

Institutional Arrangements to Combat Corruption

A Comparative Study



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CONTENTS

Foreword	iv
PART 1: Overview and Policy Recommendations	1
Acronyms	2
1. Introduction	3
1.1 The importance of effective anti-corruption bodies	4
1.2 The UN Convention Against Corruption and institutional arrangements for combating corruption	4
2. A special anti-corruption agency or commission	5
2.1 Independence of the anti-corruption agency	5
2.2 Mandate	6
2.3 Summary: Advantages and disadvantages of an independent anti-corruption body	9
3. Other institutions involved in anti-corruption	11
3.1 Prosecutor	12
3.2 Auditor General	12
3.3 Public Service Reform Agency or Public Service Commission	13
3.4 Ombudsman	14
3.5 The Courts	15
4. Countries without a special anti-corruption agency	17
5. Coordination	19
6. Conclusion	21
Bibliography	23
PART 2: Country Briefs	25
Australia (New South Wales)	27
Botswana	35
Bulgaria	39
Hong Kong S.A.R.	44
Indonesia	49
Latvia	53
Lithuania	58
Malaysia	63
Nigeria	68
Republic of Korea	73
Singapore	78
South Africa	82
Thailand	87
United Republic of Tanzania	94

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.

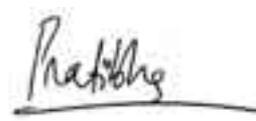
The idea for this comparative study resulted from an initial request made by the parliamentary working group on anti-corruption of the State Great Hural in Mongolia to provide them with a series of options on how to design the institutional framework that will support future implementation of the national 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), Turoid 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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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 successful 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 subsequent 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 generation¹.

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 context².

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 power³. 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 institutions⁴. 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 President⁵. 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 Committee⁶, 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 area⁷. This is also the case with the Corruption Prevention and Combating Bureau (CPCB) in Latvia⁸, 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 year⁹ 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 debate¹⁰. To avoid overload of asset declarations and excessive cost of investigation¹¹, 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 judiciary¹². After investigation by the ACA¹³ 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 are subject to asset inspection and to prescribe 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 manner¹⁴. 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 governance¹⁵. 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 area¹⁶. 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 interference¹⁷ and inadequate laws are considered the main reasons for most of the failures¹⁸. 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 advantages 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 Mongolia²⁰ (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 General²¹. 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 Office²². 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 funds²³. 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 success²⁴. 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 independent²⁵ 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 service²⁶. 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 Commission²⁷, 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 highest levels 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-\(orc\)](http://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).

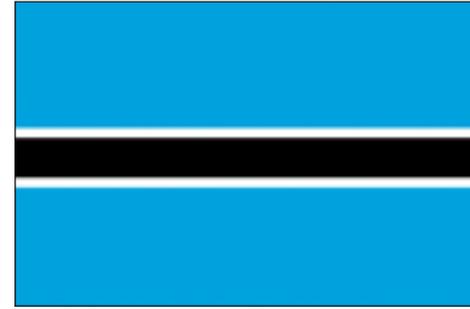
Although the ICAC is widely seen as successful in combating corruption in the public sector, in 1996, the Royal Commission into the New South Wales Police Force found that the ICAC had not been successful in combating corruption and misconduct in the NSW Police Force. This was explained in part by the 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 cases² 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. country 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 too 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 be 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 2000¹ 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 laundering³.

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 Ombudsman⁴. 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 Chairperson⁶ 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, 2002:5). 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 politicians⁹— 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/acagency_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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Information was also gathered from the websites of the various institutions listed above.

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 legislation¹

- *Audit Ordinance* (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 Department** 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 media** 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 than 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 1,000,000,000⁵ (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 Judges⁷ 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.

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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) <http://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 officials² 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.

- Implementing the state customs policy and ensuring protection of customs borders;
- Within the framework of its authority as set out by Law, exercising control over the execution of anti-corruption measures as well as ensuring the observance of additional restrictions on state officials set out by other laws; and
- Preventing and detecting offences in the field of payment of state taxes, duties and other compulsory payments set out by the state.

Within the SRS, the Finance Police has been given extensive powers, as provided by Article 16 of the SRS Law, in the sphere of state revenue. In accordance with Article 14, the tasks of the Finance Police include:

- Carrying out investigations aimed at disclosing and preventing crimes in the sphere of state revenues;
- Carrying out investigations in accordance with the Law aimed at disclosing and preventing crimes in the activities of the officials and employees of the SRS; and
- Carrying out investigations in the event of smuggling and criminal cases related to crimes disclosed in the sphere of state revenues as well as in the activities of officials and employees of the SRS.

In addition to the KNAB, the Finance Police is only one of several law enforcement agencies involved in anti-corruption investigations. In addition, the **Security Police** as well as the **State Police** – in particular, its **Economic Police Department (EPD)** and **Organised Crime Enforcement Department (OCED)** – are also involved in anti-corruption investigations. The EPD is primarily responsible for investigating cases of corruption within the private sector, whereas the OCED is tasked with preventing and detecting corruption offences related to organized and economic crime (GRECO, 2004a:5). In investigating cases related to corruption, they all work closely with the KNAB and, as mentioned above, they are all required to assist the KNAB in its investigation should they be requested to do so. Both the Security Police and the State Police are state administrative institutions subordinate to the Ministry of Interior.

The **PPO** is a uniform and centralized system consisting of three levels – the Office of the Prosecutor General, prosecutors' offices of judicial regions and district prosecutors' offices as well as specialized prosecutors' offices (Article 22, PPO Law). The PPO is headed by the Prosecutor General – appointed by the Saeima upon the recommendation of the Chairman of the Supreme Court for a period of five years (Article 38[1], PPO Law). Public prosecutors are appointed as well as dismissed in accordance with the procedures stipulated by law by the Prosecutor General (Article 23[2], PPO Law). Article 5 of the PPO Law provides that public prosecutors, when considering any case, shall make their decisions independently and in accordance with the law. Furthermore, Article 6 of the PPO provides that public prosecutors shall be independent from any influence by any other institution or official. As established by Article 2 of the PPO Law, the functions of the PPO are to:

- Supervise the activities of inquiry institutions and the operative activities of other institutions;
- Organize, manage and conduct pre-trial investigation;
- Initiate and carry out criminal prosecution on behalf of the state;
- Supervise the proper execution of sentences;
- Protect the rights and lawful interests of persons and the State in accordance with procedures prescribed by law;
- Submit a complaint or submission to the courts in cases stipulated by law; and
- Take part in court review when required to do so by law.

Within the PPO, several departments have been assigned specialized tasks. None of these, however, have been given the primary function of dealing with corruption cases (GRECO, 2002:24). All cases, including cases related to corruption, are brought before the courts by the PPO.

The independence of **judges** and **courts** is guaranteed by the Constitution, which establishes that judges shall be independent and subject only to the law (Article 83). Corruption cases are dealt with by the courts in the same manner as other cases brought before them.

There is no **Ombudsman** institution in Latvia. Instead, some of the functions traditionally carried out by the Ombudsman are being carried out by other institutions such as the State Office for Protection of Human Rights and the PPO (GRECO, 2004b:9 and 13).

Lessons learned

In GRECO's 2002 Evaluation Report on Latvia, the lack of direction and coordination between the various policing institutions

charged with combating corruption was seen as a major concern and an impediment in the efforts to combat corruption. In view of this, a central recommendation was the need to promote coordination, experience-sharing and circulation of information among the different institutions. This would also include the establishment a body for overseeing coordination (2002:21). The establishment of the KNAB, as well as the CCPC, has gone some way towards addressing this. In the field of investigation of corruption cases, however, the situation remains fragmented with, as described above, a number of enforcement institutions (GRECO, 2004a:6). The EC monitoring report notes that there also remains a need for the establishment of an efficient cooperation mechanism between other institutions involved in the anti-corruption effort such as the SAO and SRS (EC, 2003:15).

A further concern was the lack of an efficient corruption intelligence system with operational functions, including research of vulnerable sectors and development of early intervention strategies. These concerns have been addressed through the establishment of the Division of Special Investigative Activities and Analysis as well as the Corruption Analysis and Counteraction Methods Development Division within the KNAB (GRECO, 2004a:6).

Of additional concern was the perception of the public that the judiciary and the public prosecution are ineffective in fighting corruption. This was related in part to the disparity between crimes registered and individuals sentenced in corruption cases. In addition to this, it was noted that there is no unit within the PPO specialized in the field of corruption. This was considered a problem as the investigation and prosecution of corruption cases requires special training, skills and experience. GRECO proposed that the PPO establish a single unit for dealing with corruption, with the additional responsibility of training, supporting and sharing of practice with other units involved in the fight against corruption. Training in general was also considered necessary for judges and police officers (GRECO, 2002:24). In addition, the importance of strengthening the cooperation and coordination role of the PPO was also emphasized (EC, 2003:15). Measures have been taken to improve training of prosecutors as well as judges and police officers, but the recommendation on establishing a single unit within the PPO specifically dealing with corruption cases was not followed (GRECO, 2004a:8).

Although, as mentioned above, other institutions fill some of the functions traditionally carried out by the Ombudsman, this has been seen as inadequate. 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. This is because the Ombudsman's role covers a different area of activities than that of already existing institutions as the Ombudsman focuses on protecting citizens from abuse by the public administration. It is reported that the institution of an Ombudsman is being considered (GRECO, 2004b:13). A key lesson learned for anti-corruption institutions is the importance of gaining the trust of the public through demonstrating effectiveness by producing results. As GRECO notes, the previous lack of convictions in corruption cases resulted in the public losing confidence in the efforts being made and in the institutions tasked with preventing and combating corruption themselves (GRECO, 2002:26). Hopefully this will be redressed by the KNAB, which has also placed greater emphasis on public relations and awareness-raising. It is noted in the EC monitoring report, however, that while public awareness of corruption and the role and functions of the KNAB is generally rising, continued efforts are needed to increase awareness among the law enforcement bodies, the business sector and the community in general (EC, 2003:15).

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



Lithuania

Key institutions of the national integrity system

- Chief Officials Ethics Commission (COEC) www.vtek.lt/enver.html
- State Control (SC) (National Audit Office) www.vkontrole.lt/en/about_general.shtml
- Seimas Ombudsmen's Office (SOO) www3.lrs.lt/pls/inter/www_viewer.ViewTheme?p_int_tv_id=823&p_kalb_id=2
- Special Investigation Service (SIS) www.stt.lt/?lang=en

Main legislation

- *Law on the Adjustment of Public and Private Interests in the Public Service* (APIPPS) <http://www.unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN017541.pdf>
- *Law on the Seimas Ombudsmen* (December 3, 1998, No. VIII-950) <http://www3.lrs.lt/cgi-bin/preps2?Condition1=85986&Condition2>
- *Law on the Special Investigation Service* (May 2, 2000, No. VIII-1649) http://www.stt.lt/en/files/stt_law.pdf
- *Law on the State Control* (May 30, 1995, No. I-907 [Revised Version of the Law, December 13, 2001, No. IX-650]) http://www.vkontrole.lt/en/l_back_law.shtml
- *Prevention of Corruption Law* (May 28, 2002, No. IX-904) <http://www.stt.lt/en/files/prevention.pdf>

Background

An important impetus in the fight against corruption in Lithuania 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 has also been one of the driving forces in the fight against corruption in Lithuania (Transparency International, 2003:177-178).

Since the 1990s, Lithuania has put in place most of the components of an anti-corruption legislation framework (OSI, 2002:356). In addition, Lithuania has put in place a wide range of agencies and bodies, in particular, in the area of law enforcement, in order to prevent, detect and counter corruption (GRECO, 2002:5). The most important of these was the Special Investigation Service (SIS) established within the Ministry of Interior in 1997 (GRECO, 2002:8). In 2000, the adoption of the *Law on the Special Investigation Service* saw the SIS become what has been considered the only truly independent anti-corruption agency in the countries which entered into the European Union in 2004 as well as those seeking accession.

Two further important developments were the approval by the Seimas of the *National Anti-corruption Programme* in January 2002 and the adoption of the *Prevention of Corruption Law* in May 2002. The comprehensive National Anti-corruption Programme sets out a three-pronged approach to combating corruption, namely:

- **Prevention** – including prevention of political corruption and conflict of interest, administrative corruption in tax and customs authorities, healthcare, law enforcement and judicial bodies, and encouraging public procurement and privatization, international cooperation, and public involvement in corruption prevention.
- **Investigation** – increasing the effectiveness of investigations, ranging from limiting immunity provisions to improving information flows between the various institutions involved in investigation and prosecution.
- **Education** – including introducing anti-corruption components into secondary and higher education curricula.

Lithuania placed 44th out of 159 countries on Transparency International's *Corruption Perceptions Index 2005*. Although it has been acknowledged that Lithuania has made significant progress in addressing the issue of corruption, the European Commission, in its *Comprehensive monitoring report on Lithuania's preparations for membership*, emphasizes that the fight against corruption should continue to receive high priority (2003:54). In the mapping of corruption undertaken by the Lithuanian Chapter of Transparency International in 2004, it was found that a majority of citizens perceive corruption as threat to the state. The European Commission concludes that "corruption remains a source of concern, in particular in the customs, public procurement, traffic police and health sectors as well as in the judiciary (2003:13). Although high-level political corruption is a relatively minor problem, administrative corruption remains at relatively high levels (OSI, 2002:351).

Mandate and institutional links of the key anti-corruption institution

The **Special Investigation Service (SIS)** was initially established under the Ministry of Interior in 1997, with the main function of collecting and using intelligence about criminal associations and corrupt public officials, in addition to carrying out corruption prevention (GRECO, 2002:8). Following the adoption of the SIS Law in 2000, the SIS – then accountable to the Government – became a statutory body accountable to the President and the Seimas (Article 2[1], SIS Law) in order to increase its independence, strengthen its effectiveness and increase its ability to combat corruption in the executive branch. As such, the SIS is obligated to report in writing, at least twice a year, to the President and the Chairman of the Seimas on its activities (Article 8[7], SIS Law). The SIS Law also provides for the objectives and legal basis for the activities of the SIS as well as its tasks and functions (Article 1, SIS Law).

The Director of the SIS is appointed for a term of five years by the President by and with the consent of the Seimas. The candidates for the post of Director of the SIS are nominated to the Seimas by the President. The President may dismiss the Director of the SIS by and with the consent of the Seimas in accordance with the provisions of Article 12 of the SIS Law (Article 11[1], SIS Law). The First Deputy Director and the Deputy Director of the SIS are appointed and dismissed by the President on the advice of the Director (Article 11[2], SIS Law).

The SIS is divided into a number of divisions and departments, including the Department of Intelligence Activities, the Department of Corruption Prevention and four field offices, each of which has its own Investigation Division, as well as a number of departments and divisions primarily performing internal functions.¹

The SIS has been designed as the main anti-corruption body, with responsibilities including coordinating the National Anti-Corruption Programme, detecting and preventing corruption offences as well as ensuring the coordination of anti-corruption measures within State institutions and between them and society (Open Society Institute, 2002:367 and GRECO, 2002:8). The main functions of the SIS, as provided by Article 8 of the SIS Law, are to:

- Carry out operational activities in detecting and preventing corruption-related criminal acts;
- Conduct inquiry and preliminary investigations into corruption-related criminal acts;
- Cooperate with other law enforcement institutions in the manner laid down by legal acts;
- Collect, store and analyse information about corruption and other related social and economic phenomena; and
- On the basis of available information, prepare and implement crime control and prevention programmes.

In carrying out the functions assigned to the SIS, its officers have been given extensive powers, including monitoring of correspondence, electronic communications and premises; entering the premises of any type of enterprise; and carrying out inspections at border points (Article 13, SIS Law). Article 16(2) of the SIS Law explicitly states that "state institutions and agencies or their employees, political parties, public organizations and movements, the mass media, other natural or legal persons" are prohibited from interfering with operations or other activities of SIS officers. Inquiries and preliminary investigations conducted by the SIS (by its Investigation Divisions) are controlled, organized and supervised by the Prosecution Office (Article 22[2], SIS Law). In order to ensure their independence, these Investigation Divisions report directly to the Prosecutor General and cannot even be influenced by the Director of the SIS (GRECO, 2002:9).

In addition, Article 15 of the Prevention of Corruption Law provides that the SIS shall:

- Participate in the development of and, together with other State and Municipal agencies, implement the National Anti-Corruption Programme;

¹ These are the Internal Audit Group; Accountancy; the Division of Legal Affairs, Personnel and Internal Investigations; the Information Technology Division; the Organizational Division; the Administrative Support Division; and the Administrative Procedures Division. There is also an Advisor to the Director as well as a Press Officer.

- Put forward proposals to the President, the Seimas and the Government as to the introduction and improvement of new legislation necessary for the implementation of corruption prevention activities;
- Take part in the Government's discharge of its functions of coordination and supervision of State and Municipal agencies' corruption prevention activities; and
- Together with other State and Municipal agencies, implement corruption prevention measures.

From previously having functioned as a law enforcement body primarily focusing on repressive anti-corruption methods, the SIS has, in line with the priorities set out in the NACP, increasingly come to adopt a three-pronged approach in the fight against corruption that focuses on prevention, investigation and public education (GRECO, 2002:23-24 and SIS, 2004:3). This development will be further discussed under the heading *Lessons learned*.

Operational arrangements

Article 12 of the Prevention of Corruption Law provides that the implementation of corruption prevention measures, as outlined in the law, shall be carried out by the **Government, the Chief Officials Ethics Commission (COEC)** and other **state and municipal agencies**², in addition to the SIS.

As prescribed by Article 13 of the Prevention of Corruption Law, the Government plays a important role in combating corruption in that it is tasked with: ensuring that corruption prevention measures are implemented by the ministries; developing the National Anti-Corruption Programme together with the SIS (submitted to and approved by the Seimas); and making recommendations to the Seimas for the introduction and amendment of laws and other legislation necessary for the prevention of corruption.

The **COEC** – established in 1997 – is an independent body accountable to the Seimas. The commission consists of five members – one appointed by the President, one by the Chairman of the Seimas, one by the Prime Minister and two by the Minister of Justice. The Chairman is appointed by the Seimas. The Commission is supported in its work by a six-person Secretariat (GRECO, 2002:18).

One of the main functions of the COEC is to monitor and control the adherence by public servants of the APPIPS Law, which is intended to ensure that “holders of public office should make decisions solely in terms of the public interest, securing the impartiality of the decisions being taken and preventing the emergence and spread of corruption in the public service” (Article 1, APPIPS Law). Article 4 of the APPIPS Law also provides that senior officials are required to provide declarations of private interest (i.e. property and income declarations) which are filed with the COEC (Article 5[6]). The Commission analyses these declarations and may also initiate investigations into the adherence of the APPIPS Law on the basis of any information received. Based on analyses and investigations carried out, the Commission may recommend actions including fines or termination of employment. Such actions must be brought before a court. The COEC may also pass on information to the law enforcement bodies for further investigation (GRECO, 2002:18 and OSI, 2002:364).

In addition, under Article 14 of the Prevention of Corruption Law, the COEC has been tasked with analysing ethical challenges faced by civil servants and making recommendations concerning anti-corruption programmes and the introduction and improvement of legislation, seeking to eliminate preconditions for possible conflicts of the private and public interests in civil service; making recommendations to the Seimas and other state and municipal agencies as to the implementation of the provisions of the Prevention of Corruption Law; and summarizing the application of the legal rules setting out the institutional ethical requirements in different areas, and shall participate in the drafting and codification of such rules.

Article 16 of the Prevention of Corruption Act provides that all **state and municipal agencies** may, in accordance with the Law, establish internal units for the prevention of corruption within their respective mandated areas and that they shall implement the national policy in the field of corruption prevention within these areas; ensure compliance with the requirements of the legislation on corruption prevention; develop and approve anti-corruption programmes within their area of responsibility, as well as raise awareness among their staff on issues regarding the prevention of corruption.

In October 2001, an **Anti-corruption Commission of the Seimas** was established as a successor to the previous Commission on Economic Crime Investigation. The main responsibility of the Commission is to monitor the situation of corruption in the

² The Prevention of Corruption Law also mentions ‘Non-governmental Organizations’ in Article 12. However, these are referred to as ‘Non-governmental Agencies’ in Article 16.

country, hear reports and analyse the activities and decisions of institutions on measures to combat corruption and submit proposals for anti-corruption measures (GRECO, 2002:17-18 and OSI, 2002:369).

In addition to the above mentioned bodies, the **State Control (SC)** – established by Article 133 of the Constitution – and the **Seimas Ombudsmen's Office (SOO)** – established by Article 73 of the Constitution – play a role in the prevention of corruption.

The activities of the SC are regulated by the Law on State Control (Article 1). The SC is the supreme government audit institution and is accountable to the Seimas (Article 5[1]). The SC is headed by the Auditor General (Article 6), who is appointed by the President on the recommendation of the Seimas. The main functions of the SC are to supervise the lawfulness and effectiveness of management and use of state property and carrying out of the State budget; and to ensure that government auditing conforms to international standards (Article 4). Should the SC find any irregularities during revision, it has an investigative function before such a case is submitted to the prosecutors (GRECO, 2002:20). The SC is independent in carrying out its functions (Article 5). The fight against corruption is considered an important task of the SC, in terms of detection as well as in cooperation with law enforcement bodies (GRECO, 2002:20).

The basic legal principles and activities of the Seimas Ombudsmen and the organizational structure and powers of the SOO are provided by the Law on the Seimas Ombudsmen (Article 1). The SOO was established as an independent state institution (Article 10) consisting of five Ombudsmen, each responsible for monitoring a particular field of public functions, appointed for a term of four years from among candidates nominated by the Speaker of the Seimas (Article 6). The Ombudsmen may only be removed from office by a majority vote of the Seimas (Article 7). The Ombudsmen are required to submit an annual report to the Seimas (Article 25).

The main function of the Ombudsmen is to investigate citizens' complaints concerning the abuse of office and bureaucracy of state and local government and administration as well as military institutions, except as provided in the Law (Article 4). Following an investigation, the Ombudsmen may give recommendations to the authorities that have been investigated as well as submit cases to investigative authorities if evidence of crime has been found (Article 22). The Ombudsmen have also acted to educate the public on its rights and how to exert them (GRECO, 2002:26).

The **judiciary** is independent both in law and in practice (OSI, 2001:377). There are no special procedures for corruption-related cases in the courts and the courts lack special expertise on corruption. Corruption cases are investigated in accordance with ordinary procedures for pre-trial investigation (GRECO, 2002:15).

By virtue of Article 118 of the Constitution, it is the prosecutor who is to organize and be in charge of pre-trial investigation as well as to pursue charges on behalf of the State in criminal cases. It is further established that the prosecutors shall be independent in discharging their functions. The **Prosecution Service** consists of the Office of the Prosecutor General and the territorial prosecutor's offices and is headed by the Prosecutor General – appointed and dismissed by the President upon the approval of the Seimas. The prosecution system is highly hierarchical and the Prosecutor General has extensive powers to intervene at all levels (GRECO, 2002:12-13).

There is a **Department of Organised Crime and Corruption Investigation** established within the Prosecution Service, consisting of staff units specialized in organized crime and corruption investigation within the different prosecutors' offices. Together, they make up a unified and centralized prosecution system with regard to these types of offences. The Department is entrusted with commencing and conducting prosecution against organized crime and corruption-related crimes; to supervise the activities of interrogation and pre-trial investigation bodies focusing on corruption; conduct pre-trial investigation in corruption cases; back the state accusation in court; investigate relevant corruption cases; and coordinate actions of interrogation and pre-trial investigation in respect to corruption-related offences. The Department may also take over cases from the general prosecutors (GRECO, 2002:14).

The **Police** have a general obligation to investigate any crime brought to their attention, including that of corruption. Corruption cases, however, are typically submitted to the SIS or the Department of Organised Crime and Corruption Investigation (GRECO, 2002:10). The various law enforcement institutions have signed agreements in order to create more effective cooperation and exchange of information in detecting and investigating corruption-related offences (EC, 2003:14). It is the prosecutor, however, who is tasked with distributing criminal cases regarding the competence of the various law enforcement bodies. It is thus the SIS that is generally charged with the investigation of corruption cases (GRECO, 2004:7). The activities of the SIS in this regard are closely monitored by the Prosecution Service (GRECO, 2002:24). It is the Prosecutor who brings corruption cases to the court (GRECO, 2002:16).

Lessons learned

As stated both in GRECO's *Evaluation Report on Lithuania* (2002:22) and the European Commission's *Comprehensive monitoring report on Lithuania's preparations for membership* (2003:13), Lithuania has taken extensive action against corruption and, overall, the anti-corruption policy, including legal framework and institutional setup, is well on track, and capacity within the anti-corruption field has been strengthened. There remain, however, a number of concerns and potential areas of improvement. The European Commission concludes that "further efforts are needed to speed up the implementation of the national and sectoral programmes, with a focus on the municipal level, and to ensure sufficient resources" (p. 13-14).

One concern is that there is a general lack of information on corruption, including research as well as data and official statistics. It is argued that data and research facilitating an adequate assessment of the corruption situation would assist in the adoption and implementation of anti-corruption measures (GRECO, 2002:22). Increasing attention has come to be placed on research and the collection of data and statistics. One example of this is the cooperation between the SIS and Transparency International in conducting sociological surveys of corruption (GRECO, 2004:2-3).

Although the SIS has generally been praised, one concern has been that the Service is primarily a law enforcement agency. This has been a concern particularly in relation to the SIS's role in coordinating the National Anti-Corruption Programme, with its emphasis on prevention and education in addition to that of investigation. The GRECO *Evaluation Report* even suggested that a specific agency could be created and given responsibility for the National Anti-Corruption Programme. It was considered that too much emphasis was being placed on enforcement and that greater emphasis should be placed on prevention and public education both within the SIS and other bodies involved in fighting corruption (EC, 2003:14 and GRECO, 2002:23). Although the responsibility for the National Anti-Corruption Programme remains with the SIS, the creation of its Corruption Prevention Department has allowed the Service to place greater emphasis on both prevention and public education (GRECO, 2004:3-4). The Ombudsmen have also been playing an important role in public education (GRECO, 2004:26).

A further concern has been the lack of coordination between investigative bodies in corruption cases and that there has not been a clear procedure for the distribution of corruption cases. When pre-trial investigations have dealt with corruption cases linked to other offences, coordination has been even more difficult. Furthermore, the quality of pre-trial investigation has been considered to be lacking, leading to courts needing to send cases back for expert examinations. This also contributed to lengthy court proceedings, leading to backlogs in corruption cases (GRECO, 2002:24-25). Measures have been taken to address these concerns through the designation of the prosecutor as the authority that distributes criminal cases as well as providing specialized training to investigation staff (GRECO, 2004:6-7). The European Commission, however, maintains that further efforts have to be made "in order to establish a proper and efficient network for effective exchange of information" between law enforcement institutions (2003:14).

Sources

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

Malaysia



Key institutions of the national integrity system

- Anti-Corruption Agency (ACA) www.bpr.gov.my/English/acamain.html
- Attorney-General's Chambers of Malaysia www.agc.gov.my/agc/index-eng.htm
- Integrity Institute of Malaysia (IIM)
- National Audit Department (NAD) (Office of the Auditor General) www.audit.gov.my
- Public Complaints Bureau (PCB) <http://www.bpa.jpm.my/index1.php?lang=E>

Main legislation

- *Audit Act* (1957)
- *Anti-corruption Act* (Act No. 575/1997) <http://www.bpr.gov.my/English/mainact.htm>

Background

The first legislation adopted in Malaysia with a view to combating corruption was the 1950 *Prevention of Corruption Ordinance*. Upon independence in 1957, one of the first actions of the Government was to conduct a study of corruption in the country. Upon completion of the study, measures were taken to combat corruption, including the setting up of a special force to investigate corruption cases (Kassim Bin Mohamad, 2005:3). This was followed by the adoption in 1961 of the *Prevention of Corruption Act* (PCA) and the establishment of the Anti-Corruption Agency (ACA) in 1967. Following the passing of the National Bureau of Investigation Act in 1973, the ACA was renamed the National Bureau of Investigation (NBI). Although this entailed no real changes in the mandate, it was perceived by the public that the NBI had been given a wider mandate than the ACA previously had, also covering, among other things, gambling and smuggling. With the adoption of the 1982 *Anti-corruption Agency Act*, the institution again came to be named the ACA in order to reflect the actual function of the agency – the prevention of corruption.

In addition to the ACA, several other institutions have been established in order to address the issue of corruption and the strengthening of integrity, such as the Public Complaints Bureau (PCB) established in 1971. In line with national and international developments, the Act was revised in 1971 and repealed and replaced by the Anti-corruption Act in 1997 (Kassim Bin Mohamed, 2003). The Anti-corruption Act introduced more severe punishments for acts of corruption. Under the Anti-corruption Act, both giving as well as taking a bribe is an offence, and any officer of a public body to whom a bribe is offered is required to report this to the ACA or a police officer (Sections 10 and 17).

Malaysia placed 39th out of 159 countries on Transparency International's *Corruption Perceptions Index 2005*. In comparison with other countries in Asia, Malaysia has a relatively low level of corruption; however, it is acknowledged that corruption may pose a threat to further development. In view of this, steps have been taken to strengthen integrity within the government, both at the federal and state level. With this in mind, the government formulated the *National Integrity Plan* (NIP) in 2004. The NIP identifies five initial priorities in order to enhance integrity in the society as a whole. These are:

- To effectively reduce corruption, malpractice and abuse of power;
- To increase efficiency of the public delivery system and overcome bureaucratic red tape;
- To enhance corporate governance and business ethics;
- To strengthen the family institution; and
- To improve the quality of life and people's well-being.

In order to promote and coordinate the implementation of the NIP, the Integrity Institute of Malaysia (IIM) was established.

Mandate and institutional links of the key anti-corruption institution

The **Anti Corruption Agency (ACA)** began its operations on 1 October 1967. The ACA is the primary institution charged with combating corruption in the public and private sector, adopting a three-pronged approach of investigation, prevention and education. The Anti-corruption Act provides for the mandate and function of the ACA. Organizationally, the ACA is placed under the Prime Minister's Department.

The ACA is headed by a Director-General appointed by the Yang di-Pertuan Agong (the King) on the advice of the Prime Minister from among members of the public service (Subsection 3[2], Anti-corruption Act). The Director-General does not have security of tenure as s/he holds office at the pleasure of the Yang di-Pertuan Agong, subject to the advice of the Prime Minister (Subsection 3[4], Anti-corruption Act). For the purpose of discipline, the Director-General is deemed to be a member of the public service (Subsection 3[5], Anti-corruption Act). In accordance with the Anti-corruption Act, the Director-General is responsible for the direction, control and supervision of all matters relating to the ACA (Subsection 38[6]). The Director-General is supported by two Deputy Director-Generals. The ACA is made up of a head office comprising nine divisions as well as a state office in each of Malaysia's 14 states – each of which is headed by a State Director. In the states, many sub-branches have been formed in order to expand the presence of the ACA in more remote areas of the country. The establishment of additional sub-branches is currently being planned (Kassim Bin Mohamad, 2005:3).

The main functions of the ACA are:

- To receive and consider any report of corrupt practices and conduct open as well as covert investigations into reports as is considered practicable;
- To detect and investigate any suspected offence, attempt at committing an offence or conspiracy to commit any offence under the Anti-corruption Act;
- To gather evidence in order to prove the commission of corruption, abuse of powers and/or disciplinary misconduct;
- To ensure that public interest and justice are safeguarded under the relevant national laws and regulations through legal counsel and fair trial in corruption and abuse of power cases;
- To assist heads of public and private sectors in handling disciplinary action against officers who have violated work regulations and the code of ethics reported in the ACA Disciplinary Report;
- To examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under the Anti-corruption Act as well as to secure the revision of such practices, systems and procedures which, in the opinion of the Director-General, may be conducive to corruption;
- To advise heads of public bodies of changes in practices, systems and procedures which, in the opinion of the Director-General, are necessary in order to reduce the likelihood of corruption;
- To oversee the selection and approval of eligible officials to high-level posts within the public sector as well as certain institutions in order to ensure that only candidates who have not been involved in corruption and abuse of powers are confirmed; and
- To educate the public, i.e. raise awareness of the harmful effects of corruption as well as enhance and foster public support in combating corruption.

The officers of the ACA are given far-reaching powers in order to fulfil the functions of the Agency. In accordance with Subsection 7(2) of the Anti-corruption Act, "an officer of the Agency shall have, for the purpose of [the Anti-corruption Act], all the powers and immunities of a police officer appointed under the Police Act 1967". Senior officers of the ACA are given the same right as an officer in charge of a Police District to give orders and issue certificates (Subsection 7[4], Anti-corruption Act). When an officer of the ACA has reason to believe that an offence under the Anti-corruption Act has or will be committed, s/he may initiate an investigation and, in doing so, exercise all the powers of investigation as provided under the Anti-corruption Act and the Criminal Procedure Code (Subsection 21[3], Anti-corruption Act). Section 22 of the Anti-corruption Act provides that, in conducting an investigation, an officer of the Agency has the power to call witnesses – who are required to attend as well as disclose all the information in respect of the matter for which s/he is being questioned – as well as require any person to produce documents, etc. This right does not, however, extend to banker's books. Should an individual contravene Section 22, s/he is guilty of committing an offence. Section 28 of the Anti-corruption Act further provides that:

every person required by an officer of the Agency [...] to give information on any subject which it is such officer's duty to inquire into under [the Anti-corruption Act] and which is in the person's power to give shall be legally bound to give the information.

While conducting an investigation, movable property – which may serve as evidence relating to an offence under the Anti-corruption Act – may be seized by any officer of the ACA who is at or above the rank of Investigator (Section 25, Anti-corruption Act). An officer of the Agency also has the right to arrest a person suspected of having committed an offence under the Anti-corruption Act (Section 30, Anti-corruption Act). Further powers of the officers of the ACA are subject to the authorization of the Public Prosecutor, which is covered further below.

The ACA has put in place ‘reception of information’ channels in order to ensure that the public can easily lodge complaints. These include a post office box number for which no postage is required and to which complaints can be made anonymously as well as a 24-hour manned national toll-free number. In order to ensure that the public is aware of these complaint channels, these means of contact are featured in national newspapers as part of the ACA’s public education and awareness raising, which also includes advertisements on both radio and television calling for the public’s cooperation in the fight against corruption (Kassim Bin Mohamad, 2005:5).

Operational arrangements

Although the ACA has the overarching responsibility for combating corruption, in 1998, the Prime Minister directed all Federal Departments and Ministries, as well as State Governments, Departments and Agencies, to establish Integrity Management Committees (IMC) in support of the agency’s work. The function of the IMCs is to work towards the prevention of corruption, abuse of power and mismanagement through addressing issues of good governance. Furthermore, the aim of the IMCs is to instil internal controls against corruption. The ACA, together with the Modernisation, Administrative, Manpower Planning Unit (MAMPU), have been appointed joint coordinators of the national level IMC. Through this mechanism, the ACA is also given a direct channel to the heads of departments and agencies, allowing for a closer cooperation in the fight against corruption (Kassim Bin Mohamad, 2005:4).

Any prosecution of an offence under the Anti-corruption Act can only be instituted by or with the consent of the **Public Prosecutor** (Section 50, Anti-corruption Act). (3) In accordance with Article 145(3) of the Federal Constitution, it is the Attorney General who “shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial”. The Attorney General is also head of the **Attorney General’s Chambers of Malaysia**. The Attorney General is appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. In order to become the Attorney General, s/he must be qualified to be a judge of the Federal Court.

Within the Attorney General’s Chambers, it is the **Prosecution Division** which is tasked with exercising the powers of the Attorney General as the Public Prosecutor in accordance with Section 376 of the Criminal Procedure Code. Additional functions of the Prosecution Division also include:

- To conduct prosecutions in the Session Courts and Magistrate Courts;
- To conduct criminal trials, appeals, applications and revisions in the High Court;
- To conduct appeals and applications in the Court of Appeal and the Federal Court;
- To give advice and instructions to all enforcement agencies in relation to investigations and criminal prosecutions; and
- To peruse investigation papers and to decide whether or not to institute prosecutions.

The Public Prosecutor is given additional powers under the Anti-corruption Act which are relevant in the fight against corruption. The Public Prosecutor may authorize officers of the ACA to inspect banker’s books and receive other material and information from a bank (Section 31, Anti-corruption Act). The Public Prosecutor may also authorize officers to enter premises and conduct searches of the premises as well as persons on the premises. Should an officer of the ACA believe that it is impractical to seek the authorization of the Public Prosecutor, s/he may proceed with entering and searching without having received any authorization (Section 23, Anti-corruption Act). When the Public Prosecutor is satisfied with the information given by the ACA, s/he may also, in certain circumstances, order the freezing or seizure of assets (Sections 33 and 34, Anti-corruption Act).

When a person is suspected of having committed an offence under the Anti-corruption Act, the Public Prosecutor may require him/her to provide a declaration of assets. If the Public Prosecutor has reason to believe that a relative, associate or any other person may be available to assist in the investigation, the Public Prosecutor may request that they also give a declaration of assets. In these cases, the Public Prosecutor may also request banks to provide information on the above mentioned individuals’ assets. Should the Public Prosecutor have reasonable grounds to believe that any officer of a public body required

to declare his/her assets has assets which are excessive in relation to his/her income and considering other relevant circumstances, the Prosecutor may request that person to give an explanation for how these assets were acquired. Should the officer fail to give a satisfactory explanation, s/he is guilty of an offence and shall, if convicted, be given a sentence within the same range as for those convicted of corruption. The same sentence may also be given to an individual who does not comply with the investigation of the Public Prosecutor (Section 32, Anti-corruption Act). It should be noted that in these cases, the burden of proof is on the accused.

The **National Audit Department (NAD)** is headed by the **Auditor General**, who is appointed by the Yang di-Pertuan Agong (the King), on the advice of the Prime Minister (Article 105[1] of the Federal Constitution). Although the NAD is organizationally placed within the Prime Minister's Department, the NAD, through the Auditor-General, is independent in that s/he enjoys security of tenure and reports to the House of Representatives through the Yang di-Pertuan Agong (Articles 105 [3] and 107[1] of the Federal Constitution). Furthermore, the Auditor-General is not subjected to the jurisdiction of the Public Service Commission (Article 109 of the Federal Constitution). In accordance with Article 106(1), it is the Auditor General who is responsible for auditing and reporting on the accounts of the Federation and of the States. In accordance with Section 7 of the Audit Act, the Auditor, in performing his/her functions under the Federal Constitution, may, among other things, call upon any person for any explanations and information which the Auditor General may require in order to enable him/her to discharge his/her duties. The Auditor shall have access to all records required in order to carry out the audit. Furthermore, the Auditor General may authorize any public officer to conduct any inquiry, examination or audit on his/her behalf and to report on these to him/her as well as confer any of his/her powers under Section 7 in writing to a public officer. It is through this last provision that the staff of the NAD are delegated the powers of the Auditor-General. Through this, the NAD is entrusted with the task of ensuring the existence of accountability in the administration and management of public funds through the audit of accounts and activities of the Federal Governments, State Government, Statutory Bodies, Local Authorities as well as other bodies. The staff of the NAD are members of the Malaysian Civil Service. Outside of the role prescribed by the Audit Act, the Auditor-General is also involved with other public agencies in developing a suitable public sector governance framework.

The **Public Complaints Bureau (PCB)** was established in 1971 and is a division within the Prime Minister's Department. The PCB serves as a mechanism through which members of the public can lodge complaints on malpractices and abuse of power in the public service. The PCB is headed by a Director-General together with a Deputy Director-General. There is also a **Permanent Committee of Public Complaints (PCPC)** which has the function and responsibility to formulate policies on system for managing public complaints; to consider and make decisions on reports on public complaints made by the PCB; to direct the heads of the authorities concerned to attend meetings of PCPC to explain specific complaints or cases; and to direct the authorities concerned to take remedial action based on the findings of the investigation into a complaint. The PCPC has the administrative powers to request and obtain information; check files and related documents; and seek explanations from the officers concerned.

Lessons learned

The adoption of the current legislation – the Anti-corruption Act – was a result of perceived weaknesses in the previous legislation which it came to replace. In particular, the previous legislation was considered ineffective because the sentences for corruption were too lenient. In addition, the officers of the ACA did not have sufficient power to fulfil their mandate to combat corruption in the public sector. This included the fact that there were few possibilities of seizing assets that had been gained through corrupt activities. This has been addressed in the current Act, as well as the introduction of a Section making the possession of unexplained wealth and property an offence for investigation. (Kassim Bin Mohamed, 2003).

The success of the ACA has been attributed to the political will of the government, together with a continuous strengthening of anti-corruption legislation and the mandate of the ACA to effectively combat corruption (Kassim Bin Mohamad, 2005:5 and 10).

As mentioned above, the Government has acknowledged that it is necessary to address the issue of integrity in society as a whole and not only within the public sector. In view of this, the Government has adopted the NIP, which will serve as an action plan for all sectors in order to enhance integrity and build an ethical society. An important aspect of the NIP is that it is grounded in the principles of the Federal Constitution as well as other guiding policies. This should ensure that it is in line with national priorities, principles and values. Furthermore, the NIP addresses corruption within the public as well as private sectors,

and importantly, it focuses on the family, which also brings the youth into focus. In contrast with what is often the case, the NIP does not lose sight of the rationale for improving integrity, accountability and integrity – to fight poverty and improve the quality of life of the people.

As mentioned above, in order to effectively promote and coordinate the implementation of the NIP, the Integrity Institute of Malaysia (IIM) has been established. The IIM has also been established in light of the fact that the ACA faces a major challenge in strengthening its work in promoting awareness among members of the public of the dangers of corruption and abuse of power. The weakness of the ACA in the area of education may be explained by the fact that the Agency has primarily focused on investigation and prevention of corruption. Thus, the role of the IIM is also to enhance awareness about corruption and the need for transparency in the public service (ADB and OECD, 2004:55). However, the IIM as a newly-established institution will require increased capacity as well as additional resources in order for it to be able to effectively fulfil its mandate. The ACA itself is also increasingly focusing on prevention and education as it is recognizing that corruption cannot be curbed and controlled purely through a punitive approach (Kassim Bin Mohamad, 2005:9).

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Nigeria

Key institutions of the national integrity system

- Budget Monitoring and Price Intelligence Unit (BMPIU)
- Code of Conduct Bureau (CCB)
- Economic and Financial Crimes Commission (EFCC) www.efccnigeria.org
- Independent Corrupt Practices and Other Related Offences Commission (ICPC) www.icpcnigeria.com

Main Legislation

- *Corrupt Practices and Other Related Offences (CPRO) Act (2000)* <http://www.icpcnigeria.com>
- *Economic and Financial Crimes Commission (Establishment) Act (2002)*

Background

Nigeria placed 152nd out of 159 countries on Transparency International's *Corruption Perception Index 2005*. Nigeria has become a society in which corruption is institutionalized as well as systemic (Agbu, 2004:22). The critical importance of addressing this rampant corruption is evident in that corruption is seen as a major factor in the country's prevalent poverty and an important contributing factor to the difficulties of life experienced by its citizens (Osborne, 2005:3). A 2001 survey conducted by a consortium of institutions showed that households perceived corruption as being second only to unemployment as an impediment to development. The urgency of combating corruption was also acknowledged by President Olusegun Obasanjo, who, in his inaugural speech following the return of the country to democracy in 1999, identified corruption as a major obstacle to development and promised to take action. Subsequently, the President, on assuming office, initiated the passage of the *Corrupt Practices and other Related Offences (CPRO) Act* in June 2000 (Agbu, 2004:9). The CPRO Act established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) as the apex body responsible for fighting corruption and other related offences.

Controversy, however, came to surround the ICPC from the outset, with the constitutionality of the Commission being challenged. While this was before the courts, the ICPC could neither investigate nor prosecute alleged corrupt acts. Two years later, the courts ruled in favour of the ICPC (Osborne, 2005:10). There were yet further delays when the Senate in 2003 voted to replace the CPRO Act with an Act which would have weakened the mandate of the ICPC¹. However, this replacement act was declared null and void by a federal high court (TI, 2004:225). It was thus not until the beginning of 2004 that the ICPC was free to operate as had been intended. In its first four years, the ICPC received only some 1,200 reports. This low number of reports has been attributed to cumbersome reporting procedures (Osborne, 2005:10). Of the reports received, the Commission has investigated only around half, mainly due to a lack of funds (Agbu, 2004:10). There is a perception that the ICPC has performed below expectations (TI, 2004: 225) and is not acting diligently to investigate corruption allegations of high-profile suspects (Agbu, 2004:11).

The adoption of the CPRO Act and the establishment of the ICPC are only one part of the government's current efforts to come to terms with corruption. Other measures have included the establishment of the Economic and Financial Crimes Commission (EFCC) and the Budget Monitoring and Price Intelligence Unit (BMPIU – also known as the Due Process Office) as well as the

¹ It should be noted that some of the changes which would have resulted in adopting the act would have omitted core provisions for which the leadership of both the Senate and House of Representatives were under investigation.

extension of the mandate of the Code of Conduct Bureau (CCB), civil service reforms and efforts to strengthen the integrity and capacity of the judiciary. These initiatives indicate that the government is indeed dedicated to fighting corruption. Yet, to date there is little evidence that much has been achieved in concrete terms. A major obstacle has been the lack of political will, in particular on the part of the Senate (Agbu, 2004:11) as well as obstruction from other elements in society who stand to lose from the war on corruption. This is reflected in the unwillingness to prosecute high-profile individuals. Additional obstacles also include a slow judicial process (Agbu, 2004:22-23). According to Osborne, the fact remains that “many people acquiesce in corrupt patterns and behaviour and make little or no effort to help change them” (2005:5).

Mandate and institutional links of the key anti-corruption institution

The **Independent Corrupt Practices and Other Related Offences Commission** is the apex body for combating corruption and other related offences. The Commission was established in September 2000 by virtue of Subsection 3(1) of the CPRO Act as a corporate body (Subsection 3[2]). The independence of the Commission is ensured by Subsection 3(14), which states that “the Commission shall, in [the] discharge of its functions under [the CPRO] Act, not be subjected to the direction or control of any other person or authority.” The Act further defines corruption, prescribes the punishment for corruption-related offences as well as sets out the mandate and function of the ICPC.

In accordance with Subsection 3(3), the ICPC consists of one Chairperson and twelve members. The Chairperson and the other members of the Commission are appointed by the President upon the confirmation of the Senate (Subsection 3[6]). In accordance with Subsection 3(8), the Chairman or any member of the ICPC can be removed by the President acting on the address of at least two-thirds of members of the Senate. The Commission may not begin to discharge its duties until all members have declared their assets and liabilities. The Chairperson is required to have held or be qualified to hold office as a judge of a superior court of record. The remaining twelve members of the Commission shall be: two retired police officers (not below the rank of Commissioner of Police); two legal practitioners (with at least ten years of post-call experience); two retired public servants (not below the rank of Director); two women; and two youths (not below 21 or above 30 years of age at the time of his/her appointment) (Subsection 3[3]). A Secretary, appointed by the President, is responsible, under the direction of the Chairperson, for the general administration and control of the staff of the ICPC (Subsection 4[6]). In accordance with Subsection 3(12), the Commission has the power to appoint, dismiss as well as exercise discipline over its own staff and shall, for this purpose, adopt its own rules.

As the apex body for combating corruption, the ICPC is mandated to prosecute and prescribe punishment for corrupt practices and other related offences. The main responsibilities of the Commission, as provided by the Section 6 of the CPRO Act, can be divided into three areas, namely:

■ Investigation

- To receive reports and, where reasonable grounds exist for suspecting that an individual has conspired to commit or has committed an offence under the CPRO Act or any other law covering corruption or related offences, to investigate and, in the appropriate cases, prosecute said individual.

■ Prevention

- To examine practices, systems and procedures of public bodies in order to discover and secure revision of practices, systems and procedures which, in the opinion of the Commission, are conducive to corrupt practice;
- To advise, instruct and assist public bodies on the ways to minimize or eliminate fraud and corrupt practices; and
- To advise heads of public bodies on practices, systems or procedures, the introduction of which the ICPC believes would lead to a decreased likelihood of bribery, corruption and other related offences.

■ Public Education

- To educate the public on (and against) bribery, corruption and related offences; and
- To enlist and foster support in combating corruption.

The operational structure of the ICPC consists of three committees: (1) Investigation and Prosecution; (2) Prevention and System Study; and (3) Public Enlightenment and Education. The Committees are in charge of the Departments that correspond to their respective areas. In addition to these, there is also the Chairman’s Special Unit and the Fast Track Team (consisting of top investigators and prosecutors), all of which answer directly to the Chairman. In accordance with Subsection 7(2), the ICPC may establish branch offices in each state as well as in the federal capital territory; however, such branch offices have yet to be established.

Reports received by the ICPC are referred to the Investigation Department for preliminary investigation. The CPRO Act provides officers of the ICPC with far reaching powers of investigation, search and seizure as well as arrest. The Chairperson is mandated to instruct an officer of the ICPC to obtain a court order for forceful entry and search of premises (Section 36). The Chairperson, upon receiving a court order, may also authorize an officer of the ICPC to exercise all powers of investigation in relation to banks and financial institutions as set out in Subsection 43(2). Every person asked by an officer of the Commission to give any information on a matter relating to his/her mandate is required to do so. Failure to provide information is a punishable offence (Section 40). In accordance with Section 5 of the CPRO Act, officers of the ICPC have, when investigating or prosecuting corruption cases, the same powers and immunities as a police officer under the Police Act as well as any other law which confers powers on police or empowers and protects law enforcement agents.

Furthermore, the Chairperson may require any person as well as his/her relatives or associates to provide information in writing on his/her assets and property. Should the Chairperson have reason to suspect that the assets or property of that person, if a public officer, is excessive in relation to present or past emoluments, an explanation for this may be requested. If no adequate explanation is given, the public officer is presumed to have used his/her office to corruptly enrich or gratify him/herself (Section 44). The Chairperson may also cause assets which have been acquired through an offence under the CPRO Act to be seized, as well as require, upon a court order, the surrender of the travel documents of individuals under investigation (Sections 45 and 50). It should also be noted that a Judge of the High Court may, on application made in relation to an investigation under the CPRO Act, instruct advocates and solicitors to disclose any information that they have which may be of relevance to an investigation of the ICPC (Section 39).

Upon completion of the investigation, the investigating officers prepare a report which is sent to the Prosecution Department to determine whether or not a prima facie case can be established. If a case is established, a charge is drafted and filed before a designated court (see further under *Operational arrangements*). Should a report concern an offence which does not fall under the CPRO Act, it is forwarded to the appropriate body (Raji, 2004).

The CPRO Act provides that public officers who have been given, promised or offered a bribe, or any person who has been solicited or from whom an attempt has been made to obtain a bribe, are required to report this to an officer of the Commission (or police officer). Failure to do so is a punishable offence which can lead to imprisonment for up to two years (Section 23).

Operational arrangements

Although the ICPC is mandated to prosecute corruption cases, every prosecution shall, in accordance with Subsection 61(1) of the CPRO Act, be deemed to be instituted with the consent of the Attorney General. Cases are brought before courts or judges which have been designated by the Chief Judge of State. Such a court or judge, after being designated, may not hear any other type of case (Subsection 61[3]). It should be noted that the Attorney General has the power, in accordance with Section 174 of the Constitution, to discontinue a case at any stage. An additional challenge to the effective and expeditious handling of corruption-related cases is that the courts themselves lack capacity and are also seen as prone to corruption. The ICPC is working together with the United Nations Office on Drugs and Crime (UNODC) to strengthen the integrity and capacity of the judiciary².

It is not, however, the responsibility of the ICPC alone to combat corruption in Nigeria. As part of its strategy to combat corruption, the ICPC has sought to create anti-corruption units within the various Ministries, Departments and Agencies (Osborne, 2005:20). Over 100 such units have been established to date (Agbu, 2004:10).

As noted above, there are also a number of other institutions which play a significant role in combating corruption. The most significant among these are the **Budget Monitoring and Price Intelligence Unit (BMPIUP)**, the **Code of Conduct Bureau (CCB)** and the **Economic and Financial Crimes Commission (EFCC)**.

The EFCC, established in 2002 by virtue of Section 1 of the EFCC(A) Act, consists of a Chairperson and 18 members – ex-officio members representing various ministries, agencies and institutions as well as appointed members. There is also a Director-General, appointed by the President, who is head of the EFCC Secretariat (Subsection 7[1]). The Commission has the power to appoint, dismiss as well as discipline its own staff and may make staff regulations for this purpose (Sections 7 and 8). The EFCC consists of a large number of units, including investigation, operations, legal and prosecution, research, audit as well as media and publicity units. The EFCC also has a Training and Research Institute.

² For further information please see http://www.unodc.org/unodc/en/corruption_projects_nigeria.html

The functions of the EFCC, as outlined in Part II of the Act, include the investigation of all financial crimes; the coordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority; adoption of measures to eradicate economic and financial crimes; examination and investigation of all reported cases of economic and financial crimes; and carrying out public enlightenment campaigns on economic and financial crimes. The Commission also has the power to cause investigations to be conducted into whether any person has committed an offence under the EFCC(A) Act. Furthermore, the EFCC is mandated to prosecute offenders as well as conduct such proceedings as may be necessary to expedite the recovery of property forfeited under the EFCC(A) Act (Subsection 12[2]). It should be noted, however, that in accordance with Section 39 of the EFCC(A) Act, the Attorney General may make rules and regulations with respect to the exercise of any of the duties, functions or powers of the EFCC under the Act. During the course of its existence, the EFCC has come to be perceived as the most effective body in combating corruption (Agbu, 2004:18) and the Commission has also, unlike the ICPC, prosecuted several high-profile cases.

In 2003, the BMPIU³, also known as the Due Process Office, was established under the Office of the Principal Secretary of the President, functioning as an operationally independent body. The unit was established in order to counter the perception of Nigeria as a corrupt nation. The unit had been designed to act as a clearinghouse for all government contracts as well as the procurement of goods and services. The function of the Due Process Office is thus to ensure the full compliance in the public sector with the guidelines and procedures that have been established for procurement. It should be noted, however, that as of March 2005, the formal creation of the BMPIU was stalled in the National Assembly, although it was expected that a redrafted Act would be passed shortly (Osborne, 2005:7).

The CCB, headed by a board consisting of a Chairperson (who is also the Chief Executive Officer of the Bureau) and nine other members (Paragraph 1, Third Schedule, Part 1 of the Constitution), was established in 1989 with the mandate to establish and maintain the conduct of government business and to ensure that the "actions and behaviour of public officers conform with the highest standards of public morality and accountability". The CCB has its Headquarters in Abuja as well as offices in each of the states and the federal capital territory. The CCB has three operations departments: (1) Assets Declaration; (2) Investigation and Monitoring; and (3) Education and Advisory Services and a service department: Administration and Finance. Each department is headed by a Director. The Secretary of the Board serves as the Administrative Head of the CCB. The Bureau has a 'twin' organization set up along with it, the Code of Conduct Tribunal which serves as the court of the CCB.

The mandate of the CCB was strengthened when it became a Federal Executive Body under the 1999 Constitution. The Constitution confers on the Bureau the power to receive declarations of assets by public officers as required under the **Code of Conduct for Public Officers (CoC)**⁴; examine the declarations; ensure compliance with the CoC; and receive complaints on non-compliance with or breach of the CoC (including allegations of corruption) and, when appropriate, to refer such matters to the Code of Conduct Tribunal. Due to limitations in resources, the CCB currently only requires the higher levels of the public service to declare their assets, but the goal is to eventually require all public servants to make such declarations (Saba, 2001). The CCB is also mandated to appoint, promote, dismiss and exercise disciplinary control over its own staff.

Lessons learned

As noted above, the government has indeed taken several steps towards curbing the rampant corruption in Nigeria. However, there is little concrete evidence of these measures having had any significant impact on levels of corruption. Some have even gone as far as stating that the war on corruption has so far been a failure (Agbu, 2004:24). Whether or not this is the case, several factors have contributed to the lack of results, despite the resources – both human and material – which have been invested.

One result of the government's efforts has been the creation of a wide range of bodies tasked with different aspects of anti-corruption work. With this comes the risk of blurred boundaries and lack of coordination. In order to avert this, close cooperation is necessary in order to achieve a holistic approach to combating corruption (Osborne, 2005:8). It has been suggested that a coalition between the various institutions should be established, with the ICPC Chairperson as Chair. According to Osborne, there is, however, some resistance to the concept of coordination within the various institutions, with less-formalized cooperation being the preferred method. Stakeholder meetings were also seen as valuable as they have enabled the institutions, through information sharing, to avoid duplication and wasting of resources (2005:15-16).

³ The information on the BMPIU was gathered from http://www.nigeriafirst.org/article_841.shtml.

⁴ The Code of Conduct for Public Officers is set out in the Fifth Schedule, Part 1 of the Constitution.

The ICPC, which was established with the intention of being the apex body for anti-corruption efforts, has, as was also mentioned above, been perceived to function below expectations. This has been attributed to various factors. A major contributing factor has of course been the obstructions of the Senate. The CPRO Act also prohibits the Commission from investigating any cases of corruption which occurred before its establishment. The small number of reports received by the Commission may in part be explained by complicated procedures, discouraging the public from making reports. The low rate of investigation of reports received has been attributed to lack of funds. In fact, the ICPC has itself stated, on numerous occasions, that it is being starved of funds (Agbu, 2004:10 and TI, 2004:225). Furthermore, the investigative mandate of the ICPC is reactive rather than proactive. Additionally, the investigations of the ICPC have not resulted in any high-profile convictions. The fact that the ICPC has limited capacity across the country is further complicated by the fact that virtually no independent efforts have been undertaken on the part of the states themselves to combat corruption (TI, 2004:226). The ICPC itself also suffers from a lack of transparency in that it has yet to publish a report and does not have publicly accessible audited accounts (Osborne, 2005:13). Furthermore, the Commission has been accused of lacking in independence and is seen as being used as an instrument for political vendettas (TI, 2004:225).

The lack of political will, as evidenced by the actions of the Senate described above, has also been a major obstacle to efforts to combat corruption. This lack of will extends further to politicians also outside of the Senate as well as the police (Agbu, 2004:22), which is itself perceived by the public to be one of the most corrupt institutions in the country. There has also been a lack of 'leading by example' among the country's elite. Complaints have been made that this lack of political will has allowed several prominent government officials who ought to have been investigated on charges of corruption to evade investigation (TI, 2005:225). In fact, even though five years have passed since President Obasanjo pledged to take action against corruption, no high-profile person has yet to be jailed for corruption (Agbu, 2004:24).

A major challenge also remains in getting the people of Nigeria to join in the war on corruption. The many unfulfilled promises made about coming to terms with the scourge of corruption followed by no high profile convictions and a government and political elite that does not lead by example makes increasing public participation difficult. Despite the attention that corruption receives in the media, it is believed that many people are actually still not aware of the issue (Osborne, 2005:4). Enlisting civil society organizations and the media in the war on corruption may be one way to gain the support of the people as they are among the most trusted institutions in the country (Agbu, 2004:14). One example is the Ministry of Finance, which enlisted a civil society organization to provide it with a hotline for complaints. It is believed that this has been more effective in gaining public confidence than had this service been provided by the government or a government-funded body (Osborne, 2005:14).

The institutions which are meant uphold or maintain the law – i.e. the police and the judiciary – are perceived as being two of the most corrupt. Any effort to come to terms with the corruption in the country needs to first address this issue. As mentioned above, efforts are being made in collaboration with donors to strengthen the integrity and capacity of the judiciary. The rules of the High Court, however, are highly unsuitable for the types of cases brought by institutions such as the EFCC and the ICPC. In many cases, these rules have been exploited in order to stall cases put before the courts (Agbu, 2004:16). It is clear that in order for the war on corruption to succeed, the efforts to improve the integrity of the judiciary must be stepped up.

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Republic of Korea



Key institutions of the national integrity system

- The Board of Audit and Inspection (BAI) www.bai.go.kr/gamsa/plsql/bai_ehome
- Commission for Prevention of Corruption
- Korea Independent Commission Against Corruption (KICAC) www.kicac.go.kr
- The Ombudsman of Korea www.ombudsman.go.kr/pub_root/english
- Prosecution Bureau (Ministry of Justice) www.moj.go.kr
- Supreme Prosecutor's Office of the Republic of Korea (SPO) <http://www.spo.go.kr>

Main Legislation

- *Anti-corruption Act* (Act No. 6494, July 24, 2001) <http://www.kicac.go.kr>
- *Board of Audit and Inspection (BAI) Act* (1963)
- *Enforcement Decree* (Presidential Decree No.17420, November 29, 2001) <http://www.kicac.go.kr>
- *Public Prosecutors' Office (PPO) Act* http://www1.oecd.org/daf/ASIAcom/pdf/korea_public_prosecutors_office_act.pdf

Background

The first steps towards carrying out a concerted approach towards corruption prevention in Korea were taken under the civilian government that came to power in 1993 through the election of a civilian President (Cho, 2001:8). This included the introduction of a *Public Officials' Property Disclosure System* which made it mandatory for public officials to register and open their property holdings to the public as well as the *Administrative Procedures Act* and the *Act on the Disclosure of Information by Public Agencies*, both of which contributed to the increased transparency of the public service. However, the approach towards corruption remained unsystematic and lacked comprehensiveness.

A major change in public perception and official policy on corruption occurred following the 1997 economic crisis. It was recognized that corruption had been one of the major factors contributing to the severity of the economic crisis, prompting the government to declare 'war on corruption' in 1998 (KICAC, 2003:37). This was also a result of increasing pressure on the government to take action against corruption from a public that had grown tired of the perceived high levels of corruption and recurring corruption scandals, (KICAC, 2004:81). 1999 saw the establishment of the Presidential Commission on Anti-Corruption (PCAC). The PCAC, however, proved to be inadequately equipped to deal with the problem of corruption and its functions were unclear and limited – serving as an advisory board to the President (KICAC, 2003:38).

In 2001, the Anti-corruption Act (ACA) was enacted, giving Korea its first comprehensive law on corruption. Previous to the enactment of the ACA, corruption and prevention activities – now expanded to include the general public – were limited to the Public Prosecutors' Office, the Police Department, the Board of Audit and Inspection (BAI) and other inspection bodies. The ACA also laid the foundation for the establishment of the Korea Independent Commission Against Corruption (KICAC). The KICAC adopted an approach which goes beyond the scope of enforcement, also focusing on prevention, education as well as the promotion of public participation in the fight against corruption. As noted by the Chairman of the KICAC, the Commission made significant progress in establishing the infrastructure for combating corruption during its first two years, although not enough progress has been made in order to meet the high expectations of the public (KICAC, 2004).

Korea placed 40th out of 159 countries on Transparency International's *Corruption Perceptions Index 2005*, indicating that the levels of corruption in Korea are considerably higher than in other countries of similar levels of economic development.

Mandate and institutional links of the key anti-corruption institution

The **Korea Independent Commission Against Corruption (KICAC)** was established under the President in January 2002 by virtue of Article 10 of the ACA. The ACA, together with the ED, provides for the mandate, operation and organization of the KICAC. The Commission is made up of nine members, including one Chairperson, who is in charge of the work of the KICAC (Article 7[1], ED), and two standing members. The Chairperson and the standing members are appointed by the President and the President appoints or designates three members on the recommendation of the National Assembly and three on the recommendation of the Chief Justice of the Supreme Court (Article 12, ACA). The independence of the Commission is provided for by Article 15 of the ACA which states that "the Commission shall independently perform the work belonging to its authority". In addition to this, the Commissioners also enjoy security of tenure.

The KICAC is supported by a Secretariat composed of one office, two bureaus and 15 divisions. The Secretariat is headed by a Secretary General, appointed by the Chairperson from among the standing members of the commission (Article 19, ACA).

The mandate and main responsibilities of the KICAC fall under four areas. These are, as provided by the ACA and ED:

- **Policy formulation and assessment, including:**
 - Formulation of anti-corruption policies and programmes;
 - Setting up enforcement plans and recommending public agencies to establish and implement these;
 - Conducting diagnostic surveys on the compliance levels in public institutions;
 - Conducting regular surveys on the level of corruption, the causes of corruption, and the mindset and behaviours of public servants; and
 - Producing and announcing the Evaluation of Anti-corruption Policy (EAP) and the Integrity Perception Index (IPI).
- **Giving recommendations on institutional improvements** (these recommendations, however, are not binding), including:
 - Eliminating and reducing unreasonable practices and procedures that could lead to corruption;
 - Improving frameworks for the enhancement of transparency of administrative standards and procedures; and
 - Providing specific codes for the various public agencies in order to enhance ethics within the public sector.
- **Handling whistle blowing, including:**
 - Setting up and operating institutional tools, such as procedures for handling corruption reports, protection of whistleblowers and compensation systems in order to encourage public participation in the fight against corruption; and
 - Exercising powers to charge corrupt high-ranking public officials, filing for adjudication, and requesting reinvestigation of inadequate results and discriminatory measures imposed on whistleblowers.¹
- **Education and promotion activities, including:**
 - Enhancing public awareness of the harmful effects of corruption;
 - Strengthening anti-corruption curriculum in schools and public organizations;
 - Conducting campaigns in alliance with NGOs to change the public mindset; and
 - Increasing cooperation with international counterparts and organizations.

In accordance with Article 25 of the ACA, "any person who becomes aware of an act of corruption may report such act of corruption to the Commission". In order to meet this responsibility, the KICAC has established a Corruption Report Center fully dedicated to receiving reports on corruption (KICAC, 2004:21). The specific responsibilities of the Center are:

- To provide general information and counselling for reporters of corruption;
- To process and classify reports received in person, by post, fax or the internet;
- To analyse and manage corruption complaints;
- To run a 24-hour report room; and
- To manage report/petition archives and viewings of documents.

¹ The powers of the KICAC in regard to charging high-ranking officials and filing for adjudication is further discussed under *Operational arrangements below*.

Under the ACA, whistleblowers are given guarantee of position, i.e. they may not be disciplined or discriminated against for having reported a suspected act of corruption. Should an individual feel that they have suffered detrimental practice due to submitting a report, they may request that the KICAC take measures to guarantee their position. Based on the investigation into the request, the Commission may request the head of a public agency to take the appropriate action to guarantee the position of the agency's employee as long as there are not unjustifiable grounds to do so (Article 32). The identity of whistleblowers may not be made public and the KICAC may take measures to ensure physical protection of whistleblowers if requested to do so (Article 34, ACA).

Operational arrangements

Article 3 of the ACA provides that every public agency shall assume the responsibility for putting in place mechanisms to combat corruption, including striving to raise the awareness of its employees as well as the wider public of the importance of combating corruption. Article 6 of the ACA further provides that "every citizen shall fully cooperate with public agencies' anti-corruption polices and programmes". Public officials are obligated to report any case of corruption that comes to their attention to the KICAC (Article 26, ACA).

As the KICAC does not have a mandate to carry out investigations on its own, it is required, upon receiving a report for which it is considered necessary to conduct an investigation, to refer such case to the appropriate authorities (Article 29[3], ACA). In accordance with Article 22(1) of the ED, cases may be referred to the **Board of Inspection and Audit (BAI)** and if there is suspicion of crime, to investigative agencies. Should neither of the former two be deemed appropriate, the case may be referred to the supervisory body of the public agency concerned. Should a case require the involvement of multiple authorities, the KICAC designates the primary authority, who then handles the case in cooperation with the other authorities (Article 22[2], ED). In the case that the KICAC receives a report regarding suspected corruption involving a high-ranking public official, the Commission is to file an accusation directly with the prosecution (Article 29[4], ACA).² Upon receipt of the accusation, the prosecutors shall report the results of its investigations to the KICAC (Article 29[5], ACA).

Public prosecutors are vested with sole authority and responsibility for carrying out criminal investigation, i.e. to initiate as well as conclude investigations. Thus, the police, as well as other law enforcement agencies, are required to conduct investigations under the direction and supervision of the public prosecutors. In practice, the prosecutors only direct police investigations in cases considered to be of high importance. However, as only the public prosecutor can conclude an investigation, all cases investigated by the police must be brought to the prosecutors for final decision. In cases of major economic improprieties and corruption, the public prosecutors initiate and conduct the investigation. Upon the completion of an investigation, it is at the discretion of the prosecutor as to whether or not the case should be prosecuted. In the case that an investigation has resulted from an accusation under Article 29[4] of the ACA and the prosecutor decides not to initiate a prosecution, the KICAC "may file for an application for an adjudication on the right or wrong thereof" with the Court corresponding to the public prosecutors' office to which the relevant prosecutor belongs (Article 31[1], ACA). It is also under the mandate of the prosecutors to supervise the execution of punishments.

The **Supreme Public Prosecutors' Office (SPO)** is responsible for the establishment and enforcement of the fundamental policies on the functions and duties of the public prosecutors as well as for supervision and support to **High Public Prosecutors' Offices** and the **District Prosecutors' Offices (DPO)**. The SPO is headed by the Prosecutor-General, who directs and is responsible for all matters related to prosecution affairs. It is typically the DPOs that carry out investigations of criminal cases, and each DPO has a Special Investigation Department that is dedicated to investigating cases of corruption and economic crime.

Under Article 8 of the PPO Act, it is the Minister of Justice, as the chief supervisor of prosecution functions, who directs and supervises prosecutors. In specific cases, however, the Minister may only direct and supervise the Prosecutor-General, who decides whether or not to convey the instruction to the prosecutor responsible for the case. Each public prosecutor is subordinate to the immediate superior prosecutor and all prosecutors are subordinate to the Prosecutor-General. The independence of the prosecutors is further ensured in that they may not be dismissed or suspended unless impeached or convicted of a serious crime (Article 37, PPO Act). Prosecutors are appointed and assigned by the President on the recommendation of the Minister of Justice. In the case of the Prosecutor-General, the appointment shall go through a confirmation hearing with the National Assembly (Article 34, PPO Act).

² In accordance with Article 29(4) of the ACA, high-ranking public officials are: a public official with the rank of Vice Minister of higher; the Special Metropolitan Mayor, Metropolitan City Mayor or Do governor; a police officer with the rank of superintendent general or higher; a judge or a public prosecutor; a military officer with the rank of general; and/or a member of the National Assembly.

The Prosecution Bureau within the Ministry of Justice supervises the personnel management of prosecutorial officials. The Bureau is also mandated with establishing and improving the plan for prosecution administration, making compilations of budgets for the prosecutorial organizations and supervising the suppressions and prevention of crime as well as the execution of sentences.

Article 103 of the Constitution provides for the independence of judges in that they are to “rule independently according to their conscience and in conformity with the Constitution and the law”.

The **BAI** is the supreme audit and inspection institution. The BAI is a constitutional body established under the President by virtue of Article 97 of the Constitution. Article 2 of the BAI Act, however, provides for the independence of the Board in the execution of its duties. The BAI is headed by a Council composed of seven Commissioners, including a Chairperson. The Chairperson is appointed by the President with the consent of the National Assembly, and the commissioners are appointed by the President on the recommendation of the Chairperson (Article 98 of the Constitution). Decisions relating to the function of the BAI are taken collectively by the Council of Commissioners. In 1993, the **Commission for Prevention of Corruption** was established as an advisory body to the Chairperson of the BAI, providing advice and recommendations on the fight against corruption.

The BAI is mandated to verify final government accounts; carry out audits of the accounts of the State, provincial governments and other local autonomous bodies, and government-invested corporations; and inspect the performance of government operations and its employees. In order to improve government operations and the performance of public officials, the BAI may also undertake investigations into problems not pertaining to the use of public monies. Upon the completion of audits and inspections, the BAI may order liable individuals to make reparations should there have been damages or losses made to government assets. Should investigations uncover irregularities, the BAI may request the agency concerned to take corrective measures, and if an individual has been found to have committed a serious wrongdoing, the BAI may request the relevant supervisory body to take disciplinary action against him/her. The BAI may also request agencies to take measures to improve legislation, institutional arrangements and practices when deemed necessary. In addition, the BAI is also mandated to support the development of internal audit and inspection functions within government agencies. Each year, the BAI prepares a report on its audit and inspections of government operations during the previous year that is presented to the President and the National Assembly. A similar report on the performance of government-invested corporations is submitted to the Government.

The **Ombudsman of Korea (OK)** was established in 1994 in order to provide a safeguard against maladministration and to protect the rights and interests of the citizens. The OK is an independent administrative institution. The Council of Ombudsmen consists of 10 members – a Chief Ombudsman, three standing Ombudsmen and six non-standing Ombudsmen, all of whom are appointed by the President. Decisions of the Council are taken by majority vote, with each member having one vote. The office of Secretary General, the administrative head of the Secretariat which provides support to the Council of Ombudsmen, is held by one of the standing Ombudsmen. The OK is mandated to conduct investigations into grievances submitted by the public. The Ombudsman does not have any statutory powers to open investigations on its own initiative. The OK may make recommendations for corrective action when its investigations reveal unlawful or unreasonable administrative procedures as well as give opinions and make recommendations for the improvement of administrative systems and their operations. The opinions and recommendations of the OK, however, are not binding. Instead, the OK has the power to request the head of the relevant administrative agency to notify the OK of actions taken in response to the opinions or recommendations made to the agency. The OK may then publicize these reports to the media or the general public and report directly to the President. There are limitations to the jurisdiction of the OK, including that it may not investigate grievances against the BAI or matters under the investigation of the BAI.

Lessons learned

The development of the current framework for combating corruption in Korea comes out of experiences with past failures. The government recognized that policies against corruption need to be both comprehensive and systematic. Previous policies have been typified by the absence of a deliberate and systematic approach (KICAC, 2003:42). Efforts had been designed primarily in order to inspect certain organizations or extend the tenure of the regime, i.e. the motives were political rather than based on a real desire to tackle the problem of corruption (KICAC, 2003:40).

The adoption of the ACA and the establishment of the KICAC are seen as important steps to overcoming these earlier deficiencies. The KICAC has adopted an approach similar to that of the so-called three-pronged approach adopted by the Independent Commission Against Corruption in Hong Kong S.A.R., although the KICAC lacks investigative mandate. Instead, the adopted approach focuses on policy formulation and assessment, institutional arrangements, receiving and handling reports, and education and promotion activities. Although, as noted above, achievements have been made by the KICAC in combating corruption, public perception remains that not enough has been done. A major obstacle to the KICAC in performing its tasks has been its lack of investigative mandate (KICAC, 2003:39). In the case of the OK, the lack of mandate to independently initiate investigations was seen as an impediment to its performance.

The whistleblowing system has been seen as one of the most effective tools at the disposal of the KICAC, of which the reward and protection elements are of particular importance. The KICAC itself, however, has emphasized that there is a need to strengthen both these aspects of the whistleblowing system (KICAC, 2004:37).

The wider definition of corruption given in the ACA has also provided the KICAC with a greater scope. From previously only having included a few institutions, the concept of corruption now includes not only public officials but also public interests (KICAC, 2003:40). The private sector, however, is not included under the definition of corruption as provided by the ACA.

The KICAC has recognized that prevention of corruption is more effective than corruption control systems that rely on detection and punishment of public officials only after the misconduct occurs. However, in order to put in place effective prevention measures, it is necessary to have a thorough knowledge of the nature and extent of corruption. Thus, the KICAC has placed emphasis on assessing corruption within the public sector by conducting 'integrity assessments' (KICAC, 2004:41).

Related to this, the KICAC also emphasizes the importance of public education, not only to raise awareness of the importance of combating corruption, but also to encourage the public to report suspected corruption as well as to raise awareness of the protection of and rewards for informants under the whistleblowing system (KICAC, 2004:53 and KICAC, 2003:139). Public education also serves to raise public awareness of the activities of the KICAC as well as to gain the trust of the public. The importance of having the trust and support of the public was a lesson learned from previous efforts to combat corruption that had failed in part due to the lack public support and trust (Cho, 2001:8). Lack of engagement and public knowledge about its activities was seen as a problem for the OK, prompting the Ombudsman to place greater emphasis on public relations and promotional activities.

In Korea, the participation of civil society – in the form of non-governmental organizations and citizen groups – has proven to be an important element in the fight against corruption (Transparency International, 2003:137). They have been important in driving the agenda on corruption, and the fact that the ACA was enacted despite strong resistance within the establishment has in part been attributed to the efforts of these civic groups (KICAC, 2003:39).

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- Transparency International, 2003, *Global Corruption Report 2003* <http://www.globalcorruptionreport.org/gcr2003.html>

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



Singapore

Key institutions of the national integrity system

- Attorney-General's Chambers of Singapore <http://www.agc.gov.sg/index.html>
- Corrupt Practices Investigation Bureau (CPIB) www.cpiib.gov.sg

Main legislation¹

- *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* (Cap. 65A) Act 29 of 1992 as amended up to 2004 (CBA)
- *Penal Code* (Cap. 224) Act 4 of 1871 as amended up to 1998
- *Prevention of Corruption Act* (Cap. 251) Ordinance 39 of 1960 as amended up to 2002 (POCA)

Background

When Singapore became independent in 1959, it inherited a governance system that was characterized by widespread corruption. Corruption had become a way of life, with syndicated corruption widespread and greasing public officials in return for services being common practice (Ali, 2000:3). Corruption was seen as a low-risk, high-reward activity, with corrupt officials seldom being caught, and if caught, not severely punished (Quah, 1999:82). This was despite the fact that the Corrupt Practices Investigation Bureau (CPIB) had been established in 1952. The initial failure of the CPIB to tackle the problem of corruption was explained by a weak legal framework and the fact that, initially, CPIB officers were drawn from the Singapore Police Force and, consequently, not committed to investigating corrupt practices that mainly involved their former police colleagues. Also, being on secondment did not provide the officers with adequate protection and security of tenure. As a result, many officers were reappointed before they were able to conclude their investigation. In addition, the public service was prone to corruption due to low skills, low salaries and lack of integrity, together with a general culture of supremacy of public officers over citizens and related public acceptance of unfair treatment by government officials (Ali, 2000:3-4). There was also a lack of support among the population as the public was sceptical of the effectiveness of the CPIB.

When the People's Action Party came to power in 1959, the new government made it an immediate task to minimize corruption and make it a high-risk, low-reward activity. Thus, in 1960, a comprehensive anti-corruption strategy was initiated through the enactment of the *Prevention of Corruption Act* (POCA). The strategy was based on the principle that "corruption is caused by both the incentives and the opportunities to be corrupt" thus requiring that both the incentives and the opportunities for corruption be removed (Quah, 1999:83). Leading by example and a policy of zero-tolerance for corruption were key elements of the strategy for changing people's attitudes. The POCA also expanded the powers of investigation of the CPIB, giving the Bureau the tools it needed to combat corruption, as well as increased the punishment for corruption. Firm action was consequently taken against corrupt officials, leading to increased support and cooperation from the public as well as a clear message being sent that the law was going to be stringently implemented and that corruption had become a high-risk, low-reward activity.

Singapore placed 5th out of 159 countries on Transparency International's *Corruption Perception Index 2005*. Thus, Singapore ranks as the least corrupt country in Asia on the index and is today one of the least corrupt countries in the world. As such, Singapore has gained worldwide recognition and respect for its culture of integrity that permeates the public administration as well as the private sector.

¹ All legislation can be found at <http://statutes.agc.gov.sg>.

Mandate and institutional links of the key anti-corruption institution

The **Corruption Prevention and Investigation Bureau (CPIB)** was established in 1952. The Bureau is an independent body located within the **Prime Minister's Office (PMO)**. The CPIB is headed by a Director who is appointed by the President on the recommendation of the Cabinet or a Minister acting under the general authority of the Cabinet. The President may refuse to appoint or revoke the appointment of the Director if s/he is not in agreement with the recommendation made (POCA, Subsection 3[1]). The Director is directly responsible to the Prime Minister. The President also appoints a Deputy Director and any number of assistant directors and special investigators "as s/he may think fit" (POCA, Subsection 3[2]). All the above are considered under Subsection 4(1) of the POCA to be public servants.

The main responsibility of the CPIB is the enforcement of the POCA and is thus the main body responsible for investigating and preventing acts of corruption. As such, the three main functions of the CPIB are:

- To **receive and investigate complaints** concerning corruption in the public as well as private sectors;
- To **investigate malpractices and misconduct by public officers**; and
- To **examine the practices and procedures in the public service** to minimize opportunities for corruption.

The CPIB's organizational structure is divided into three branches, namely:

- The Investigation Branch, which is the largest branch, consisting of four units – each of which is headed by a Senior Assistant Director responsible for directing and supervising investigations.
- The Data Management and Support Branch, which manages a computer information system that enables the CPIB to formulate corruption prevention strategies and to screen candidates for public appointments, promotions, scholarships and training. The Research Unit within the branch reviews work procedures of corruption-prone departments. The Intelligence Unit provides required intelligence for meeting the Investigation Branch's operational needs.
- The **Administration Branch**, which provides secretarial support to the other two branches and is responsible for the financial and personnel administration of the CPIB (Quah, 2003).

The CPIB is relatively small, with just over 80 staff. The Independent Commission Against Corruption in Hong Kong S.A.R., for example, has a staff 15 times larger. The Bureau's location within the PMO and its legal powers to obtain the required cooperation from both public and private organizations, however, enable the CPIB to fulfil its task despite a heavy workload, without requiring additional staff (Quah, 1999:84).

By virtue of the POCA, the CPIB has extensive powers of investigation and arrest. Section 15 of the POCA provides that the Director or any special investigator of the Bureau may arrest as well as search, without a warrant, any individual suspected of an offence under the POCA. In the case of offences falling under Section 165 and 213-215 of the Penal Code, the POCA, or any seizable offence disclosed in the course of an investigation under the POCA, the Director or a special investigator may, without the order of the Public Prosecutor exercise any or all of the powers of a police investigation (POCA, Subsection 17[1]). The Director of the CPIB or a Magistrate may also, by warrant, direct any special investigator (or police) to enter premises, by force if necessary, to conduct searches. Should an investigator have reason to believe that seeking a warrant may lead to the search being frustrated, s/he may enter without such a warrant (POCA, Section 22). The Public Prosecutor may also, by order, authorize the Bureau to use special investigative powers (see further under heading *Operational arrangements*).

The POCA further provides that every person is legally bound to provide information to the Director or any officer of the CPIB on any subject which it is the duty of the Director or officer to inquire into under the POCA (Section 27). The POCA also provides for the protection of informers who report suspected acts of corruption (Section 36).

In addition to reviewing work methods and providing advice to both the public and the private sectors on how to minimize methods and procedures prone to corruption, additional prevention tools include the requirement that all public officers 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.

Although the CPIB does not have a Branch directly dedicated to public relations, the Bureau does see public education as an essential element of an effective strategy towards combating corruption. For this purpose, the Bureau regularly conducts lectures and seminars to educate public officers – particularly those who work in corruption-prone professions – on the ills of corruption.

Operational arrangements

The responsibility for combating corruption does not, however, lie with the CPIB alone. While the Bureau has the main responsibility for investigating cases of corruption, the primary responsibility for corruption prevention 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. These measures include improvement of working methods and procedures, strengthening control and monitoring systems, including the conduct of routine and surprise checks, regular rotation of public officers and putting in place strict measures governing conflict of interest (Ali, 2000:8-9).

The **Attorney-General**, appointed by the President on the advice of the Prime Minister (Article 35[1] of the Constitution), is also the Public Prosecutor and, as such, is vested with the power to institute, conduct or discontinue proceedings for any offence (Article 35[8] of the Constitution). The Attorney-General is independent in this role and not subject to the control of the government. The Attorney-General heads the **Attorney-General's Chambers of Singapore**, which is divided into five divisions. Of these, the Criminal Justice Division is the organizational extension of the Attorney-General's role as Public Prosecutor and, as such, advises on and prosecutes criminal cases as well as exercises the Attorney-General's control and direction of criminal prosecutions by directing law enforcement agencies in their investigations.

In order for a prosecution to be instituted based on an investigation conducted by the CPIB, the consent of the Public Prosecutor must be sought (POCA, Section 33). In addition to this, the Public Prosecutor can grant the Director and special investigators of the CPIB or any police at or above the rank of assistant superintendent special powers of investigation, including investigating bank and other types of accounts (POCA, Subsection 18[1]) as well as, by order, authorize the CPIB to exercise the powers of a police investigation in the case of any type of offence (POCA, Section 19). The Public Prosecutor also has the power to order the inspection, by the CBIP, of bankers' books (also of the spouse, children or others who may have acted as his/her agent) (POCA, Subsection 20[1]). Section 21 gives the Public Prosecutor further powers to request information on the resources and property of the accused and his/her family and associates, including ordering the Comptroller of Income Tax to provide any information on offenders that it has in its possession (POCA, Section 21).

Offences under the POCA fall under the jurisdiction of the **District Courts**, which try the cases and determine punishment following a conviction (POCA, Section 34). The POCA further provides that, during any trial or inquiry by a court into an offence under the POCA, the failure of an accused person to account for acquisition of resources or property shall be seen as corroborating that the accused has made these acquisitions through corrupt practices (Subsection 24[1]). When a defendant is convicted of a serious offence, the court shall, on the application of the Public Prosecutor, issue a confiscation order of any means which are considered to have been acquired through criminal activity (CBA, Subsection 5[1]).

Lessons learned

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 repeated messages to government contractors that contracts will be terminated and severe fines and other measures (being barred from any public contract for a period of 5 years) imposed in case of bribery and corruption.

In Singapore, both the giver and the receiver of a bribe are guilty of corruption and are liable to the same punishment. Besides fines and imprisonment, the person convicted of a corruption offence will be ordered by the courts to return the full amount of the bribe. The courts are also empowered to order confiscation of the property obtained by corrupt offenders. The possibility of losing employment, pension and other benefits also provide effective preventive measures. But probably "the strongest deterrent against corruption in the Singapore society is a public opinion that censures and condemns corrupt persons and that make corrupt behaviour so unacceptable that the stigma of corruption cannot be washed away by serving a prison sentence" (Singapore's former Prime Minister, Lee Kuan Yew as quoted in Quah, 1999:76).

Singapore's success in combating corruption is also due to the comprehensiveness of its anti-corruption legal framework, which has been periodically reviewed to introduce relevant amendments whenever required. The POCA has equipped the CPIB with the necessary powers to effectively investigate as well as prevent corruption, as well as providing punishment that effectively deters officials from engaging in corrupt activities.

The high wages in the public service are usually also considered one of the main contributing factors to the low levels of corruption in Singapore. Yet, while today, Singapore's public sector wages are among the highest in the world and certainly contribute to the consolidation of the integrity system, it needs to be reminded that these high salary levels are a main outcome of the anti-corruption policies rather than an explanatory factor of their success. 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, public sector wages ranked among the highest in the world, nearing private sector wage levels. Therefore, while the reduction in corruption in Singapore has often been linked to the high levels of pay in the civil service, it was not until 1972 that the government was able to afford an increase in the salaries of civil servants. In the meantime, the main emphasis was on reducing incentives and opportunities for corruption through economic, educational, and legal reform, institutional strengthening and severe punishment and penalties. The main lessons learned from the Singapore experience is that first, reducing corruption is much more complex than increasing civil services wages alone, and second, even for developing countries under severe resource constraints, corruption can be combated if there is sufficient political will and public support.

Singapore's experience is particularly interesting because it represents a case of an independent anti-corruption agency that is under the direct supervision of the Prime Minister. Essential to the success of the CPIB was to separate the Bureau from the police, especially since the latter itself was considered highly corrupt. Some would argue that, although its independence is rather limited, placed within the PMO in a small city-nation, it is exactly this connection to the top executive that allows the CPIB to mobilize all needed support for its actions from other state institutions. Others would argue that this connection represents, at the same time, the vulnerability of the system, as it relies essentially on the integrity and professionalism of Singapore's political leadership. Also, the strength of the government has been seen as contributing towards the effective control of corruption, although the strength of the government has come at the expense of limitations of political freedoms and access to information (Transparency International, 2003:140).

Furthermore, it also should be acknowledged that the success of the CPIB has resulted from the relatively good governance of the country, including the effective prosecution agencies and judiciary (Transparency International, 2003:145).

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



South Africa

Key institutions of the national integrity system

- Department of Public Service and Administration (DPSA) www.dpsa.gov.za
- Independent Complaints Directorate (ICD) www.icd.gov.za
- National Prosecuting Authority of South Africa (NPA) – in particular, the Asset Forfeiture Unit and Directorate of Special Operations www.npa.gov.za
- Office of the Auditor-General www.agsa.co.za
- Office of the Public Protector www.polity.org.za/html/govt/pubprot/index.html?rebookmark=1
- Public Service Commission (PSC) www.psc.gov.za
- South African Police Service (SAPS) – in particular, the Commercial Branch of the Detective Service www.saps.gov.za
- South African Revenue Service (SARS) www.sars.gov.za
- Special Investigating Unit (SIU) www.siu.org.za

Main legislation

- *Constitution of the Republic of South Africa* (1996) <http://www.gov.za/structure/Constitution.htm>
- *National Prosecuting Agency Act, No. 32 of 1998* (NPA Act) <http://www.polity.org.za/html/govdocs/legislation/1998/act32.pdf>
- *Prevention and Combating of Corrupt Activities Act, No. 12 of 2004*, (PCCAA) <http://www.polity.org.za/pdf/Prev&CombOfCorrActB19B.pdf>
- *Prevention of Organised Crime Act, No. 121 of 1998* (POCA) <http://www.polity.org.za/html/govdocs/legislation/1998/act98-121.html>
- *Promotion of Access to Information Act*, No. 2 of 2000 (PAIA) <http://www.polity.org.za/html/govdocs/legislation/2000/act2.pdf>
- *Promotion of Administrative Justice Act, No. 3 of 2000* (PAJA) <http://www.polity.org.za/html/govdocs/legislation/2000/act3.pdf>
- *Protected Disclosures Act, No. 26 of 2000* (Act No. 26) <http://www.polity.org.za/html/govdocs/legislation/1999/act1.pdf>
- *Public Finance Management Act, No. 1 of 1999* (PFM Act) <http://www.polity.org.za/html/govdocs/legislation/2000/act26.pdf>
- *Special Investigating Units and Special Tribunals Act, No. 74 of 1996* (Act No. 74) <http://www.polity.org.za/html/govdocs/legislation/1996/act96-074.html>

Background

Since the end of the Apartheid regime, South Africa has moved from an oppressive racist state characterized by corruption and political patronage to a modern constitutional democracy. The end of the Apartheid state, however, was not in itself the beginning of a new anti-corruption 'government'. Rather, it heralded a process of profound transformation of the state (Van Vuuren, 2004:2). The first task was thus not to design a plan to combat corruption; rather, it was to build the institutions that were required to fulfil the obligations of the state as established by the Constitution. In addition, this had to be done with elements of the former regime maintaining key functions within the public service, security apparatus as well as the economy, following on the negotiated transition. Thus, the plan was not initially to combat corruption. Establishing a framework for combating corruption became a first priority well into the presidency of Nelson Mandela (1994-1999). It was a necessary means towards safeguarding the achievements that had been made during the first years after the fall of the Apartheid system, and it gained further momentum during the first presidency of Thabo Mbeki (1999-2004).

What followed was the adoption by the democratically elected National Assembly of a number of laws relating to combating corruption as well as the establishment of a number of different agencies with a mandate to counter corruption – a devolved anti-corruption mandate as opposed to a single anti-corruption agency. In addition, civil society and the media have also played a role in keeping up the reform momentum. Although the legislation related to corruption is generally deemed to be adequate, the case has been made that implementation of these laws has not been adequate. This has been attributed partly to lack of resources (Transparency International, 2004:259-260). In addition, there has been an overlap in the mandate of and a lack of coordination between the different agencies with a mandate to combat corruption (UNODC, 2003).

Despite discussions on whether or not to establish a single anti-corruption agency, the Government has decided to maintain the current devolved institutional structure for combating corruption, opting to instead implement incremental improvements to existing agencies as proposed by the 2002 Public Service Anti-corruption Strategy. In line with the recommendations put forward in the strategy, an Anti-corruption Coordinating Committee has also been established to coordinate the work of the different agencies (UNODC, 2003). The adoption of the Public Service Anti-corruption Strategy is in itself a positive development providing a comprehensive framework aimed at preventing and combating corruption in the public service. A further encouraging development is the replacement of the *Corruption Act* of 1992 – widely seen as inadequate – with the *Prevention and Combating of Corrupt Activities Act* adopted in 2004. The new Act provides a clear definition of corruption as well as acknowledges both the supply and demand side of corruption, i.e. also criminalizing the attempt to bribe or corrupt.

South Africa placed 46th out of 159 countries on Transparency International's *Corruption Perceptions Index 2005*. However, although the level of corruption is relatively low compared to its neighbours, the *Country Corruption Assessment Report* carried out by the United Nations Office on Drugs and Crime (UNODC) and the Government of South Africa shows that the perception of corruption is high, although those reporting to have actually been exposed to corruption are much fewer.

Mandate and institutional links of the key anti-corruption institutions

No single anti-corruption agency exists in South Africa. Instead, the anti-corruption mandate has been devolved to a number of separate institutions. The investigation and prosecution of corruption primarily lies with the **National Prosecuting Agency of South Africa (NPA)**, the **Special Investigating Unit (SIU)** and the **South African Police Services (SAPS)**. Bodies such as the **Office of the Auditor-General**, the **Office of the Public Protector**, the **South African Revenue Services (SARS)**, and the **Public Service Commission (PSC)** have, as their core function, to strengthen employee integrity, financial management and the quality of administration within the public service – all of which are central to the prevention and detection of corruption.

The **NPA** – headed by the National Director of Public Prosecutions (NDPP) and appointed by the President – was established in terms of section 179 of the Constitution, which also states that the NPA must exercise its functions without fear, favour or prejudice. The NDPP reports to the Parliament and is accountable to the Minister of Justice. The functions and duties of the NPA as outlined in the NPA Act are:

- To institute and conduct criminal proceedings on behalf of the State;
- To carry out any necessary function incidental to instituting and conducting such criminal proceedings; and
- To discontinue criminal proceedings.

As such, the NPA is the institution most closely associated with state efforts to combat corruption and organized crime in South Africa.

The two units of the NPA who play the most direct role in combating corruption are the **Directorate of Special Operations (DSO)** – also known as the Scorpions – and the **Asset Forfeiture Unit (AFU)**.

One of the key objectives of the NPA is to implement the asset forfeiture provisions in Chapter 5 and 6 of the POCA. The **AFU** was established to pursue this objective. Although the AFU does not have a direct mandate to combat corruption, its work is of fundamental importance to its prevention through the recovery of profits and assets gained as result of involvement in criminal activities, including corruption.

The **DSO** was launched in 1999 as part of the establishment of state capacity to effectively investigate and prosecute national priority crime. As such, the DSO is a multidisciplinary agency specifically mandated to deal with crimes committed in an organized fashion. This mandate includes investigating and prosecuting organized crime and corruption. Primarily, the DSO

has come to focus on high-level corruption cases. The DSO has adopted a unique law enforcement approach that combines crime analysis, investigation and prosecution in an integrated manner, making use of modern technology.

The **SIU** was created under Act No. 74 and is accountable to the Minister of Justice and Parliament. The SIU is a semi-independent statutory body tasked with investigating fraud, corruption and maladministration of state assets and public money. As such, the SIU is the only agency that has an exclusive mandate to combat corruption. If, following an investigation, there is evidence of fraud, corruption and maladministration, the SIU is empowered to take civil action in the Special Tribunal to recover any state assets or public money that may have been misappropriated or misused. The SIU concentrates on civil protection and recovery and is not empowered to take any criminal action. The SIU works in close cooperation with the NPA, DSO, AFU and SAPS. When the SIU does come across alleged criminal activity or uncovers criminal acts, the information is passed on to the relevant criminal investigation body in order for corruption to be pursued on a civil as well as criminal basis.

Within the **SAPS**, it is the Commercial Branch of the Detective Service Division that has the main responsibility in relation to corruption. This has followed on the merger of the SAPS Anti-Corruption Unit into the Detective Service Division.

The **Internal Complaints Directorate (ICD)** – established by virtue of Chapter 10, Section 50(1) of the South African Police Service Act, No. 68 of 1995 (Act No. 68) – is mandated to investigate any alleged misconduct of a member of the SAPS as well as the Municipal Police Service (Section 53.2, Act No. 68) with the purpose of promoting proper police conduct. This also includes investigating allegations of members of the SAPS being involved in any form of corruption. The ICD is a government department, headed by an Executive Director nominated by the Minister and appointed by the Parliamentary Committee, which operates independently of the SAPS (Section 51, Act No. 68).

By virtue of Chapter 9 of the Constitution – **State institutions supporting constitutional democracy** – a number of independent state institutions have been created. Of these, the Office of the Auditor-General and the Office of the Public Protector are of particular relevance to the National Integrity System. These institutions are protected against outside interference and are accountable to the National Assembly, to which they are also required to report on their activities and the performance of their functions on an annual basis (Section 181 of the Constitution).

The Auditor-General – who heads the **Office of the Auditor-General**, as prescribed by Section 188 of the Constitution – must audit and report on the accounts, financial statements and financial management of:

- All national and provincial state departments and administrations;
- All municipalities; and
- Any other institution or accounting entity as required.

The Auditor-General thus has an important role to play in the control of economic crime in South Africa, including contributing towards the prevention of corruption.

The functions of the **Office of the Public Protector** – headed by the Public Protector – are provided by Section 182 of the Constitution. The Public Protector has the power, as regulated by national legislation:

- To investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- To report on that conduct; and
- To take appropriate remedial action.

In addition to the main institutions listed above, there are also several additional agencies that play a role in the prevention of corruption, such as the Public Service Commission and the South African Revenue Service as well as the National Anti-Corruption Forum – a body consisting of government, private sector and civil society representatives.

Operational arrangements

As there is no single anti-corruption agency, an **Anti-Corruption Coordination Committee** has been established, following on the recommendations of the Public Service Anti-corruption Strategy. The Committee consists of national and provincial departments as well as those national agencies and institutions that have anti-corruption functions. The Committee is tasked with assisting in the coordination and integration of anti-corruption work.

Within the **Department of Public Service and Administration (DPSA)**, 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;
- Coordination and integration of the government's anti-corruption work at policy and strategic levels;
- Supporting the national anti-corruption programme;
- Regional and international policy and cooperation on anti-corruption;
- Collecting and analysing information on corruption and anti-corruption; and
- Supporting the Minister for the Public Service and Administration in the responsibility of fighting corruption.

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 PSAC Unit, however, does not itself carry out any corruption investigations.

The Public Service Anti-Corruption Strategy – a comprehensive framework for initiatives to combat and prevent corruption in the public service adopted in 2002 – provides guidance in the Government's efforts to combat corruption. The strategy proposes that a holistic and integrated approach to fighting corruption be established, requiring a strategic combination of preventative and combative activities and a consolidation of the institutional and legislative capabilities of the Government¹. The strategy establishes nine considerations, namely:

- Review and consolidation of the legislative framework;
- Increased institutional capacity to address corruption;
- Improved access to report wrongdoing and protection of whistle blowers and witnesses;
- Prohibition of corrupt individuals and businesses;
- Improved management policies and practices;
- Management of professional ethics;
- Partnerships with stakeholders;
- Social analysis, research and policy advocacy; and
- Awareness, training and education to support the above developments and launch of a public communication campaign.

While Chapter 2 of the newly adopted PCCAA also provides for offences in respect to corrupt activities, an additional tool in combating corruption is provided by Chapter 3, which establishes that the NDDP may apply to a judge in chambers to investigate individuals whose property is disproportionate to their current or known sources of income or assets. In addition, Section 34 of the PCCAA requires that "any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed" a corruption-related offence (involving an amount of 100,000 Rand or a little less than US\$20,000) "must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official". Any person who reports suspected acts of corruption are protected under Act No. 26, which provides for the protection of whistleblowers through the process of disclosure of acts of corruption or other abuse of office in the public and private sectors.

In its efforts to prevent and combat corruption, the Government has also established that all departments and institutions of the Public Service must establish a minimum capacity to undertake the following functions:

- Conduct risk assessments;
- Implement fraud plans including as a minimum, in accordance with the provisions of the PFM Act, an anti-corruption policy and implementation plan;
- Investigate allegations of corruption and detected risks at a preliminary level;
- Enable the process of conducting further investigation, detection and prosecution in terms of prevailing legislation and procedures;
- Receive and manage allegations of corruption through whistle blowing or other mechanisms; and
- Promote professional ethics among employees.

Lessons learned

One of the strengths of the South African national integrity system has been the promulgation of a comprehensive anti-corruption related legislative framework. This includes the PAJA and the PAIA, which empower the general public to

¹ See: Department of Public Service and Administration, Public Sector Anti-Corruption Strategy, DPSA, Pretoria, January 2002.

require information from the public sector and to challenge administrative decisions. It is stated in the Country Corruption Assessment Report that “these laws greatly enhance transparency and contribute to clean government”. The adoption of the PCCAA also should lead to a more effective facilitation of the fight against corruption. In addition, Act No. 26 provides protection for whistle blowers and witnesses in anti-corruption cases in support of the duty of individuals to report corruption as expressed in the PCCAA. However, concerns have been raised as to the state’s lack of capacity to provide actual protection, with most departments and institutions not having put in place the policies and procedures necessary in order to comply with Act No. 26 (UNODC, 2003 and van Vuuren, 2004:6).

This relates to a further challenge, namely, that there has been a lack of implementation of the existing legislation (Transparency International, 2004:259) and that there is an uneven capacity to enforce and comply with the legislation within the public sector (UNODC, 2003). One of the elements towards ensuring the success of an anti-corruption strategy will thus lie in the effective implementation of existing legislation as well as raising the awareness of both those tasked with implementation as well as the wider public of the rights and responsibilities afforded to them by the legislative framework (UNODC, 2003 and van Vuuren, 2004:4-5).

Although South Africa has been successful in increasing its law enforcement capacity (i.e. investigation and prosecution), the country has not been equally successful in prevention of corruption and public education – the other two elements of the so-called ‘three-pronged approach’ to corruption. This constitutes one of the major weaknesses of South Africa’s current approach to corruption (UNODC, 2003), possibly because there is no single anti-corruption agency with such a mandate.

The strategy also covers the issue of the need for increased coordination between the institutions with an anti-corruption mandate. Coordination between institutions was only initiated recently. The creation of the Anti-corruption Coordination Agency has met with some success in bringing together the various agencies (van Vuuren, 2004:4). Yet the devolved corruption mandate is still seen as a weakness, with overlapping legislative mandates and lack of coordination between institutions. There is thus a need to clarify the mandate of the respective institutions as well as to better coordinate anti-corruption strategies, initiatives and investigations (UNODC, 2003). It has been proposed that South Africa consider establishing a single anti-corruption agency as a way of rectifying this perceived deficiency (Van Vuuren, 2004:3-4).

A further weakness is the lack of management of information on corruption, limiting the ability of the government to gain a picture of the shape and extent of corruption. It also hinders the measurement of the effectiveness of anti-corruption strategies and activities. There is thus a need for increased capacity for knowledge management within the institutions tasked with combating corruption (UNODC, 2003).

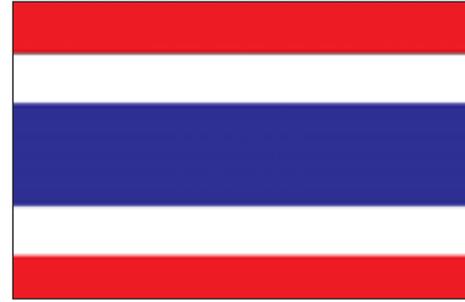
The need to raise the institutional capacity to deal with corruption generally is also dealt with in the Public Service Anti-corruption Strategy. This includes increasing the capacity of the courts, which are currently overloaded, resulting in backlog, delays and withdrawals in corruption cases, as well as of investigating officers. It also includes the need for all departments and institutions to increase their capacity to deal with corruption internally (UNODC, 2003). Yet the institutions responsible for implementing the anti-corruption legislation face decreasing resources and increasing case loads (Transparency International, 2004:259). In fact, it has been claimed that the Public Service Anti-corruption Strategy itself has not been accompanied by the necessary additional financial support and that the institutions and departments have been expected to resource the additional activities themselves out of their existing budgets (Transparency International, 2004:260). This has resulted in several departments not putting in place the anti-corruption procedures and mechanism required by law.

Sources

- Transparency International, 2004, *Global Corruption Report 2004*, <http://www.globalcorruptionreport.org/download.htm>
- UNODC and the Government of South Africa, 2003, *Country Corruption Assessment Report*, http://www.unodc.org/southafrica_reports/
- van Vuuren, Hennie, 2004, *South Africa A Case Study*, (Executive Summary) Paper commissioned for the Kenya Meeting on New Anti-Corruption Governments, Co-organised by the Government of Kenya, TI-Kenya and Transparency International, 11-13 October 2004, http://www.kenyangm.co.ke/pdfs/south_africa.pdf

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

Thailand¹



Key institutions of the national integrity system

- The Administrative Courts
- Anti-Money Laundering Office (AMLO) www.amlo.go.th/Eng/index.htm
- The Constitutional Court www.concourt.or.th/concourt/en_index.jsp
- The Election Commission www.ect.go.th/english
- Ministry of Justice www.moj.go.th/english/ebegin.asp
- The National Human Rights Commission www.nhrc.or.th/index.php?lang=EN
- Office of the Auditor General of Thailand (OAG) www.oag.go.th/OAG0Q005.htm
- Office of the Civil Service Commission (OCSC) www.ocsc.go.th/ehome.asp
- Office of the National Counter Corruption Commission www.nccc.thaigov.net/nccc/eng.php
- Office of the Official Information Commission (OIC) www.oic.thaigov.go.th/eng/engmain.asp
- The Ombudsman of Thailand www.ombudsman.go.th/eng_version/main_eng.asp
- The Public Service Development Commission

Main Legislation

- *The Act on Offences Relating to Corrupt Bidding to State Agencies* (1999)
- *The Act on the Establishment of Administrative Courts* (1999)
- *The Anti-Money Laundering Act* (1999)
- *The Offence Relating to the Bid in Government Agency Act* (1999)
- *The Office of the Constitutional Court Act* (1999)
- *The Official Information Act* (1999)
- *The Organic Act on Counter Corruption* (1999)
- *The Organic Law on Political Parties* (1998)
- *The Organic Law on State Audit* (1999)
- *The Organic Law on the Ombudsman* (1999)
- *The Partnerships and Shares Management of the Ministers Act* (2000)

Background

Prior to 1975, investigating and combating corruption was done by the regular government agencies (mainly the police), primarily relying on the criminal laws and the various regulations applying to public servants. State officials found to be corrupt faced disciplinary reprimand by their respective government agencies. As was the case in several other countries, evolvement of anti-corruption institutions in Thailand resulted from a crisis in public confidence in the Government. After the public uprising of 14 October 1973 against the Government, the subsequent 1974 Constitution stated that “the State should organize efficient systems of government [...] and should take all steps to prevent and suppress the quest for benefits by corrupt means”. As a result, in 1975, the Counter Corruption Act was promulgated and a special agency, the Office of the Counter Corruption Commission (OCCC), was established.

¹ Inputs to this chapter were provided by Ryratana Suwanraks, Manager of the Governance Unit, UNDP Thailand.

From 1975 to 1999, the OCCC operated as a special government unit within the Office of the Prime Minister. Yet levels of corruption remained high, mainly due to insufficient code of ethics, a climate conducive to corruption, weak enforcement, insufficient coordination of anti-corruption efforts and the lack of independence of the OCCC, which reported solely to the executive branch. In addition, there was general public mistrust towards the OCCC and other integrity agencies, in particular the police and the courts.

The 1997 Constitution resulted from political reform efforts that stemmed from the People's Uprising in May 1991². To ensure transparency and accountability, the Constitution aims to establish oversight institutions that are independent, transparent and free from executive interference. Existing institutions were restructured to ensure greater independence, while many new institutions have been created (the Election Commission, the Anti-Money Laundering Office, the Ombudsman, the Administrative Court, and the Constitutional Court). In line with the Constitutional provisions, the Organic Law on Anti-corruption was promulgated in 1999. In contrast to the OCCC, which was under the Office of the Prime Minister, in 1999, the National Counter Corruption Commission (NCCC) was established as an independent institution, selected by the Senate (which is directly elected by the people).

The need to promote transparency, improve the quality of public services and strengthen integrity in public life was also one of the drivers behind the promulgation of the Regulation of the Prime Minister's Office on Good Governance (2001). The Instruction aims to prevent, inter alia, corruption, misconduct, and malpractice for personal benefit and gain in both the public and private sectors and to create a sense of mutual responsibility towards society. The regulation lists the "Rule of Integrity" and the "Rule of Value for Money" among the key good governance principles. In 2003, the current Government issued a Royal Decree on Rules and Procedures for Good Public Administration, focusing on responsiveness, results-based management, effectiveness and value for money, transparency and cutting down red tape. The decree assigns a key role to the Public Sector Development Commission that was established in 2002 to steer the public sector reform process.

Thailand placed 59th out of 159 countries on Transparency International's *Corruption Perception Index 2005*. Corruption remains a serious concern, especially in the area of procurement, customs³ and business operations. Over the years, corruption has become diverse and complex both in size and forms, adapting succinctly to the rapidly changing political, economic and social environment, advancement in technology and fierce business competition. Political corruption (money politics), as well as corruption related to organized crime and prostitution has become widespread. The press is playing an increasingly important role in investigating and exposing examples of corruption. Parliament is also increasing its role in checking the abuse of powers by officials and politicians and the judiciary is showing increasing signs of independent assertiveness. Finally, there is also a vibrant civil society network against corruption, with Transparency Thailand, the Anti-Corruption Network and the Foundation for Clean and Transparent Thailand playing a dominant role.

Mandate and institutional links of the key anti-corruption institution

The **National Counter Corruption Commission (NCCC)** is an independent constitutional agency, accountable to the Senate. The NCCC is composed of nine commissioners (the President and eight other members) who sit for a term of nine years without renewal. The commissioners are selected by the Senate from a list of 18 candidates recommended by a selection committee of 15 people⁴. The persons nominated as NCCC commissioners must have been a Minister, Judge of the Constitutional Court, independent Commissioner, Ombudsman, member of the National Human Rights Commission, the State Audit Commission, serving or having served in positions not lower than Deputy Prosecutor General, Director General or its equivalent, or University Professor. The NCCC submits an annual performance report to the Senate, the House of Representatives and the Cabinet.

In addition to the administrative units, the NCCC is composed of seven main Bureaus: (1) the Bureau of Corruption Prevention Measures, (2) the Bureau of Corruption Prevention – Public Relations and Ethics, (3) the Bureau of Policy and Planning, (4) the Bureau of Corruption Suppression – Local Government and Social Sector, (5) the Bureau of Corruption Suppression – other sectors, (6) the Bureau of Asset Inspection; and (7) the Bureau of Legal Affairs.

² In 1992, the general who led the military coup in 1991 installed himself as prime minister. The 1997 Constitution now stipulates that the Prime Minister can only come from a political party leader who runs as Party-list Member of Parliament.

³ According to the Director General of the Customs Department (2002), at least 25 million baht (approximately US\$610,000) in bribes passed under the table of customs officials monthly (<http://www1.oecd.org/daf/asiacom/countries/thailand.htm>).

⁴ The selection committee comprises the President of the Supreme Court, the President of the Constitutional Court, the President of the Supreme Administrative Court, 7 Rectors representing the State higher education institutions and 5 representatives from all political parties that have members in the House of Representatives.

The Office of the NCCC serves as the Commission's secretariat. It is headed by a Secretary General who is directly answerable to the President of the NCCC.

The NCCC is tasked with being the main coordinator of all anti-corruption efforts in Thailand, both in prevention and enforcement. Its main functions are provided by the Constitution and the Organic Act on Counter Corruption 1999, and are mainly related to:

- Declaration and inspection of assets and liabilities: 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) children⁵ (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 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.
- Corruption prevention, including corruption education and public awareness: the NCCC has the responsibility to reduce opportunities for corruption, educate the population, promote morality and ethics and strengthen alliances with civil society and the private sector. It proposes measures and recommendations (including legislative and managerial remedies) to the cabinet and concerned organizations, aiming to improve working procedures and reduce opportunities and incentives for corruption in the public sector. The NCCC also promotes transparency and accountability in society. It monitors the implementation of the provisions in the Organic Act on Counter Corruption that deal with conflict of interest issues.
- Corruption suppression: the NCCC has the power to conduct inspections and investigations.

The NCCC also investigates offences relating to the Bid in Public Agencies Act of 1999. The Act imposes severe penalties for politicians and state officials as well as private businesses⁶. Public officials who are aware of unfair or corrupt procurement practices but who fail to act against the process are also subject to strong penalties.

The NCCC can summon relevant documents or evidence from any person or summon any person to provide a testimony in a corruption case. The NCCC cannot issue a search warrant or a warrant of arrest or custody; it needs to file an application with the competent court to do so. If the NCCC is of the opinion that the continued performance of the accused shall cause injury to the Government service or cause an impediment to the inquiry, the NCCC shall refer the matter to the superior of the accused for an order of suspension from the Government service, pending the decision of the NCCC. When investigating a case of unusual wealth, the NCCC has the power to order a temporary seizure of that property.

Oversight of the operations of the NCCC is ensured through well-defined operational arrangements involving the courts and the prosecution services. Inquiries into corruption cases are also monitored by special committees composed jointly of external highly qualified resource persons and NCCC officials.

The NCCC is not only tasked with ensuring witness protection, but also has the power to issue regulations and decide on rewards for information leading to the detection of corrupt activities. It also promotes research on corruption from social, economic, political and criminal perspectives. It has initiated a number of prevention programmes among youth, local governments and community people nationwide. The NCCC has commissioned several surveys on the issue of corruption in business and government, and has issued guidelines for public officials that regulate the acceptance of gifts. Furthermore, as part of its 'prevention' mandate, the NCCC has taken several measures to promote ethical standards among students.

Operational arrangements

Where the NCCC finds irregularities in the declaration of assets of public officials, it shall, after investigation, refer the matter to the Constitutional Court for further decision. This is the case where the NCCC rules that an office-holder has withheld information or submitted false information when making an asset and liability declaration⁷.

⁵ According to section 291 of the Constitution, persons holding the following political positions shall submit an account: (1) Prime Minister; (2) government ministers; (3) members of the House of Representatives; (4) senators; (5) other political officials; (6) local administrators and members of a local assembly as provided by law (the list has been specified in article 39 of the Organic Act on Counter Corruption). The account submitted by the Prime Minister and ministers shall be disclosed to the public.

⁶ As of 2000, it is believed that procurement corruption accounts for as high as five to ten percent of a procurement project's budget and as high as 10 to 20 percent of a bidding project budget (Seminar on "Anti-corruption Strategic Planning Workshop," held by NCCC in 2000).

⁷ The Partnership and Shares Management of the Ministers Act stipulates that Cabinet members cannot hold shares of public companies of more than five percent unless he or she sets up a blind trust to manage the shares without his or her involvement. In 2000, a case involving the current Prime Minister was brought before the Constitutional Court. The Court decided in favour of the Prime Minister.

In addition, persons holding high-ranking political or government positions⁸ may be removed from office by the Senate if there is proof of unusual wealth indicative of corruption, malfeasance in office or an intentional excess of power. Such an impeachment procedure can be launched under two conditions: (1) by at least one quarter of the members of the House of Representatives or the Senate, or (2) by at least 50,000 voters. In that case, the President of the Senate shall refer the matter to the NCCC for investigation. The NCCC shall submit its report to the Senate, which may then proceed to vote to remove the office-holder in question from office. But the NCCC shall also submit the report to the Prosecutor General in order to institute prosecution in the Supreme Court Criminal Division for Holders of Political Office (for holders of political positions) or the competent court (for others). The removal from office by the Senate does not do prejudice to the trial of the Supreme Court (in accordance with the Organic Law on Criminal Proceedings against persons holding political positions) or another court (in the case of non-political positions).

An individual can also lodge a complaint against a state official directly to the NCCC, in which case the NCCC will conduct a fact inquiry (the NCCC does not, however, consider anonymous complaints). If the matter concerns a person holding a political office, then the NCCC will report to the Senate and to the Prosecutor General. When the investigation involves a person who does not hold a political position, the case is submitted to the Prosecutor General (if there is a violation of the Criminal law). If there is a case for disciplinary action, the NCCC shall also submit the report to the relevant superior for further action.

In principle, it is thus the Prosecutor General who is responsible for bringing corruption cases before the competent Court. However, there are some exceptions to this rule. First, where the case is to be judged by the Constitutional Court, the NCCC shall itself act as the prosecutor in the case. Second, the NCCC shall also have the power to act as prosecutor under the following two circumstances: (1) when the accused is a Prosecutor General; (2) when the Prosecutor General considers that the report of the NCCC is not complete and does not justify prosecution, and no agreement has been reached in the special working committee, consisting of representatives of both the NCCC and the Prosecutor General⁹.

The NCCC operates within a web of relationships with other institutions that are directly or indirectly involved in anti-corruption efforts.

The **Election Commission** comprises five members, selected by the Senate on the recommendation of a Selection Committee. It ensures the holding of free and fair elections. More specifically, the Election Commission has ruling power against candidates in vote-buying cases. It has the power to recall an election or bar a particular candidate from running for election should clear evidence for vote-buying be found. In addition, the body also oversees financing of and contribution to political parties. To ensure transparency in party financing, records of political parties' accounts – including income, expenses and contributions – are required to be reported to be the public on an annual basis.

A key role in the fight against corruption lies with the **Civil Service Commission (CSC)** and its executive agency as well as with the **Public Sector Development Commission (PSDC)**. The CSC sets policy and guidelines for the management and administration of the public service and oversees and monitors operations. It is comprised of 15 to 17 high-ranking government officials and individuals of high calibre from both the public and private sector¹⁰. The CSC sets ethical standards for government agencies to follow and advises and supports ministries, departments and provinces to develop efficient and effective management techniques. It is also tasked with strengthening people's awareness on public service values and confidence in the public service system. The Office of the **Civil Service Commission (OCSC)** is a government agency under the Office of the Prime Minister. The OCSC is headed by a secretary-general who is directly accountable to the Prime Minister as the Chairperson of the CSC. Its main duties involve making recommendations and advising the Cabinet on personnel administration policy, monitoring public sector personnel administration, serving as the central agency in protecting the merit system, as well as encouraging professionalism, efficiency, result-based performance, transparency and accountability in the public sector. The newly engineered Senior Executive Service aims towards more transparent and merit-based appointment of senior public officials. The Constitution also stipulates that members of Parliament cannot use their position to interfere with the appointment, recruitment, transfer or promotion of government officials.

⁸ A person holding a position of Prime Minister, Minister, member of the House of Representatives, senator, President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court or Prosecutor General, who is under the circumstance of unusual wealth indicative of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law, may be removed from office by the Senate (Constitution section 303). The provisions also apply to the Election Commissioner, the Ombudsman, judges of the Constitutional Court, members of the State Audit Commission, civil court judges, public prosecutors and high ranking officials (section 303).

⁹ That special working committee is to collect further evidence to be submitted to the Prosecutor General for further prosecution. Where there is no agreement, the NCCC itself shall have the power to prosecute or appoint a lawyer to prosecute on its behalf.

¹⁰ There are five elected commissioners, five to seven academic specialists and five ex officio members (which include the Prime Minister or Deputy Prime Minister, the Permanent Secretary of the Ministry of Finance, the Director of the Budget, the Secretary General of the National Economic and Social Development Board and the Secretary General of the Civil Service Commission).

In 2001, the OCSC created the Transparent and Clean Thailand Foundation (<http://www.fact.or.th/english/index.asp>). The Foundation is a joint effort between the OCSC, relevant public and private organizations and the general public. The objective of the foundation is to raise awareness among all segments of Thai society – including politicians, state employees, businessmen, and the general public – to embrace ethical standards and to conduct themselves with honesty and integrity as well as to encourage mutual cooperation and networking among organizations and individuals to safeguard against corruption. The campaign called “Neither give nor receive” aims to create a new value for the Thai society.

In 2002, the Government created the **PSDC**. The PSDC plays a key role in monitoring the implementation of the Decree on Rules and Procedures for Good Public Administration (2003). In accordance with the decree, the permanent Secretary in each ministry shall establish One-Stop Service Centres (OSSC) that will act as intermediaries between the citizens and the government agencies, and enhance transparency, convenient public access to information and speedy delivery of services. Similar OSSCs are to be established at the provincial, district and sub-district levels.

The **Office of the Official Information Commission (OIC)** is in charge of awareness creation and enforcement of the Official Information Act (1997). In essence, public agencies are entitled to provide information as requested by the public, with few exceptions. Citizens can file complaints to OIC in a case of non-compliance by a public agency, and OIC has power to direct the agency to disclose information. The Royal Decree on Rules and Procedures for Good Public Administration (2003) also imposes disclosure of official duty¹¹. Official secrecy may be imposed to maintain national security, national economic stability, public order or to protect personal rights.

The **State Audit Commission** audits the accuracy of statements on receipts and payments, custody and disbursement of money and use of other properties of public agencies and state enterprises. It also certifies whether transactions are in compliance with stated objectives and are cost-effective. The Auditor General is appointed by the King after prior approval by the National Assembly. The Auditor General holds office until retirement at the age of 60.

The Organic Law on the Ombudsman of 1999 foresees a maximum of three Ombudsmen. The **Ombudsman** is empowered to seek facts on complaints against public officials who do not perform according to the laws, fail to perform their duties as required by law or exercise powers beyond their authority. The Ombudsman is thus another channel through which corruption cases can be acted upon. The Ombudsman does not have investigative power and needs to file alleged corruption cases with the NCCC. It can also submit cases to the Constitutional Court or the Administrative Court for decision. The Ombudsman also provides an annual report to the Parliament, which is another channel to reveal the corruption situation in the country.

The **National Human Rights Commission of Thailand (NHRC)**, established under the Constitution, is composed of 11 full-time commissioners, elected for a six-year term by the Senate from a shortlist of 22 people. Each Commissioner can serve for only one term. The Commission is to (1) promote the respect for human rights; (2) examine and report on acts which violate human rights or which do not comply with international obligations; (3) propose policies and amendments of laws, rules and regulations for the promotion and protection of human rights; (4) promote human rights education and research, including the dissemination of human rights information; (5) promote coordination and cooperation with governmental agencies, nongovernmental organizations and others; and (6) give opinions when the government considers being a party to human rights treaties. The Office of the NHRC is under the supervision of a Secretary General. The NHRC submits an annual report to both the Parliament and the Cabinet.

Relations between the state and its citizens are also regulated by the rulings of the **Administrative Court**. The Jurisdiction of the Administrative Court covers dispute between people and the state, including corrupt cases. It also covers dispute over cases where state officials neglect to perform their duties or perform their duties at an inappropriately slow pace. Anyone who feels s/he has been wrongfully discriminated against by a state agency can take the case to the Administrative Court, making it an important avenue for the general public to police the actions of the state.

The **Anti-Money Laundering Office (AMLO)** serves as the Financial Intelligence Unit for law enforcement agencies in Thailand. As such, a primary function is to collect and analyze the various reports submitted to AMLO by financial institutions and other sources of information in order to identify subjects for investigation. Corruption is one of the seven charges covered under the Anti-Money Laundering Law of 1999. AMLO has the power to cease banking transaction of suspected cases under the Anti-Money Laundering Law. The Office is accountable to a Board, chaired by the Prime Minister. AMLO is responsible for

¹¹ Government agencies are obliged to disclose their annual budget, annual procurement as well as any approved procurement contract.

conducting investigations leading to the seizure and forfeiture of assets acquired with the proceeds from the commission of a predicate offence. A further responsibility of AMLO is to educate the public and private sectors concerning the Anti-Money Laundering Act.

The Decree on Good Governance also assigns to the **National Social and Economic Advisory Board (NSEAB)** the task of creating and facilitating cooperation among government, business, and the general public for the establishment of sustainable good governance. The NSEAB is a constitutional body comprised of 99 members, selected from different professions. It is meant to be a formal channel of the people's voice to the Cabinet. The Board has set up an internal anti-corruption working group. The Cabinet is required to respond to the Board's inquiries or recommendations, but it does not need to follow the recommendations given.

Lessons learned

The independence of the NCCC from the Executive branch has improved its operations, especially where it is to verify the assets and liability declaration of persons holding political offices. The NCCC also has a wider jurisdiction than did the former OCCC, which could only intervene after a state official was accused of corruption. The transfer to the Constitutional Court of cases involving declarations of assets of high-level politicians have strengthened popular confidence in the NCCC.

Clearly, while playing an important role, the NCCC is not the only institution involved in the fight against corruption. As is the case in other countries, the Thai experience has shown that one organization, even if independent and highly efficient, is unlikely to be successful if not complemented by a comprehensive legal and institutional framework. Thailand has designed institutional and legal mechanisms whereby corruption can be tackled from different points of view, including significant efforts in public sector reform, with a key role assigned to the Office of the Public Service Commission. But a comprehensive framework also calls for effective coordination mechanisms. However, there seems to be an increasing lack of coordination as more institutions have now been given a mandate to coordinate anti-corruption related activities directly or indirectly (the NCCC, the OCSC, the NSEAB).

In addition to a comprehensive web of state institutions, the Thai experience also stresses the need for effective partnerships between relevant authorities, civil society and the media. People can file complaints and lawsuits against corrupt practices either to the NCCC, the Ombudsman or the Administrative Court, or to the Senate (by gathering at least 50,000 signatures to file a petition to the Senate Chairman against politicians and senior state officials¹² whose behaviour and wealth imply corrupt practices and/or abuse of public power). The recent arrest in Bangkok on 30 October 2004 of a former Health Minister who had fled the court hearing in the Supreme Court (in 2003) is but one example of a successful collaboration between the NCCC and civil society (in this case, the Anti-Corruption Network).

But while the independence of the NCCC has proven successful in the unprecedented indictment of high-level corruption cases in the country, the lack of oversight by a representation from civil society is a point of concern. Although civil society actively collaborates with the NCCC, oversight mechanisms are lacking. First, civil society representatives cannot apply to be NCCC Commissioners. Second, the NCCC law only allows for the impeachment of NCCC Commissioners through the House of Representatives or the Senate, and not directly by 50,000 voters, as is the case with other high-level officials.

The NCCC has the power to initiate criminal prosecution against politicians, their advisors and senior officials but it lacks the manpower and resources to do so. Capacity remains a serious issue of concern, and one of the main reasons for the current backlog of corruption cases. When the OCCC was replaced by the NCCC, pending cases stood at approximately 3,000. At present, pending cases have increased to nearly 5,000. The NCCC's mandate covers persons holding political positions at all levels, including the local level, and all levels of state officials. With manpower of approximately 500 for a total population of 65 million, it is almost impossible for the NCCC to cover the entirety of its mandate¹³. The NCCC is now working towards establishing a screening mechanism within respective ministries before a case is submitted to the Commission.

The problem of capacity is aggravated by the fact that assets and liabilities declarations of officials other than Cabinet members are classified as secret by law. The NCCC is thus unable to hire outside personnel or institutions to assist in verifying the accuracy of assets and liability declarations.

¹² The 17 positions for which such petition is possible are defined in the Organic Law on Counter Corruption.

¹³ Hong Kong's ICAC has a manpower of 1,300 staff for a total population of 6.8 million.

Because of this lack of capacity and insufficient human resources, the NCCC has not been able to reach out to people reporting corruption. The ineffectiveness of the NCCC's whistleblower programme has also reduced popular involvement. The NCCC is also supposed to promote capacity development related to combating economic crime. But while the NCCC has provided recommendations to state agencies, due to a lack of trained personnel, it has not been able to do so for private businesses, unlike Hong Kong's ICAC. Acknowledging that corruption is increasingly seen as a transnational crime that needs to be tackled at the regional and global level, international agreements are being made to join forces (e.g. last year, Thailand and Viet Nam signed an Anti-Money Laundering Pact).

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United Republic of Tanzania

Key institutions of the national integrity system

- Human Rights and Good Governance Commission
- National Audit Office
- The President's Office www.tanzania.go.tz/government
- Prevention of Corruption Bureau (PCB) www.tanzania.go.tz/pcb/
- The Public Leaders' Ethics Secretariat

Main legislation

- *Economic and Organized Crime Control Act*, 1984
- *Establishment of the Human Rights and Good Governance Commission Act*, 2002
- *Prevention of Corruption (Amendment) Act No. 2 of 1974*
<http://www.ipocafrika.org/pdfuploads/Prevention%20of%20Corruption%20Act%20No2%20of%201974.pdf>
- *Prevention of Corruption (Amendment) Act No. 20 of 1990*
[http://www.ipocafrika.org/pdfuploads/Prevention%20of%20corruption%20\(Amendment\)%20Act%20No.%2020%20of%201990.pdf](http://www.ipocafrika.org/pdfuploads/Prevention%20of%20corruption%20(Amendment)%20Act%20No.%2020%20of%201990.pdf)
- *Prevention of Corruption Act (PCA) No. 16 of 1971*
<http://www.ipocafrika.org/pdfuploads/Prevention%20of%20Corruption%20Act%20No.%2016%20of%201971.pdf>
- *Public Leadership Code of Ethics (PLCE) Act No. 13 of 1995*
<http://www.ipocafrika.org/pdfuploads/The%20public%20Leadership%20Code%20of%20ethics%20Act%20no.%2013%20of%201995%20.pdf>

Background

Tanzania used to have a reputation of being a poor but corruption-free country. Under the post-1967 socialist regime, officials were allowed to own only one house and to drive modest cars. The task of combating corruption was performed by the Ministry of Home Affairs, with the Police Force Department mandated to investigate and prosecute corruption offences. But the side-effects of the command economy soon started to become evident as monopolies in the economic sectors provided ample opportunities for extortion. In order to combat the increasing levels of corruption, in 1971, the *Prevention of Corruption Act* was adopted. This was followed in 1975 by the creation of the **Anti-Corruption Squad (ACS)** by President Julius Nyerere, under the *Prevention of Corruption Amendment Act* (1974). The ACS was initially under the Ministry of Home Affairs. However, in an effort to make it more independent in the execution of its duties, supervision of the Squad was shifted to the Office of the Prime Minister and eventually to the Office of the President.

In the 1980s, despite the creation of the ACS, corruption had become prevalent, particularly in the police, and banditry and smuggling was widespread. In 1984, the Government enacted the *Economic and Organized Crime Control Act*, making offences under the PCA economic crimes. During the 1990s, the levels of corruption continued to rise, with petty corruption prevalent in all sectors of the economy and social services. The higher levels of government and the public service were also affected by corruption (Government of Tanzania, 1996).

In the early 1990s, the government launched a series of remedies that focused largely on promoting popular involvement, e.g., reporting 'wrongdoers' as well as on campaigns to improve relations between the police and the public service. This included

giving incentives for reporting smuggled or stolen goods, and policemen were encouraged to denounce those offering bribes. Although these campaigns were believed to have led to some reductions in corruption, implementation of the strategy met with several obstacles. Corruption in procurement remained high, funds from charities and non-governmental organizations continued to be funnelled to private accounts, and there were high levels of tax evasion. In addition, court action remained slow and there were repeated failures to bring convictions to a close. In 1991, the ACS was renamed the **Prevention of Corruption Bureau (PCB)**, with the intention of creating an institution capable of applying a scientific approach to combating corruption.

Corruption was one of the main issues during the 1995 elections – the first multi-party elections in Tanzania – and the winning candidate had led by example in declaring his and his families assets during the election campaign¹. The new President decided to establish a **Presidential Commission of Enquiry Against Corruption** (commonly known as the Warioba Commission) as well as the **Public Leaders' Ethics Secretariat**.

The Warioba Commission was appointed early in 1996 to extensively inquire into the problem of corruption in the country and come up with recommendations to move forward. The report of the Commission detailed that petty as well as grand corruption was rampant at all levels of society, stigmatizing ministries, departments and agencies involved in corrupt practices. The widespread corruption was partly explained by low salaries in the civil service, but the report concluded that the worst perpetrators were actually those at higher levels in the bureaucracy. The Commission identified a lack of ethical leadership and the failure to remove or persecute corrupt high-ranking officials as being the major cause of corruption. This, in combination with a failure of the relevant parties to act on citizen reports on incidence of corruption, explained the lack of confidence of the people in state organs, especially the judiciary and the police. Moreover, the Commission found that the PCB had focused on investigation rather than prevention of corruption; the report also found that the PCB suffered from inadequate resources to effectively fulfil its mandate (Government of Tanzania, 1996).

Following the delivery of the Commission's Report, the government embarked on the formulation of a national anti-corruption strategy. The process involved government ministries, NGOs, the private sector, civic associations, donors, the media and religious organizations. Resulting from this participatory process was the National Anti-Corruption Strategy and Action Plan, adopted in 1999. It covers all sectors and sets out the four principles for the fight against corruption, namely (1) prevention; (2) enforcement; (3) public awareness and participation; and (4) institution building. The strategy also highlights the importance of political will for the success of anti-corruption measures.

Tanzania placed 88th out of 159 countries on Transparency International's *Corruption Perception Index 2005*. Although the country still suffers from high levels of corruption permeating all areas of society, Tanzania has showed improvement since the late 1990s.

Mandate and institutional links of the key anti-corruption institution

The **Prevention of Corruption Bureau** (essentially the renamed Anti-Corruption Squad) came into being in 1991 by Government Notice No. 27 of 1991. The Bureau is a semi-autonomous governmental institution tasked with combating corruption in mainland Tanzania, under the supervision of the President's Office. The Bureau is headed by a General Director, directly accountable to the President. The director is assisted by four Directors (PCA, Section 2A). On administrative and financial matters of the PCB, the Director General is accountable to the Chief Secretary of the President's Office. The Director General authorizes investigations of corrupt practices that involve high-ranking government officials, political parties, public institutions and the private sector, and advises the President on actions taken after completing investigations of alleged corruption.

In accordance with Section 3A(3) of the PC[A]A No. 2, the functions of the PCB are:

- To take necessary measures for the **prevention** of corruption in the public, parastatal and private sectors;
- To **investigate** and, subject to the directions of the Director of Public Prosecutions, to prosecute for offences under the PCA and other offences involving corrupt transactions; and
- To **advise** the Government, the public, civil society organizations, parastatal organizations and the private sector on ways and means to prevent corruption.

¹ Under the Public Leadership Code of Ethics Act No. 13, adopted in 1995, all leaders were directed to declare their assets.

The PCB consists of four divisions: (1) the Investigation Division²; (2) the Research, Control and Statistics Division³; (3) the Community Education Division⁴; and (4) the Administration and Personnel Division⁵. Each Division in turn consists of a number of sections. There is also an Accounts Unit and an Internal Audit Unit as well as a Secretariat and Confidential Registry Unit.

By law, the PCB is mandated to investigate all forms of corruption in the public, parastatal as well as private sectors. The Director General may assume the responsibility for any investigation or prosecution commenced by the police for an offence involving corruption (PCA, Section 2A[4]). The PCB invites and considers complaints, including those given anonymously. As part of its investigatory mandate, the Bureau also initiates surveillance. Pending the approval of the Director of Public Prosecution, the Bureau may also prosecute cases.

Officers of the PCB have the same powers in performing their functions as police officers⁶. This includes the power to arrest, enter premises, detain suspects and seize property when there is reason to suspect that any offence involving corruption has been or is about to be committed (PCA, Section 2A[4]). In addition, the Director General may grant PCB officers special powers of investigation, e.g. to investigate bank accounts (PCA, Section 12[1]).

The PCB also has regional offices that are headed by the Regional Bureau Chiefs, who report directly to the Director General. The regional offices have a mandate to prevent, investigate and educate on corruption. However, they may not institute or withdraw a corruption case without instructions from the Director General. There are also district offices. These are headed by senior investigators who are responsible to the Regional Bureau Chief.

Operational arrangements

The performance of the PCB is monitored by the **Committee for Control and Evaluation** and the **Committee of Directors**. The Committee of Control and Evaluation is responsible for the overall supervision of the performance of the PCB. The Committee is chaired by the Chief Secretary of the President's Office, with the PCB Director General, the Director General of the Tanzanian Intelligence and Security System and the Private Secretary of the President as additional members. The Director of Administration and Personnel of the PCB acts as Secretary. The Committee of Directors is chaired by the PCB Director General, with the Directors of the PCB as members. The operations of the PCB are also monitored by the Auditor General. The report of the Auditor General is made public and is subject to public evaluation.

As mentioned above, the PCB may prosecute cases. However, in order to do so, it must seek the approval of the Director of Public Prosecution (PCA, Section 18). 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. No prosecution matters are submitted to the Director of Public Prosecution without having been approved first by the Committee of Directors. Offences under the PCA are to be tried by the High Court, the court of Resident Magistrate or a District Court (PCA, Section 19).

The **Good Governance Office**, within the **President's Office**, is tasked with the: (1) implementation and coordination of the National Anti-Corruption Strategy and Action Plan (2) monitoring of the public leaders' ethics and abuse of power; (3) coordination of state organs involved in the fight against corruption; (4) strengthening of the legal regime (i.e., anti-corruption legislation and ethics frameworks); and (5) linking the efforts of the Government with civil society (through education, prevention of corruption programmes, media, etc). As such, it has the overall responsibility for coordination of the fight against corruption. However, the Good Governance Office has limited capacity to fulfil this wide mandate.

The PLCE Act of 1995 established a code of ethics for public leaders (as defined in the Act) as well as required all public leaders to submit a declaration of property (also including that of family members). The **Public Leaders' Ethics Secretariat** has the duty to receive these declarations as well as notifications of breaches of the code of ethics from the public and to inquire into any alleged or suspected breach of the code of ethics by public leaders who are subject to the PCLE Act (Section

² The Investigation Division consists of the Public Sector Investigation Section, the Private Sector Investigation Section, the Legal and Prosecution Section and the Technical and Communication Services Section.

³ The Research, Control and Statistics Division consists of the Research Section, the Control Section, and the Statistics Section.

⁴ The Public Education Section consists of the Liaison and Coordination Section, the Public Education Section, the Library Section, and the Planning and Logistics Section.

⁵ The Administration and Personnel Section consists of the Administration Section, the Personnel Section, and the Training Section.

⁶ The same powers as granted to a police officer of or above the rank of an Assistant Superintendent of Police.

19[2]). The Ethics Secretariat was established in accordance with Section 132 of the Constitution. Within the Secretariat, the office of the Ethics Commissioner, who also serves as the head of the Secretariat, was established in 1996 in accordance with Section 20 of the PLCE Act. The Commissioner is appointed by and reports to the President.

As provided by Section 8 of the PCA, any public officer may, if authorized in writing by the President, the Attorney General or the Director General of the PCB, be requested to give an account of all property in his/her possession as well as in the possession of the immediate family or associate. If the public officer is found to be in possession of property that could be suspected of being corruptly acquired, s/he must give an explanation for this. Should the public officer not be able to give a satisfactory response, s/he will be found guilty of an offence under the PCA and a court may order the property acquired by corrupt means to be forfeited (PCA, Section 9).

The **Human Rights and Good Governance Commission**, which was established in 2002, serves the function of Ombudsman (replacing the previous Permanent Commission of Enquiry). The Commission considers complaints of abuse of office, including human rights abuses. It recently asserted itself by finding against the Government in a case filed by members of a village in the Serengeti who were forcefully removed by the district authorities. The case had a high profile and the Commission gained the public's respect for its politically sensitive – though widely perceived to be fair – ruling.

The **National Audit Office** is the supreme audit institution in the country. The Office, together with the National Board of Accountants and Auditors, has issued a Code of Ethics for its members, aimed at instituting a professional behaviour that leads to reduced malpractices, including corruption. The profession has also been at the forefront of promoting best practice in corporate governance in the country. The National Board of Accountants and Auditors is one of the founding members of the Tanzania Institute of Corporate Governance, a private sector institution recently launched to spearhead the corporate governance issues in the country.

Lessons learned

One of the main causes of corruption in Tanzania, as identified by the Warioba Commission, was the poor example that the leadership was showing in the fight against corruption. As mentioned earlier, corruption affects the country at all levels and little was being done to address corruption at the higher levels. In addition, when corrupt officials at the lower levels of the bureaucracy were reported by the public, frequently no action was taken as superior officers were either directly involved in the corruption or did not consider it a priority (Government of Tanzania, 1996).

In order to address the perceived lack of ethics within the leadership, the PLCE Act provided for the adoption of a code of conduct for public leaders as well as the establishment of the Public Leaders' Ethics Commission and the Office of the Ethics Commissioner. The Commissioner is, however, limited to making enquiries to complaints received from "identified" persons and reports in the media. The Commissioner may not make enquiries on the basis of anonymous complaints. Also, the Secretariat is dependent on the police and the PCB for conducting investigations. In addition, as long as standards are not well-defined and penalties for breaches not explicitly provided, the role of the Commissioner will be limited. A further obstacle to the effective functioning of the Secretariat was the statement by the Attorney General that public declarations of wealth offended the constitutional right of privacy. Following this, declarations have only been made directly to the Ethics Commissioner. In order to gain access to these declarations, special permission is required – though rarely granted. Even when permission is granted, it is illegal to make public any information obtained. To date, no one has been convicted for making a false declaration or for having excessive wealth.

Corruption at the lower levels has been attributed to low levels of remuneration, something which was also acknowledged as a problem by the Warioba Commission. The Commission went on to conclude that this should not, however, be seen as the major determinant of corruption as those most corrupt were also those at higher levels within the establishment and already receiving high salaries. Raising salaries would thus "only help them raise the value of corruption". That corruption is prevalent also within the higher levels of the public service is also acknowledged in the National Anti-Corruption Strategy and Action Plan. The latter, however, states that raising salaries and increasing incentives for public servants is part of, but not in itself, a strategy towards addressing the high levels of corruption.

The PCB itself has proven less than effective in combating corruption, with few cases of corruption being prosecuted and even fewer convictions. One problem is the institutional setup of the Bureau, i.e. the fact that the PCB is a functional section of the President's Office, thus lacking in independence because it is subject to the directives of the President's Office. The Director

General of the PCB is appointed by and responsible to the President. Having no fixed term, the Director General serves at the will of the President, who alone has the power to remove or sanction the Director General. Confidential reports need to be forwarded to the President. The PCB is thus not in a position to seriously tackle corruption involving actors close to the President.

Moreover, the Committee of Control and Evaluation, which oversees the performance of the PCB, is chaired by the Chief Secretary of the President's Office. The findings of this Committee are not published. In addition, neither Parliament nor citizen's committees have formal oversight authority for the PCB. These are all factors that are likely to contribute to the lack of public confidence in the Bureau. Some observers have also argued that the PCB has not gained public support and credibility to act independently because of fear, apathy and lack of awareness of its mission. Nonetheless, despite all the changes made over the years in the institutional setting of the Anti-corruption Squad, the functions and responsibilities of the PCB have remained the same as those contained in the PCA of 1971.

An essential element of any anti-corruption agency is having the capacity for researching levels and causes of corruption. The Research Section of the Research, Control and Statistics Division in the PCB carries out research on: various policies to ensure that there is no room for corrupt practices; on services provided by different institutions in order to detect loopholes that lead to corruption; on remuneration of public servants, employees of political parties, parastatals, and the private sector; on Public Service Acts and regulations so as to determine whether such legal instruments are appropriate and in conformity with the behaviour of employees; and on methods for combating corruption adopted in other countries.

A further hindrance to the efficiency of the PCB is the weak linkages that the Bureau has with other government agencies, in particular, the judiciary. The judiciary is itself weak, requiring increased resources and capacity. In order for the fight against corruption to be effective and for the national Anti-Corruption Strategy and Action Plan to be implemented, stronger linkages with the government as well as with civil society and the private sector are required on the part of the Bureau. Strengthening the PCB and implementing the Strategy will not, however, in itself be sufficient. Other reforms are also needed; local government reform, public finance reform and public sector reform will all play a critical role in coming to terms with corruption. Furthermore, it will also require a change in culture and attitudes within the leadership and the existence of political will at the highest levels to come to terms with corruption.

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