible for imposing administrative or other liability (GRECO, 2002:16 and OSI, 2002:101).

The **judiciary** also plays an important role in combating corruption. The judiciary consists of **the Courts,** the **Prosecutor's Office** and the Investigation Services, the functions and organization of which will be covered below under Operational arrangements. The judiciary is administered by the **Ministry of Justice** and the **Supreme Judicial Council (SJC).**

The SJC determines the composition and carries out the organization of the judiciary. The Council consists of the Minister of Justice as Chairperson[6] and 25 members – the Chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court and the Chief Prosecutor as ex-officio members, together with 11 members elected by the National Assembly and 11 members elected by the Judiciary (Articles 16, 17 and 26[1], JS Act). It is the SJC which proposes to the President for appointment or dismissal Chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court as well as the Chief Prosecutor. Should a proposal be repeated to the President, s/he must follow the proposal. The SJC also appoints, promotes, demotes and dismisses as well as rules on disciplinary cases against judges, prosecutor and investigators within the judiciary (Article 27, JS Act).

Operational arrangements

In order to coordinate and consolidate the institutional setup for the fight against corruption, the **Commission for Coordinating Actions Against Corruption** was established in February 2002. It is an inter-ministerial commission with representatives from the Ministry of Finance, the Ministry of Interior and the Ministry of Justice as well as the NAO, among others. The commission is headed by the Minister of Justice as the Chairperson, together with two Vice-Chairpersons and is supported in its work by a Secretariat headed by a Secretary. The main function of the commission is to coordinate and control the implementation of the National Anti-Corruption Strategy and the accompanying Action Plan, which includes

[4] The election of the Ombudsman was preceded by two previous failed attempts by the National Assembly to hold elections (CSD, 2004).

[5] This obligation follows on the introduction of the Act on Property Disclosure by Persons Occupying Senior Positions in the State. Senior officials include members of the National Assembly, the President, the Vice-president, Ministers, etc (OSI, 2001:99).

[6] The Minister of Justice does not have voting rights.

assigning departmental responsibilities in this regard. The commission is also tasked with reporting on the implementation of the National Strategy through the Action Plan and making proposals on how to make implementation more effective. In addition to this, the commission is also tasked with analyzing the general effectiveness of the efforts to combat corruption and preparing measures for increasing the effectiveness of anti-corruption measures. The commission does not, however, have any investigative powers of its own and is unable to intervene in any corruption cases (EC, 2003: GRECO, 2004:3; TI, 2004:167). [7]

In addition, a 24-member **Permanent Parliamentary Commission** was set up by the National Assembly in October 2002 in order to combat corruption. The main task of the commission is to bring national legislation into line with the EU acquis and practices, to monitor the implementation of legislation and to supplement said legislation should any weaknesses occur (EC, 2003:20). The commission is also tasked with proposing amendments and monitoring existing laws as well as identifying gaps in enforcement practices. The commission does not have any investigative powers (TI, 2004:167).

The **judiciary** is tasked with the investigation, prosecution as well as adjudication of corruption cases (GRECO, 2002:7). The independence of the Judiciary is provided by Article 117 of the Constitution as well as Articles 13 and 14 of the JS Law. There are no specialized courts for dealing with corruption cases (GRECO, 20021:5). The **Prosecutor's Office** is unified and centralized, with each prosecutor being subordinate to the immediate superior prosecutor, with all prosecutors being subordinate to the Chief Prosecutor, who is also head of the Prosecutor's Office (Articles 111 and 112, JS Law). The **Investigation Services** consist of the National Investigation Service and the **District Investigation Services,** headed by Directors (Articles 122 and 123, JS Act). The investigators conduct preliminary investigation of criminal cases as provided by law (Article 121[1], JS Act).

The cooperation between the Police, the Prosecution Service and the Investigating Services is regulated in the *Criminal Procedure* Code and the *Directive on the Activity and Coordination between the Preliminary Proceedings Authorities* (GRECO, 2002:14 and GRECO, 2004:6). There are, however, no special provisions made for the investigation and prosecution of corruption cases, which are dealt with in the same way as any other offence. Corruption cases are normally investigated by the District Investigation Services, although the investigations are supervised by the Prosecution Service. The Prosecution Service monitors the lawfulness of pre-trial investigations as well as brings cases to court (GRECO, 2002:14).

Lessons learned

In Bulgaria, a main concern has been the lack of coordination of anti-corruption efforts. In part, this has been addressed by the establishment of the inter-ministerial Commission for Coordinating Actions Against Corruption as well as the permanent parliamentary commission on corruption. The inter-ministerial Commission has stated, however, in its report to the Government on the implementation of the National Anti-Corruption Strategy, that the administrative setup of specialized structures for the fight against corruption should be further strengthened. [8]

The President has proposed the possibility of introducing a new independent structure or service to combat corruption in order to improve public confidence as well as provide greater effectiveness in pursuing corruption by senior government officials and politicians[9]– something which the current National Strategy has not been perceived as addressing adequately (OSI, 2002:82). It would appear, however, that the government has chosen instead to strengthen the capacity to combat corruption within existing institutions. Also, the appointment of the Ombudsman may contribute towards the prevention of corruption. In addition, the role of the NAO in the fight against corruption has been strengthened, based on a prevention approach, transparency of the audit work and publication of the audit results (EC, 2003:114). It has been claimed, however, that the NAO's reports and recommendations have come to be largely ignored (OSI, 2002:101).

The adoption of the National Strategy was in itself a measure in order to address the lack of a coordinated and comprehensive programme for the fight against corruption. The lack of such a strategy had been seen as a serious impediment to effectively addressing corruption. The National Strategy also places a greater emphasis on prevention of corruption, whereas previous efforts had primarily focused on the repression of corruption. The National Strategy does not, however, appear to include any significant elements of education on corruption or public awareness raising as had been recommended in GRECO 2002 *Evaluation Report on Bulgaria* (2002:19).

[7] Information on the Commission was also gathered from *http://www.anticorruption.org.*

[8] As quoted in EC, 2003:19.

[9] See further Establishment of a New Anti-Corruption Body in Bulgaria: President's Position and Public Debate, *http://www.csd.bg/news/acagensy_stenograma.doc.*

Bulgaria has also created a Unified Information System for Combating Crime and a Criminological Survey Council in order to address the concern that there was a general lack of data available on corruption as well as insufficient research on corruption – both of which are necessary in order to formulate and effectively implement any measures to prevent and combat corruption (GRECO, 2002:17-18 and GRECO, 2004:2-3).

A further concern regarding Bulgaria's ability to effectively combat corruption is the functioning of the judiciary. One obstacle has been the lack of judges, prosecutors and investigators specialized in corruption offences together with a general lack of human resources as well as funds within the judiciary. In addition to this, the criminal justice system was considered to be slow, resulting in relatively few cases of corruption adjudicated. Although it was perceived that this was partially due to the general lack of resources, it was emphasized that increased specialization on corruption within the investigating authorities would improve the investigation and adjudication of corruption cases. It was thus recommended in the GRECO 2002 *Evaluation Report on Bulgaria* that specialized departments for corruption cases within the Prosecution Service as well as the Investigating Services (2002:20-21). The government has taken some steps towards establishing such specialized departments as well as providing more institutionalized training on corruption for judges, prosecutors and magistrates (GRECO, 2004:5-7). An additional impediment has been the lack of coordination between the Prosecution Service and the Investigation Services, as well as with other law enforcement bodies (GRECO, 2002:20). As mentioned above, the government has taken measures to improve the coordination between the various investigating bodies through the adoption of specific directives (GRECO, 2004:6).

It should also be noted, however, that the judiciary itself is perceived as being corrupt, and one position is that a comprehensive reform of the judiciary is necessary both in order to address corruption within the judiciary and for the judiciary to be effective in combating corruption in society.[10]

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[10] See for example CSD, 2003, Judicial Anti-Corruption Programme, *http://www.csd.bg/artshow.php?id=137*

Hong Kong S.A.R.

Key institutions of the national integrity system

- Department of Justice (DoJ) *www.doj.gov.hk*
- Hong Kong Ethics Development Centre (HKEDC) *www.icac.org.hk/hkedc*
- Independent Commission Against Corruption (ICAC) *www.icac.org.hk/eng/main*
- Office of the Ombudsman *www.ombudsman.gov.hk*

Main legislation[1]

- *Audit Ordinanc*e (Cap. 122)
- *Elections (Corrupt and Illegal Conduct) Ordinance* (Cap. 554)
- *Independent Commission Against Corruption (ICAC) Ordinance* (Cap. 204)
- *Prevention of Bribery Ordinance* (POBO) (Cap. 201)
- *Public Service Commission Ordinance* (Cap. 93)
- *The Ombudsman Ordinance* (OO) (Cap. 397)

Background

Although it may seem unimaginable today, corruption was widespread in Hong Kong during the 1960s and early 1970s. Bribery was regarded as a necessary evil and a way to get things done. The police department was in charge of investigating corruption offences. The effectiveness of the Police, however, was limited as corruption syndicates within the force were particularly prevalent and bribe-taking was institutionalized in most city administrations. A turning point was reached first due to a corruption scandal involving a senior police officer. It was against this background that the Independent Commission Against Corruption (ICAC) was established in February 1974 in order to respond to the public's call for action against widespread corruption. The ICAC was given the two main tasks of rooting out corruption and restoring public confidence in Government.

In order to win the confidence of the public, the ICAC was separated from the rest of the civil service and made directly accountable to the Governor of Hong Kong. In order to enable the Commission to tackle the problem at the source, the ICAC was given the task of carrying out an integrated three-pronged attack on corruption – investigation, prevention and public education. To achieve the objectives set out for it, the Commission was provided with the necessary legal powers as well as sufficient resources. Tough and high-profile law enforcement action quickly convinced the public that the government and the ICAC were serious about curbing corruption, with the ICAC making every effort to plug corruption loopholes in both the public and private sectors. In order to foster a culture of integrity, the Commission also launched public education campaigns aimed at impressing upon the people that corruption was an evil as well as to enlist their support in reporting on corrupt individuals.

By 1977, it was thought that all the major corruption syndicates had been broken. In particular, efforts had been made to root out corruption within the police. In light of its success, the ICAC was now able to turn its attention to addressing the problem of corruption in the private sector. The change in the character of corruption can also be seen from that of the 4,310 reports

[1] All legislation is available at *http://www.legislation.gov.hk/eng/index.htm*. The Organised and Serious Crimes Ordinance (Chapter 455) may also be of interest.

on corruption received by the ICAC in 2003 – 57.4 percent were on the private sector, with government departments, the police and public bodies accounting for 23.4 percent, 12.3 percent and 6.9 percent respectively (ICAC, 2003:35). In the same year, 421 persons were prosecuted in 207 cases with a case-based conviction rate of 85 percent (ICAC, 2003:12-13). In 1974, corruption within the public sector had accounted for over 80 percent of reports received by the Commission.

Some recent developments in the fight against corruption have included the 1994 review of the powers and accountability of the ICAC, which was completed within the context of political changes, and the Hong Kong Bill of Rights Ordinance 1993. The aim of the review was to ensure that the ICAC remained effective against corruption without itself becoming corrupted. The changes introduced as a result of the review included more outside control over some investigating powers; search warrants, for example, are now issued by the courts and not by the ICAC. In 1995, six major chambers of commerce, together with the 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.[2]

Corruption in the Hong Kong is today under control, with Hong Kong placing 15th out of 159 countries on Transparency International's *Corruption Perceptions Index 2005*. While no government can expect to eradicate corruption completely, improvements in the area of integrity are encouraging. The efficiency and honesty of the civil service has been acknowledged by the world community and syndicated corruption is something which belongs to the past. The change in public attitude, from accepting bribery as a necessary way of life to actively helping to bring corrupt individuals to justice was achieved through extensive media campaigns and face-to-face contact with various members of the community. The trust in the ICAC is high, with over 98 percent of respondents expressing support for the work of the ICAC. The proportion of respondents agreeing that the ICAC was impartial in its investigation rose to an all-time high of 74.6 percent in 2000, up from 56.4 percent in 1994.

Mandate and institutional links of the key anti-corruption institution

The **Independent Commission Against Corruption (ICAC)** was established on 15 February 1974, by virtue of Section 3 of the ICAC Ordinance as the primary body for combating corruption applying the three-pronged approach of prevention, investigation and public education. The ICAC consists of the Commissioner as the head, together with the Deputy Commissioner – both of whom are appointed by the Chief Executive (Subsection 5[3] and Section 6, ICAC Ordinance) – and officers as appointed. The ICAC Ordinance also provides the charter of the Commission and, together with the POBO, also provides for the ICAC's mandate.

Section 6 of the ICAC Ordinance provides that the Commissioner is responsible for direction and administration of the ICAC, subject to the orders and control of the Chief Executive. Furthermore, the ICAC Ordinance provides that the Commissioner shall not be subject to the direction or control of any person other than the Chief Executive. The Commissioner has the power to appoint officers to the ICAC (Section 8, ICAC Ordinance). Under Section 17 of the ICAC Ordinance, the Commissioner shall submit, on an annual basis, a report on the activities of the ICAC to the Chief Executive. In accordance with Section 4 of the ICAC Ordinance, the expenses of the Commission are charged to the general revenue, i.e. the ICAC receives its resources from the government. The ICAC is independent in terms of structure, personnel, finance and power.

Organizationally the ICAC comprises the office of the Commissioner and three functional departments – Operations; Corruption Prevention; and Community Relations – serviced by the administration Branch. The division of labour between these departments mirrors the three-pronged approach of the ICAC in the fight against corruption: investigation, prevention and education.

The **Operations Department** is the investigative arm of the ICAC and is its largest department. 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 the ICAC. In that respect, by virtue of Section 10(A to G) of the ICAC Ordinance, the Director of the Operations Department is enabled to authorize his or her officers to restrict the movement of a suspect, to investigate bank accounts and safe deposit boxes, to restrict disposal of a suspect's property and to require a suspect to provide full details of his financial situation. The ICAC may arrest and detain persons (without a warrant)

[2] For further information on the Hong Kong Ethics Development Centre, see *http://www.icac.org.hk/hkedc/eng/main2.asp*

in its own centre for up to 48 hours (for the offences indicated in the ICAC Ordinance and the POBO). The Department can also collect and detain any evidence for such offences. From time to time, ICAC officers engage in undercover activities. While initially, the ICAC was allowed to issue search warrants, this has now become the sole responsibility of the courts.

The **Corruption Prevention Department** is the smallest unit within the ICAC. The role of the Department is to examine practices and procedures of government departments and public bodies, identify corruption loopholes and make recommendations to reform work methods for reducing the potential for graft. Prevention is claimed to be more cost-effective than prosecution. 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. To this end, corruption prevention specialists are dispatched to various government departments to examine their procedures and practices with a view to removing all loopholes for corruption. Assistance is also rendered when necessary to help departments produce codes and guidelines on staff conduct. The Department is also involved in the early stages of policy formulation and in the preparation of new legislation to close down opportunities for corruption.

The **Community Relations Departmen**t consists of two divisions dealing respectively with the mass media and the public. The Department is responsible for educating the public about the evils of corruption and for harnessing popular support for the ICAC. It 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. The success of these efforts depends in part on successful court cases and their publicity, thus providing a credible threat of prosecution. Workshops, seminars, training programmes and various formats are adapted to reach the targets and so-called prevention packages are handed out. The Department has brought about a revolution in the public's attitude towards corruption.

An important tool for the ICAC in combating corruption is Section 10 of the POBO – possession of unexplained property – which provides that individuals who maintain a standard of living or have financial resources which are beyond his or her levels of income and cannot provide a satisfactory explanation for how s/he can maintain such a standard of living or how the financial resources were gained is considered guilty of an offence.

The ICAC uses the media for deterrence and educational purposes. A series of announcements in the public interest have been produced for television and radio explaining the efforts of the ICAC with 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 are also provided for schools.

Operational arrangements

The ICAC is the primary body responsible for fighting corruption and as such, extensive powers have been vested in it in order to enable the Commission to effectively fulfil its mandate. In view of the extensive investigative powers enjoyed by the ICAC, a system of checks and balances has been put in place in order to prevent these powers from being abused.

To thus ensure the Commission's integrity, its activities are scrutinized by four independent committees made up of citizens from different sectors of the community appointed by the Chief Executive. These committees receive reports and complaints and monitor the work of the ICAC in order to ensure that the Commission itself does not abuse its powers or become corrupt. The committees are:

- The **Advisory Committee on Corruption,** which oversees the general direction of the ICAC and advises on policy matters;
- The **Operations Review Committee,** which oversees the work of the ICAC's investigative arm;
- The **Corruption Prevention Advisory Committee,** which advises on the priority of the corruption prevention studies and examines all the study reports; and
- The Citizens **Advisory Committee on Community Relations,** which advises the ICAC on the strategy to educate the public and enlist their support.

A further accountability mechanism is the independent **ICAC Complaints Committee** – chaired by an Executive Council member – which receives, monitors and reviews all complaints against the ICAC.

The ICAC does not have the mandate to prosecute corruption cases. The power to prosecute after the completion of investigations is vested in the Secretary for Justice, thus ensuring that no cases are brought to the courts solely on the judgement of the ICAC. The Secretary for Justice heads the Department of Justice, which is responsible for the conduct of criminal proceedings. In the discharge of this function, the independence of the Department is constitutionally guaranteed by virtue of Article 63 of the Basic Law, which stipulates that the Department "shall control criminal prosecutions, free from any interference". Within the Department the Prosecution Division – headed by the Director of Public Prosecutions – has the role of prosecuting trials and appeals on behalf of the State, to provide legal advice to law enforcement agencies upon their investigations, and generally to exercise on behalf of the Secretary for Justice the discretion of whether or not to bring criminal proceedings.

The **Office of the Ombudsman** – headed by the Ombudsman, who is appointed by the Chief Executive (Subsection 3[3], OO) – serves to ensure that the public is served by a fair and efficient public administration that is committed to accountability, openness and quality of service. This is achieved through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in the public administration. The functions of the Office of the Ombudsman are thus to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness;
- Public authorities are readily accessible to the public;
- Abuse of power is prevented;
- Wrongs are righted;
- Facts are pointed out when public officers are unjustly accused;
- Human rights are protected; and
- The public sector continues to improve quality and efficiency.

Lessons learned

The high-level success of the ICAC is generally attributed to:

- Political will manifested by, among other things, the provision of adequate legal powers and resources to the ICAC;
- The independence of the ICAC;
- The authority of the Commissioner to appoint, manage and to dismiss staff without explanation;
- The existence of proper, and properly enforced, legislation against corruption;
- Publicity for prosecutions of corruption;
- A law that obliges public servants to declare their assets and the sources of their funds, when asked;
- A holistic approach to the problem of corruption through the three-pronged strategy of investigation, prevention and public education;
- A supportive public; and
- The rule of law.

More specifically, the need to **win the cooperation and trust of the public** in the fight against corruption is of central importance. The transformation of the public's attitude from resigned tolerance to extreme intolerance of corruption has been a slow and painstaking process, with successes and setbacks.

Public identification with the cause is necessary, requiring sustained community education campaigns in order to raise public awareness of corruption. People should be made aware that corruption may have dire consequences if left unchecked. They must also 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 well-being of the people. The ICAC therefore produces its own public interest announcements to proactively communicate a culture of probity and integrity. A large share of educational resources has, in recent years, gone towards fostering integrity and honesty among youth, to make sure that the next generation is aware of the need to continue anti-corruption efforts.

Fear of retaliation discourages people from reporting corruption, further necessitating the option of **reporting in confidence** as well as the **protection of witnesses.** The ICAC spares no effort in ensuring that no individual is victimized for reporting corruption. First, the ICAC has a general rule that all reports of alleged corruption must be investigated. Second, the ICAC has enforced a rule of silence on all reports of corruption. It is an offence for the ICAC staff to disclose the names of persons being investigated until a search warrant is given or the persons are charged or arrested. Third, for highly sensitive cases, a comprehensive witness protection programme is in place that, in extreme cases, enables witnesses to change their identities and relocate. Gradually this has led to fewer and fewer anonymous reports of corruption – from 65 percent in 1974 down to only 30 percent in 2000.

The ICAC also realized at an early stage that **partnering with the medi**a was necessary. The media is a powerful and indispensable partner in disseminating anti-corruption messages.

The use of media does not, however, diminish the need for **face-to-face contact.** Face-to-face contact with the people is seen as crucial by the ICAC as it serves to explain the Commission's goals and mission and obtain feedback on its work. For this purpose, the ICAC uses a strategic network of regional district offices to maintain direct contact with members of various segments of the community. These offices have two primary functions: serving 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; and being manned by staff trained to deliver the ICAC messages to different sectors of the community. The offices also serve as report centres where members of the public can walk in and lodge a complaint about corruption. Experience shows that people feel more at ease providing such information in these less-formal settings.

The experience with fighting corruption in Hong Kong has showed that **prevention is an essential component of anti-corruption strategies.** Prevention is also considered to be more cost-effective then enforcement. In relation to this, the ICAC has also been providing assistance to public sector and private sector bodies for the **development of codes of conduct.**

It has also proven essential to **make corruption a high-risk crime,** emphasizing the **importance of securing convictions for corruption cases.** Such convictions must also be widely publicized and brought to the attention of the general public. **Trials for minor offences, however, are costly,** and the experience of the ICAC has shown that **cautions for minor cases for which the offender makes a full admission have been found to be highly cost-effective** in that the offender knows that they will be watched closely after being cautioned and few offend again.

In view of the extensive investigative powers of the ICAC, there is potential for abuse. It has thus been **necessary to put in place an effective system of checks and balances.**

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Indonesia

Key institutions of the national integrity system

- Audit Board of the Republic of Indonesia (BPK) *www.bpk.go.id/english/english.htm*
- Commission for Eradication of Corruption (KPK) *www.kpk.go.id/index.php?idunit=6*
- Commission of the National Ombudsman (KON) *www.ombudsman.or.id*
- Public Prosecution Service

Main legislation

- *Law No. 15 of 2002 on Eradication of Money Laundering*[1]
- *Law No. 28 of 1999 on Government Executives who are Clean and Free from Corruption, Collusion and Nepotism*[2]
- *Law No. 30 of 2002* on the *Commission to Eradicate Criminal Acts of Corruption* (Law 30/2002) *http://www1.oecd.org/daf/ASIAcom/pdf/indonesia_302002_KPK.pdf*
- *Law No. 31 of 1999 on the Eradication of Criminal Acts of Corruption* (Law 31/1999)[3] *http://www.hamline.edu/apakabar/basisdata/2000/03/13/0022.html*

Background

Since the fall of Suharto in 1997, Indonesia's government has repeatedly declared its commitment to fighting corruption and has enacted a series of legal measures to address the problem. These include a Clean Government Law, an Anti-Money Laundering Law, and an Anti-Corruption Law (listed above), which has subsequently been amended in order to place the burden of proof on the accused. Yet despite these impressive legal developments, the weakness of the Indonesian state has limited the effectiveness of anti-corruption measures (Transparency International, 2003:140), with little progress being made in the fight against what in Indonesia has been termed as KKN *(korupsi, kolusi dan nepotisme)*, i.e. corruption, collusion and nepotism. Major parts of the enabling legislation have not been enacted, and the government has failed to undertake the necessary follow-up. In particular, the government has repeatedly failed to provide adequate budgets for the institutions set up to implement and enact these laws.

Recent years have also seen important steps in institutional development, with a range of state auxiliary bodies established with mandates that contribute to the fight against corruption. These bodies include the Commission for the Audit of the Wealth of State Officials (KPKPN)[4]; the National Ombudsman Commission; the National Law Commission; and the Commission for the Eradication of Money Laundering (ADB, 2004:1). However, the efforts of these institutions have been weakened by their conflicting mandates (Transparency International, 2003:145). An important development in this regard is the establishment of the Commission for Eradication of Corruption (KPK) in December 2003 which, among other things, is charged with coordinating with and supervising all institutions authorized to eradicate corruption. It is hoped that the KPK will thus form a critical part of and become a focal point for a comprehensive institutional framework for tackling corruption in Indonesia.

Corruption remains a major challenge, with Indonesia placing 137th out of 159 countries on Transparency International's *Corruption Perceptions Index 2005,* having a disproportionate impact on the lives of the poor as described in *The Poor Speak Up — 17 Stories of Corruption* and negatively impacting on the development of the country as a whole.

1 No English translation of this law is available.
2 No English translation of this law is available.
3 Note that this law has been amended by *Law No. 20 of 2001 on the Changes in Law No. 31 of 1999.*
4 The KPKPN is to merge with the KPK becoming its Prevention Division as the task of monitoring the wealth of state officials falls within the mandate of the KPK.

Mandate and institutional links of the key anti-corruption institution

The **Commission for Eradication of Corruption** was established in December 2003, by virtue of Article 43 of Law 31/1999. The organizational structure of the KPK and its mandate and legal jurisdiction is set out in Law 30/2002. Article 3 of Law 30/2002 provides that the "KPK is to be a State agency that will perform its duties and authority independently, free from any and all influence". The KPK decides on policies and procedures on how to conduct its duties and authority. The KPK is also responsible for the management of its own personnel, including appointments and termination of contracts (Article 25[1], Law 30/2002). Under Article 15(c) of Law 30/2002, the KPK is obligated to report on its activities, on an annual basis, to the President, the Parliament and the State Auditor.

The KPK is made up of and headed by five Commissioners, one of which acts as the Chairperson of the KPK and the remaining four as Vice-chairpersons. The Commissioners are designated as government officials (Article 21, Law 30/2002). The Commissioners are selected by the Parliament from a list of candidates provided by the President. The list of candidates is prepared by a selection committee appointed by the Government (Article 30, Law 30/2002). The Commissioners hold office for a term of four years and may be reappointed for one term (Article 34, Law 30/2002). The KPK is assisted in its work by a Secretary General. S/he is appointed by the President but is accountable to the KPK Commissioners (Article 27, Law 30/2002).

A Commissioner must relinquish office if s/he violates the provisions of Law 30/2002. Should a Commissioner be suspected of having committed a criminal act, s/he is to be temporarily relinquished from office. Any decision relating to the above is to be made by the President (Article 32, Law 30/2002).

There is also an Advisory Team, made up of four members elected by the KPK from among the candidates proposed by a selection panel (Articles 21[1(b)] and 22, Law 30/2002). The purpose of the Advisory Team is to provide suggestions and considerations to the KPK within the context of the execution of the KPK's tasks and authority (Article 23, Law 30/2002).

Organizationally, the KPK consists of four divisions: Prevention; Prosecution; Information and Data; and Internal Supervisory and Public Complaints. Each division is further divided into a number of units (directorates) (Article 26, Law 30/2002).

Article 6 of Law 30/2002 provides that the KPK is tasked with:

- Coordinating with institutions with a mandate to eradicate corruption;
- Supervising institutions with a mandate to eradicate corruption;
- Conducting investigations, indictments, and prosecutions against corrupt acts;
- Conducting preventive actions against corrupt acts; and
- Monitoring the governance of the State.

The KPK is mandated to fulfil its task to investigate, indict and prosecute corruption cases that involve "law enforcement officers, government executives, or other parties connected to corrupt acts committed by law enforcement officers or government executives"; that have drawn the attention of the general public; and/or involve a loss to the State of at least Rupiah 1,000,000,000[5] (Article 11, Law 30/2002). The KPK appoints – as well as dismisses – investigators, indictors, and prosecutors in order to fulfil this mandate (Articles 43, 45 and 51).

Article 12 of Law 30/2002 gives the KPK wide ranging powers in performing its mandate of investigation, indictment and prosecution, including: ordering the relevant institution to prohibit a suspect from travelling abroad; requesting financial details from banks and other financial institutions and freezing the assets of a suspect or connected parties; ordering that a suspect be suspended from his/her office; requesting information on the wealth and tax details of the suspect; requesting assistance from Interpol Indonesia or the law enforcement institutions of other nations to conduct searches, arrests, and confiscations in foreign countries; and requesting assistance from the Police or other relevant institutions to conduct arrests, confinements, raids, and confiscations in corruption cases currently under investigation.

In carrying out its preventive mandate, the KPK is mandated to audit the wealth of state officials as well as carry out education and public awareness programmes, including: running anti-corruption education programmes in every level of education; designing and implementing socialization programmes against criminal acts of corruption; conducting anti-corruption campaigns; and conducting bilateral and multilateral cooperation on anti-corruption (Article 13, Law 30/2002).

[5] The equivalent of US$100,000.

In performing its mandate to monitor the governance of the State, the KPK may conduct reviews of the management systems of all State institutions and give advice to said institutions should such a review reveal that their systems are prone to corruption. If the advice of the KPK is not adhered to, the KPK is to report this to the President, the Parliament and the State Auditor (Article 14, Law 30/2002).

Article 15 of Law 30/2002 provides that the KPK must provide protection to witnesses or whistle-blowers reporting or providing information on alleged corruption.

In performing its duties of coordination, the KPK is mandated to:

- Coordinate investigations, indictments, and prosecutions against criminal acts of corruption;
- Implement a reporting system for the purposes of eradicating corruption;
- Request information on acts with the purpose of eradicating corruption from relevant institutions;
- Arrange opinion hearings and meetings with institutions with a mandate to eradicate corruption; and
- Request reports from relevant institutions pertaining to the prevention of criminal acts of corruption (Article 7, Law 30/2002).

It is stressed in Law 30/2002 that the KPK shall be transparent and open to the public, including the appointment of commissioners and other staff as well as conducting campaigns to inform and raise awareness among the public on the work of the KPK. The KPK also aims to actively pursue and promote the involvement of the public in its activities.

Operational arrangements

In the course of carrying out its mandate to supervise other state institutions active in anti-corruption efforts, Article 8 of Law 30/2002 provides that the KPK is empowered to take over an indictment or prosecution in a corruption case being carried out by the Police or the Prosecutor's Office – who would then be required to hand over the suspect as well as all relevant documentation to the KPK – if any of the conditions outlined in Article 9 of Law 30/2002 prevail.[6]

Although the KPK is mandated to investigate, indict and prosecute cases of corruption, the KPK may request that the Police or the Prosecutor's Office investigate a case of suspected corruption should the KPK itself not be able to find enough evidence for an indictment (Article 44, Law 30/2002). The Police and Prosecutor's Office may also carry out indictments in relation to corruption cases but must then inform the KPK of this within 14 days; the KPK is then mandated to coordinate the indictment process. If the KPK initiates an indictment process in a corruption case or is carrying out an indictment process at the same time as the Police or the Prosecutor's Office, the latter are no longer mandated to continue the indictment process (Article 50, Law 30/2002).

Article 53 of Law 30/2002 establishes a **Court of Corruption** – within the general court system but distinct from other Courts – tasked with and mandated to appraise and decide on corruption cases put before it by the KPK. The Court of Corruption is also mandated to appraise and decide on criminal cases of corruption committed outside the jurisdiction of Indonesia if the perpetrator is of Indonesian nationality (Article 55, Law 30/2002). The Court consists of five Judges – two District Court Judges[7] appointed on the decision of the Head of the Supreme Court and three ad hoc judges appointed by the President in consultation with the Head of the Supreme Court (Article 56, Law 30/2002). In accordance with Article 58(1) of Law 30/2002, the Court must appraise and decide on corruption cases brought before it within 90 days. The appraisals of the Court are conducted according to the Law on Criminal Procedure and Law 31/1999, as amended by Law No. 20 of 2001 on Changes on Law No. 31 of 1999 (Article 62, Law 30/2002). The decisions of the Court of Corruption may be appealed to the High Court, the decision of which may in turn be appealed to the Supreme Court (Articles 59 and 60, Law 30/2002).

The Public Prosecution Service is the government institution that executes state powers – in particular, in the field of prosecution – within the authority of the law and justice enforcement agencies and is headed by the Attorney General, who is appointed by and responsible to the President. The Public Prosecution Services are made up of the Attorney General's Office, the High Public Prosecution Office and the District Public Prosecution Office, representing a single undivided entity.

[6] Article 9 provides that the KPK shall take over an indictment or prosecution if: a report by a member of the general public about an act of corruption has been ignored; the processing of a corruption case goes on for too long or is delayed without a valid reason; the handling of the corruption case has been manipulated in order to protect the accused; the handling of the corruption case has been subject to corrupt acts; where executive, legislative, or judicial interference has occurred; or any other circumstances where the Police or the Prosecutor's Office are unable to carry out the case in a responsible and adequate manner.

[7] In accordance with Article 57 of Law 30/2002, ad hoc judges are required relinquish any office that they are holding.

The **Audit Board** is the supreme audit institution in Indonesia and is responsible for the auditing of the accountability of the state finance, including the budget implementations of the central government, the regional governments, the state-owned enterprises, and those of the enterprises owned by the regional governments. The KPK is required to report on its activities to the State Auditor. The State Auditor is one of the institutions which fall within the supervisory mandate of the KPK as it is mandated to contribute towards the fight against corruption.

The **Commission of the National Ombudsman** is an independent public institution that aims to foster the integrity, accountability and the efficient running of the State. In its work, the Commission receives and strives to find and to rectify complaints lodged by the public against government maladministration as well as strives to create conditions conducive to fostering a state that provides services to the people in a manner that is free from corruption.

Lessons learned

Earlier experiences in Indonesia have been that high hopes placed on the new institutions established to combat corruption have come to be dampened by the government's lack of support and inadequate funding. Reforms of the judiciary, a key element in the fight against corruption, have also been disappointing. Previously, there has not appeared to be any overall government strategy for tackling corruption that brings together the creditable initiatives already initiated. Indonesia needs a clear road map for reform and a credible government commitment to push through, coordinate, and follow up reforms. To date, the history of anti-corruption initiatives in the post-Suharto era has been a story of creative initiatives and promising legislation that has not been followed through. Some observers suggest that the legislation and the associated institutions were designed to fail – providing a superficial commitment to fighting corruption, but with built-in features to render them inoperable. This can be considered a particularly sophisticated form of "state capture" – indicating the necessity of political commitment at the highest levels in order for any anti-corruption effort to have a chance of being successful.

It remains to be seen what direction the fight against corruption will take under the government of President Susilo Bambang Yudhoyono, elected to office in September 2004. One of the main themes of his campaign leading up to the Presidential elections was the importance of tackling corruption. It also remains to be seen what impact the establishment of the KPK will have. One issue that will require attention in order to allow the KPK to successfully fulfil its mandate is the need to harmonise other laws with Law 30/2002. The provisions in Law 30/2002 do not necessarily coincide with the regulations that govern other institutions. One example of this is that although the KPK is empowered to request information from state institutions, there are no corresponding provisions requiring these institutions to disclose the information requested (ADB, 2004:2).

The case of setting up the KPK illustrates that it is not only necessary to look at the mandate of an anti-corruption body but also that the regulations of other organizations must reflect the mandate of the anti-corruption body – especially if the body is to have a coordinating function. In a situation where a country has a number of anti-corruption bodies and a decision is taken to establish a coordinating body, this will require a harmonization of the legal framework, and it must be ensured that no legislation remains which can be used as a source of protection by corrupt elements with the State.

Sources

- Transparency International, 2003, *Global Corruption Report* 2003 *http://www.globalcorruptionreport.org/gcr2003.htm*
- Hardjono, Ratih and Teggemann, Stefanie (eds.), 2002, *The Poor Speak Up – 17 Stories of Corruption,* The Partnership for Governance Reform *http://www.kemitraan.or.id/data/pdf/poor%20speak%20up.pdf*
- Asian Development Bank, May 2004, *TAR: INO 37025 Technical Assistance to the Republic of Indonesia for Strengthening the Capacity of the Commission for Eradication of Corruption in Indonesia* *http://www.adb.org/Documents/TARs/INO/tar_ino_37025.pdf*

Information was also gathered from the websites of the various institutions listed above.

Latvia

Key institutions of the national integrity system

- Corruption Prevention and Combating Bureau (CPCB) *www.knab.gov.lv/en*
- Crime and Corruption Prevention Council (CCPC)
- State Audit Office (SAO) *www.lrvk.gov.lv/htmls/english/engindex.htm*
- Ministry of Interior *www.iem.gov.lv/?lng=en*
- State Police *www.vp.gov.lv/?setl=2&PHPSESSID=10e32a205f1c94ca81fc3748e907be35*
- Security Police *www.iem.gov.lv/iem/2nd/?lng=en&cat=136*
- State Revenue Service (SRS) *www.vid.gov.lv/eng/index.htm*

Main legislation

- *Criminal Law* (17 June 1998 with amendments up to 1 June 2000) *http://www.tm.gov.lv/str/569_The%20Criminal%20Law.htm*
- *Law on Corruption Prevention and Combating Bureau* (CPCB) (18 April 2002) *http://www.knab.gov.lv/uploads/en_htm/EN_bureau.htm*
- *Law on Prevention of Conflict of Interest in Activities of Public Officials* (PCIAPO) (5 April 2002) *http://www.knab.gov.lv/uploads/en_htm/EN_amatpersonas.htm*
- *Law on Public Prosecutor's Office* (PPO) (1 July 1994) *http://www.humanrights.lv/doc/latlik/prok.htm*
- *Law on the State Revenue Service* (SRS) (28 October 1993) *http://www.vid.gov.lv/eng/4laws/docs/203-01.pdf*
- *State Audit Office* (SAO) Law (29 May 2002) h*ttp://www.lrvk.gov.lv/page.php?id=1779*

Background

An important impetus in the fight against corruption in Latvia was the stringent criteria that the country was required to adopt leading up to its accession to the European Union in May 2004. The EU itself has also been one of the driving forces in the fight against corruption in Latvia (Transparency International, 2003:177-178).

Several steps were taken during the 1990s in order to address the problem of corruption. With the establishment of the Corruption Prevention Council in 1997, the Government took the first steps in developing a substantial anti-corruption policy (OSI, 2002:300). Yet the institutional setup for the prevention and combating of corruption remained fragmented and lacked effective coordination. Corruption was generally perceived as a worrying phenomenon negatively affecting the activities of some public institutions (GRECO, 2002:6). The current Prime Minister founded the New Era Party in part because of his desire to minimize corruption in the country. Leading up to the 2002 elections in which the New Era Party received the highest number of votes, minimizing corruption was also one of the main campaign promises (FHI, 2004,:18).

The Government of Latvia remains strongly committed to further combating corruption and has taken several important steps in order to increase the effectiveness of its anti-corruption policy. This has included the improvement of legislation – such as the adoption in 2002 of the PCIAPO Law – as well as clarification and consolidation of the institutional setup through the establishment of a central Corruption Prevention and Combating Bureau (KNAB), fully operational since February 2003 (EC, 2003:14). Other important steps have been the establishment of the Crime and Corruption Prevention Council (CCPC), established in 2002, and most recently, the adoption in 2004 of the *National Strategy for Corruption Prevention and Combating 2004-2008*.

Latvia places 51st out of 159 countries on Transparency International's *Corruption Perceptions Index 2005*. Although Latvia has taken several important steps towards addressing the issue of corruption, the European Commission, in its *Comprehensive monitoring report on Latvia's preparations for membership,* stresses that the fight against corruption "should continue to receive high priority". In particular, further efforts are needed to complete the legislative basis and to consolidate the KNAB (2003:56).

Mandate and institutional links of the key anti-corruption institution

The **Corruption Prevention and Combating Bureau** – established in October 2002 – is an institution of the State Administration under the supervision of the Cabinet of Ministers (Article 2[1], CPCB Law). The CPCB Law provides for the legal status and objectives of the Bureau. The CPCB is managed by a Director – appointed (and dismissed) by the Saeima on the recommendation of the Cabinet of Ministers (Article 4[1], CPCB, Law) – together with two Deputy Directors responsible, respectively, for corruption prevention matters and corruption combating matters.

The CPCB consists of a total of 16 divisions, nine of which sort directly under the Director, performing primarily internal functions.[1] Of the remaining divisions, the Division of Control of Actions of State Officials, the Division of Control of Political Parties Financing, the Division of Corruption Analyses and Countermeasures Methodology, and the Public Relations and International Cooperation Division sort under the Deputy Director responsible for corruption prevention matters. The Division of Criminal Intelligence Process, the Division of Inquiry and the Administrative Division of Surveillance sort under the Deputy Director responsible for corruption combating matters.

The activities of the CPCB are based on the three pillars of corruption prevention, investigation of cases of corruption and building of public awareness. Also, in accordance with Article 7(1) of the CPCB Law, the Bureau was tasked with preparing the *National Strategy for Corruption Prevention and Combating 2004-2008* which was subsequently approved by the Cabinet of Ministers in 2004. The CPCB has a clear mandate to coordinate the implementation of anti-corruption measures in State and local government institutions as the Bureau is also responsible for ensuring coordination of the efforts of and cooperation between all institutions active in the fight against corruption in line with the national strategy (Article 7[2], CPCB Law). In relation to this, the CPCB is also responsible for providing the Crime and Corruption Prevention Council (CCPC) with information and recommendations on corruption-related issues. The CCPC is discussed further under the heading *Operational arrangements*.

In accordance with Article 7 of the CPCB Law, the main functions of the Bureau in the area of corruption prevention are:

- Developing anti-corruption strategies;
- Reviewing any complaints received falling within the Bureau's mandate;
- Analyzing corruption prevention practices in the State and local government institutions and, in cases where corruption is found, submitting recommendations to the relevant Ministry or institution;
- Developing methods for preventing and combating corruption in State and local government institutions as well as in the private sector;
- Analyzing and drafting legal acts and proposing possible changes, as well as submitting recommendations for the drafting of legal acts;
- Carrying out surveys of public opinion and analysing the results;
- Educating the public regarding legal and ethical aspects of corruption;
- Keeping the public informed on developments regarding corruption in the country, cases of corruption found, as well as efforts made in the prevention of and fight against corruption;
- Developing and implementing a public relations strategy; and
- In accordance with its competence, evaluating investigations performed by other institutions.

In the area of combating corruption, the CPCB is tasked with, as provided by Article 8 of the CPCB Law, charging State officials with administrative liability and imposing punishment in cases of administrative violations in the area of corruption as provided by law; and carrying out investigations and operative actions in order to detect corruption in the Public Service. All other bodies with an investigative mandate are required to assist the Bureau in carrying out its investigations. The Bureau also performs the function of monitoring the observance by political organizations of the party financing regulations (Article 9, CPCB Law).

Article 10 of the CPCB Law provides the official of the Bureau with a wide range of powers and authority, including:

[1] These are the Legal Division, the Financial Division, the Personnel Division, the Administrative Division, the Internal Control Division, the Protection of Classified Information Division, the Information Technology Division, the Internal Audit Unit and the Report Centre.

- Carrying out investigations as provided by the *Code of Criminal Procedures;*
- Carrying out operative investigations as permitted by law in order to uncover and prevent criminal offences in the areas of corruption and party financing;
- Drawing up administrative charges in cases of discovered violations, reviewing cases of administrative violations and imposing administrative punishment in cases of violations, the review of which, according to the *Code of Administrative Violations,* comes under the jurisdiction of the Bureau;
- Receiving information, documents and information upon request from the State administration and municipal institutions, companies, organizations, officials and other persons, regardless of their secrecy regime;
- Receiving information from financial institutions needed in criminal cases through the agencies of the Prosecutor General;
- Summoning to the CPCB any person connected to the investigation of a case or material, and in the event a person fails to appear after receiving such summons, bringing him/her in by force; and
- Using force should it be required.

The CPCB may, with the mediation of the Prosecutor General, submit criminal cases or examination materials to other inquiry institutions for continuation of inquiry processes, as well as take over from other investigative institutions criminal cases or inquiry materials which fall within the mandate of the Bureau (Article 10[17], CPCB Law).

In addition to the above, Article 7(3) of the CPCB Law provides that the Bureau is tasked with monitoring the observance of the *Law on Prevention of Conflict of Interest in Activities of Public Officials.* This also includes the responsibility to examine the declarations of public officials[2] submitted to the CPCB in accordance with Subsection 23(4) of the PCIAPO Law (Article 7[16], CPCB Law). The purpose of the PCIAPO Law is to ensure that decisions and actions taken by public officials are in the interest of the public interest and to prevent any influence from outside or financial interests. Ultimately, this is also intended to promote public confidence regarding the actions of public officials (Section 2, PCIAPO Law).

Operational arrangements

The parliamentary **Crime and Corruption Prevention Council,** established in 2002 and headed by the Prime Minister, is charged with overseeing efforts to prevent corruption and combating organized crime. As such, the CPCC is tasked with coordinating and supervising all State authorities' activities in the field of prevention of crime and corruption (GRECO, 2004a:4). Within this mandate, the Council has taken leadership of oversight of the KNAB (EC, 2003:15). In addition, the CCPC is tasked with supporting civil society's involvement in anti-corruption policies; promoting prevention plans with regard to organized crime and corruption; and supporting criminological research. It is also entitled to make proposals for the development of draft legal acts and the implementation of justice and home affairs policies to ensure the coordination of activities within institutions fighting crime and corruption, as well as the cooperation of Latvian institutions with international institutions (GRECO, 2004a:4-5).

The **State Audit Office (SAO)** is established as an independent institution under Article 87 of the Constitution subject only to the law (Subsection 1[2], SAO Law). The SAO is the supreme audit institution and is headed by the Auditor General, appointed by the Saeima for a term of seven years (Subsection 26[1], SAO Law), together with the SAO Council – the members of which are approved by the Saeima on the recommendation of the Auditor General, also for a term of seven years (Subsection 27[1], SAO Law). The organization and responsibilities of the SAO are provided by the SAO Law. In accordance with Section 2 of the SAO Law, the SAO is tasked with examining the revenue and expenditure of State and local government budget resources; utilization of the resources of the European Union and other international organizations or institutions that have been included in the State budget or local government budgets; and actions with State and local government property – in order to ensure that resources have been used in a lawful, correct, economical and efficient in their manner. Should the SAO find irregularities that give rise to the suspicion of corruption, the case is reported directly to the **Public Prosecutor's Office (PPO)** should there be evidence of criminal activity. Otherwise, the case is reported to the **State Revenue Service (SRS)** (GRECO, 2002:17). The SAO reports on its activities to the Saeima and the Government (Section 3, SAO Law).

The **SRS** is a state administration institution operating under the supervision of the Ministry of Finance (Article 1, SRS Law) and is headed by a Director General appointed by the Minister of Finance upon the approval of the Government (Article 4[1], SRS Law). The organization and responsibilities of the SRS are provided by the SRS Law. As provided by Article 2 of the SRS Law, the main tasks of the SRS include:

- Ensuring the collection of state taxes, duties and other compulsory payments administered by the SRS within Latvia and at the borders, i.e. customs;

[2] Section 4 of the PCIAPO Law defines the scope of public officials covered under the Law.