UNITED NATIONS *Office on Drugs and Crime*

THE GLOBAL PROGRAMME AGAINST CORRUPTION

UN ANTI-CORRUPTION TOOLKIT

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THE TOOLKIT - EXCERPTS

TOOL #1

ASSESSMENT OF THE NATURE AND EXTENT OF CORRUPTION

Tool #1 is used to provide quantitative measurements of the extent of corruption in a country or within specific sectors of a country. It also provides qualitative assessments of the types of corruption that are prevalent, how corruption occurs and what may be causing or contributing to it.

Tool #1 will generally be used prior to the development of the national anti-corruption strategy:

- In the preliminary phase, to assist with the development of the national anti-corruption strategy, to help set priorities, to make a preliminary estimate of how long the strategy will last and to determine the resources required to implement it. The preliminary assessment should cover all sectors of the public administration and, if necessary, the private sector, to ensure no detail is overlooked. The data gathered at this stage will be the baseline against which future progress will be assessed.

- In the follow-up phase, to help assess progress against the baseline data gathered at the preliminary stage, to provide periodic information about the implementation of strategic elements and their effects on corruption, and to help decide how strategic elements/priorities can be adapted in the face of strategic successes and failures.

- To help in setting clear and reasonable objectives for the strategy and each of its elements, and measurable performance indicators for those objectives.

- To raise the awareness of key stakeholders and the public of the true nature, extent and impact of corruption. Awareness-raising will help foster understanding of the anti-corruption strategy, mobilize support for anti-corruption measures and encourage and empower populations to expect and insist on high standards of public service integrity and performance.

- To provide the basis of assistance to other countries in their efforts against corruption.

TYPES OF DATA TO BE SOUGHT

- **Information about where corruption is occurring.**

  Such information may include the identification of particular public or private sector activities, institutions or relationships. Data are often gathered about particular Government agencies, for example, or about relationships or processes, such as public service employment or the making of contracts for goods or services.

- **Information about what types of corruption are occurring.**

While an overall assessment of what types of corruption are prevalent may be undertaken, a more detailed focus will be usually involved on what types of corruption tend to occur in each specific agency, relationship or process   for which corruption has been identified as a problem.   Research may show that bribery is a major problem in Government contracting, for example, while public service appointments may be more affected by nepotism.

- **Information about the costs and effects of corruption.**

    Understanding the relative effects of corruption is critical to setting priorities and mobilizing support for anti-corruption efforts.   Where possible, information should include the direct, economic costs plus an assessment of indirect and intangible human consequences.

- **Factors that contribute to or are associated with corruption.**

    There is seldom a single identifiable cause of a particular occurrence of corruption but a number of contributing factors will usually be identifiable. They often include factors such as poverty or the low social and economic status of public officials that makes them more susceptible to bribery; the presence of specific corrupting influences, such as organized crime; or structural factors, such as overly broad discretionary powers and a general lack of monitoring and accountability.   Information about such factors is critical to understanding the nature of the corruption itself and to formulating countermeasures. The presence of known contributing factors may also lead researchers or investigators to identify previously unknown or unsuspected occurrences of corruption.

- **The subjective perception of corruption by those involved or affected by it.**

    All assessments of corruption should include objective measurements (of what is actually occurring) and subjective assessments (of how those involved perceive or understand what is occurring).   The information is needed because the reactions of people to anti-corruption efforts will be governed by their own perceptions.   The following specific areas should be researched:

    o The impressions of those involved (offenders, victims and others) about the types of corruption occurring;

    o The impressions of those involved about relevant rules and standards of conduct, and whether corruption is in breach of those standards;

    o The impressions of those involved about the actual impact or effects of the corruption; and

    o The views of those involved as to what should be done about corruption and which of the available remedies may prove effective or ineffective in their particular circumstances.

METHODS OF GATHERING DATA

Corruption is, by its nature, a covert activity. It makes accurate information hard to obtain and gives many of those involved a motive for distorting or

falsifying any information they do provide. To obtain an accurate assessment, therefore, it is essential to obtain information from as many sources as possible and to ensure diversity in the sources and methods used. That enables biases or errors due to falsification, sampling or other problems to be identified and either taken into account or eliminated. The major techniques for gathering information include:

Desk Review.

An early step is usually to gather as much data as possible from pre-existing sources: previous research or assessments by academics, interest groups, public officials, auditors-general or ombudsmen, as well as information from media reports.

Surveys.

Conducting surveys is an important means of assessment. Surveys gather information from responses to written questionnaires or verbal interviews. They may be directed at general populations or be samples specifically chosen for comparison with other samples. They may gather objective data (for example, the nature or frequency of occurrences of corruption known to the respondent) or subjective data (the views, perceptions or opinions of the respondent).

A wide range of data can be obtained about the types, nature, extent and locations of corruption, the effectiveness of efforts against it and the public perceptions of all of those. Considerable expertise is needed, however, to gather valid data and to interpret them correctly.

When conducting a survey, it is important to choose representative samples of the population, as the nature of the sample is a major factor in assessing the survey results. A general public survey may show that only a small part of the population has experienced public sector corruption; a sample selected from among those who have had some contact with the Government or a particular governmental area or process, such as employment or contracting, may produce a different result. Results of samples from Government insiders may also differ from samples based on outsiders.

The comparison of data taken from different samples is one valuable element of such research but comparisons can be valid only if the samples were correctly selected and identified in the first place. For general public surveys, care must be taken to sample all sectors of the population. A common error is to oversample urban areas, where people are more accessible at a lower cost, and to undersample rural or remote populations. Valid results will not be yielded if the reality or perception of corruption is different in urban and rural areas. Samples selected more narrowly, for example by asking the users to comment on a particular service, must also ensure that a full range of service-users is approached. Anonymity and confidentiality are also important; corrupt officials will not provide information if they fear disciplinary or criminal sanctions, and many victims may also fear retaliation if they provide information.

The formulation of survey instruments is critical. Questions must be drafted in a way that can be understood by all those to be surveyed, regardless of background or educational level. The question must be understood in the

same way by all survey respondents. In cases where many respondents are illiterate or deemed unlikely to respond to a written questionnaire, telephone or personal interviews are often used. In such cases, it is essential to train interviewers to ensure that they all ask the same questions using the same terminology.

Focus Groups.

Another diagnostic technique used in country assessments is focus groups, whereby targeted interest groups in Government and society hold in-depth discussion sessions. The technique usually produces qualitative rather than quantitative assessments, including detailed information concerning views on corruption, precipitating causes of corruption and valuable ideas on how the Government can combat it. Specific agendas for focus groups can be set in advance, or developed individually, either as the group starts its work or by advance consultations with the participants. Focus groups can also be used to generate preliminary assessments as the basis of further research, but should not be the only method used for such assessments. A focus group of judges may well be useful in developing research into corruption in the legal or criminal justice system, for example, but others, such as law enforcement personnel, prosecutors or court officials, may yield different results.

Case Studies.

Following basic quantitative and qualitative assessments that identify the extent of corruption and where it is occurring, case studies can be used to provide more detailed qualitative information. Specific occurrences of corruption are identified and examined in detail to identify the type of corruption involved, exactly how it occurred, who was involved and in what manner, what impact the occurrence had, what was done as a result, and the impact of any action taken. Information is usually gathered by interviewing those involved, although other sources, such as court documents or reports, may also be used if reliable. Case studies are particularly useful in assessing the process of corruption and the relationships that exist between participants, observers and others, as well as between causal or contributing factors. They are also useful in educating officials and members of the public about corruption. As with other areas of research, care in the selection or sampling of cases is important. Cases may be chosen as "typical" examples of a particular problem, for example, or attempts may be made to identify a series of cases that exemplify the full range of a particular problem or of corruption in general.

Field Observation.

Observers can be sent to monitor specific activities directly. If they are well trained, they can obtain very detailed information. Field observation, however, is too expensive and time-consuming to permit its widespread use; it is usually limited to the follow-up of other, more general, methods and to detailed examinations of particular problem areas.

Field observers can be directed to gather and report information about any aspect of the activity being observed, and this can generate data not available using the majority of other methods, for example the speed, efficiency or

courtesy with which public servants interact with the public. In one recent example, as part of a comprehensive assessment of judicial integrity and capacity in Nigeria, field observers attended courts and reported on whether they were adjourning on time and how many hours a day they were actually sitting.

In many cases, it can be difficult to distinguish between the use of observers, whose function is simply to gather data for research purposes, and investigative operations, the function of which is to identify wrongdoers and gather the evidence needed for prosecution or discipline. That is particularly true where observers are working under cover or anonymously, which will often be the case so as to ensure that their presence does not influence the conduct they are observing. Officials working in countries where constitutional or legal constraints apply to criminal investigations should bear in mind that constraints may apply to covert or anonymous observation or may operate to prevent the use of information thus obtained against offenders in any subsequent prosecution. Observers should also be given appropriate rules or guidelines governing whether or when to notify law enforcement agencies if serious wrongdoing is observed.

Professional assessment of legal and other provisions and practices

In most countries, criminal and administrative law provisions intended to prevent, deter or control corruption already exist and range from criminal offences to breaches of professional codes of conduct or standards of practice. The most important of these usually include: criminal offences, such as bribery; public service rules, such as those governing disclosure and conflict of interest; and the regulations and practices of key professionals, such as lawyers and accountants. Other sectors, such as the medical or engineering professions and the insurance industry, may also have codes or standards containing elements relevant to efforts against corruption. An assessment of those, conducted and compiled by researchers who are professionally qualified but independent of the sectors or bodies under review, can be conducted. Where appropriate, professional bodies can also be requested to review and report.

Reviews should be compiled to generate a complete inventory of anti-corruption measures that can then be used for the following purposes:

- Comparison of each individual sector with the inventory to determine whether elements present in other sectors are absent and, if so, whether they should be added;

- Comparison of parallel or similar rules adopted by different sectors to determine which is the most effective and to advise improvements to others;

- Survey of members of the profession and their clients, once the measures have been identified, to assess their views as to whether each measure was effective, and if not, why not; and

- Identification of gaps and inconsistencies and their closure or reconciliation.

The entire legislative anti-corruption framework should be assessed which will require some initial consideration of which laws could or might be used against corruption and how. Such an assessment will include:

- Criminal laws including the relevant offences; elements of criminal procedure; laws governing the liability of public officials, and as well as laws governing the tracing and seizure of the proceeds of corruption and, where applicable, other property used to commit or in connection with such offences;

- Elements treated as regulatory or administrative law by most countries, including relevant public service standards and practices and regulations governing key functions, such as the operation of the financial services sector (for example, banking and the public trading of stocks, securities and commodities), the employment of public servants and the making of Government contracts for goods and services;

- Other areas of law, including legislation governing court procedures and the substantive and procedural rules governing the use of civil litigation as a means of seeking redress for malfeasance or negligence attributable to corruption; and

- Any area of professional practice governed by established rules, whether enacted by the State or adopted by the profession itself, may also be open to internal or external review. Critical areas include the legal and accounting professions and subgroups, such as judges and prosecutors; but other self-governing professional or quasi-professional bodies may also be worth examining. It should be noted that the primary purpose of such examination is not necessarily to identify corruption but to assess what measures have been developed against it, so that they can be used as the basis of reforms for other professions, or to identify and deal with inconsistencies or gaps.

Assessment of institutions and institutional relationships.

Most of the assessment of institutions and institutional relationships will involve consideration of their capacity or potential capacity to fight corruption (Tool #2). They should also be assessed to determine the nature and extent of corruption within each, as well as in the context of the relationships between them. The assessment should include public agencies and institutions as well as relevant elements of civil society, including the media, academe, professional bodies and relevant interest groups. The methods set out under Tool #1 can be used for this purpose.

PRECONDITIONS AND RISKS

The major risks associated with assessment are that data obtained will be inaccurate, or that they will be misinterpreted, leading to the development of inappropriate anti-corruption strategies or to incorrect conclusions about progress against corruption, both of which represent a serious threat. If initial strategies are too conservative, a country can fall short of its potential in dealing with corruption and, if they are too ambitious, the strategies are likely to fail. If populations are convinced that the national strategy is not working, either because it was too ambitious or because the data used to assess

progress are not valid, compliance with anti-corruption measures will decline, leading to further erosion of the strategy.

The methods for gathering, analysing and reporting data and conclusions must therefore be rigorous and transparent. Not only must the assessments be valid, but they must be perceived to be valid by independent experts and by the population as a whole.

TOOL #3

SPECIALIZED ANTI-CORRUPTION AGENCIES

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

The United Nations Convention against Corruption requires the establishment of such agencies, unless they already exist in some form, in two specific areas:
preventative anti-corruption bodies (Article 6) and bodies specialized in combating corruption through law enforcement (Article 36).Whether this requires two separate bodies is left to the discretion of governments: the agreed notes for the *Travaux Preparatoires* specify that State Parties may establish or use the same body to meet the requirements of both provisions. [1]

In implementing the Convention and their national strategies, countries will need to consider whether to establish new entities, whether existing ones will meet the requirements, with or without modifications, and whether the most effective approach will involve a single centralized entity or the establishment of separate ones. In doing so, they should also bear in mind that the Convention sets minimum standards only[2] and that the most important considerations will be the effectiveness of the bodies in the context on domestic laws, procedures and practices.

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

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

- A high degree of specialization and expertise can be achieved;
- A high degree of autonomy can be established to insulate the institution from corruption and other undue influences;
- The institution will be separate from the agencies and departments that it will be responsible for investigating;
- A completely new institution enjoys a "fresh start", free from corruption and other problems that may be present in existing institutions,

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[1] A/58/422/Add.1, paras. 11 and 39.
[2] See Article 65, paragraphs 2 regarding the freedom to apply measures which are "more strict or severe" than those required by the Convention itself.

- 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; and

- There will be faster action against corruption. Task-specific resources will be used and officials will not be subject to the competing priorities of general law enforcement, audit and similar agencies.

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

- Greater administrative costs;

- Isolation, barriers and rivalries between the institution and those with which it will need to cooperate, such as law enforcement officers, prosecution officials, auditors and inspectors; and

- The possible reduction in perceived status of existing structures that are excluded from the new institution.

From a political standpoint, the establishment of a specialized institution or agency sends a signal that the government takes anti-corruption efforts seriously. A separate agency may, however, generate competing political pressures from groups seeking similar priority for other crime-related initiatives. It may also be vulnerable to attempts to marginalize it or reduce its effectiveness by under-funding or inadequate reporting structures.[3] Generally speaking, the dividing up or fragmentation of law enforcement and other functions will reduce efficiency. On the plus side, an ACA will incorporate an additional safeguard against corruption in that it will be placed in a position to monitor the conventional law-enforcement community and, should the agency itself be corrupted, vice versa. The legislative and managerial challenge in this area is to allow just enough redundancy, and even rivalry, to expose corruption if the primary ACA fails to do so. There should not, however, be so much duplication allowed that the flow of intelligence becomes reduced or the investigative and prosecutorial opportunities available to the primary authority is diminished.

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

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[3] Note that both Articles 6 and 36 of the United Nations Convention against Corruption both explicitly require the allocation of adequate resources and what both refer to as the "necessary independence", underscoring the importance of these requirements.

disadvantages in the coordination of anti-corruption efforts with other law enforcement cases.

ENSURING THE INDEPENDENCE OF SPECIALIZED AGENCIES

Where a completely independent agency must be established, the necessary degree of autonomy can usually be achieved only by statutory enactment or, in some cases, even constitutional reforms. Fundamental rule-of-law principles, such as judicial independence, are often constitutionally based although, in many countries, the aim of reforms is more likely to be ensuring satisfactory interpretation and application of existing constitutional rules than adopting new ones. While anti-corruption agencies may not be considered as judicial in nature, where corruption is sufficiently serious and pervasive to require the establishment of a specialized institution, something approaching accepted standards for the independence of judicial or prosecutorial functions may be required [4]. They may include:

- Constitutional, statutory or other entrenched mandates[5];
- Security of tenure for senior officials;
- Multi-partisan and public review of key appointments, reports and other affairs of the agency;
- Security and independence of budgets and adequate resources;
- Exclusivity or priority of jurisdiction or powers to investigate and prosecute corruption cases and the power, subject only to appropriate judicial review, to determine which cases involve sufficient elements of corruption to invoke this jurisdiction; and,
- Appropriate immunity against civil litigation.

MANDATES OF SPECIALIZED ANTI-CORRUPTION AGENCIES

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

- The nature and extent of the corruption problem;
- The external or international obligations of a country to establish such an agency or agencies;[6]

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[4] Many sources have set out what are seen as requirements for judicial independence. See, for example, "Basic Principles on the Independence of the Judiciary", Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, A/CONF/121/22/rev.1, UN Sales # E.86.IV.1, Part I.D.2, reprinted in United Nations: Compilation of International Instruments, Vol.1 Part 1 and International Commission of Jurists, Declaration of Delhi (1959), reprinted in The Rule of Law and Human Rights: Principles and Definitions (I.C.J., Geneva, 1966). Examples may also be found in the independence granted to some other critical governance functions such as ombudsmen, electoral commissions and independent auditors or financial regulators.
[5] An "entrenched" mandate is one which is established by law and protected by amending procedures which are more difficult than for ordinary legislation, such as time-delays, special majority (e.g., 2/3) votes or additional legislative deliberations.

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

SUBSTANTIVE ELEMENTS OF SPECIALIZED ANTI-CORRUPTION AGENCIES COULD INCLUDE:

An investigative and initial prosecutorial function.[7]

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

An educational and awareness-raising function.

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

An analysis, policy-making and legislative function.

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

A preventive function.

Apart from basic deterrence and education measures, the ACA should be in a position to develop, propose and, where appropriate, implement preventive

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

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

measures. For example, it could be granted the power to review and comment on preventive measures developed by other departments or agencies.

TOOL #5

AUDITORS AND AUDIT INSTITUTIONS

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

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

The United Nations Convention against Corruption treats audit requirements as elements of prevention, in both the public sector (Article 9) and the private sector (Article 12), but specific elements of the Convention, such as the requirements to preserve the integrity of books, records and other financial documents make it clear that the functions of deterrence, detection, investigation and prosecution are also contemplated.[8] As with many preventive requirements, audits and auditors prevent corruption by making it riskier and more difficult, while at the same time laying the basis for reactive and remedial measures in cases where it is not prevented or deterred.

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

Once carried out, audits serve the following specific purposes:

- **They independently verify information and analysis,** thus establishing an accurate picture of the institution or function being audited.

- **They identify evidentiary weaknesses,** administrative flaws, malfeasance or other problems that insiders may be unable or unwilling to identify;

- **They identify strengths and weaknesses in administrative structures,** assisting decisions about which elements should be retained and which reformed;

- **They provide a baseline against which reforms can later be assessed** and, unlike insiders they can, in some cases, propose or impose substantive goals or time limits for reforms;

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

- In public systems, **they place credible information before the public**, generating political pressure to act in response to problems identified; and,

- Where malfeasance is identified, **they present a mechanism through which problems can be referred to law enforcement or disciplinary authorities** independently of the institution under audit[9].

DIFFERENT TYPES OF AUDIT

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

Audits range in size from minor contractual arrangements, in which an auditor may be asked to examine a specific segment or aspect of the business activities of a private company, to the employment of hundreds of audit experts, responsible for auditing the entire range of activities of large Governments[10].

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

Specific types of audit include:

Pre-audit/post-audit.

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

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

[10] One of the larger such institutions, the United States General Accounting Office, presently lists 3,275 employees.

Internal/external audits.

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

Non-public audits.

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

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

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

ENSURING THE INDEPENDENCE OF AUDIT INSTITUTIONS

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

Independence of auditors and staff.

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

Financial and budgetary independence.

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

Independence and transparency of reporting.

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

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

RELATIONSHIP BETWEEN AUDIT INSTITUTIONS AND OTHER PUBLIC BODIES

Relationship with the legislature and political elements of Government.

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

The mandate of an audit institution should also deal with the difficult question of whether the institution should have the power and responsibility to audit the legislature and its members. If an auditor has strong powers, there may be interference with the legitimate functions of the legislature and the immunities of its members. If, on the other hand, the legislature is not subject to audit, a valuable safeguard may be lost. One factor to be considered in making such a decision is the extent to which transparency and political accountability function as controls on legislative members. Another is the extent to which internal monitoring and disciplinary bodies of the legislature itself act as effective controls. A third is the degree of immunity members enjoy. If immunity is limited and members are subject to criminal investigation and prosecution for misconduct, then there may be less need for auditing. Where immunity is strong, on the other hand, exposing members to strict audit requirements may compensate for this. A mechanism could be tailored, for example, to ensure political and even legal accountability without compromising legislative functions[11].

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

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

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

Relationship to Government and the administration.

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

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

POWERS OF AUDITORS

Powers of Investigation.

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

Expert opinions and consultations.

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

input should be used on a strictly limited basis, as it could compromise the basic independence of the auditor[12].

AUDIT METHODS, AUDIT STAFF, INTERNATIONAL EXCHANGE OF EXPERIENCES.

Audit staff.

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

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

Audit methods and procedures.

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

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

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

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

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

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

Tax audits.

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

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

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

Public contracts and public works.

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

Audit of electronic data-processing facilities.

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

Audit of subsidized institutions.

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

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

Audit of international and supranational organizations.

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

PRECONDITIONS AND RISKS

Inadequate enforcement or implementation of findings or recommendations.

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

Inadequate reporting and investigations.

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

Unrealistic aims and expectations.

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

Competition and relationships with other agencies.

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

Lack of political commitment and/or political interference.

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

OTHER RELATED INSTRUMENTS

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

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

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

TOOL #6

STRENGTHENING JUDICIAL INSTITUTIONS

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

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

The independence of judges and their functions makes them a powerful anti-corruption force, but also represents unique challenges. Training in areas such as integrity must be carried out so as not to compromise judicial independence. Accountability structures must be able to monitor judicial activities as well as detect and deal with corruption and other conduct inconsistent with judicial office. At the same time, safeguards must be incorporated to ensure that judges cannot be threatened or intimidated, or judicial decision-making adversely influenced[13]

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

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

ANTI-CORRUPTION MEASURES AFFECTING JUDGES

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

Assessment of the problem of judicial corruption.

As with other anti-corruption measures, efforts to combat judicial corruption should be based on an assessment of the nature and scope of the problem. As

many of the measures pertaining to judges must be developed, maintained and applied by the judges themselves, the assessment should also consider the capacity of the judiciary to undertake such functions.

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

Consultations.

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

well as in consultation with the practising bar. In some cases, bringing together different groups to discuss issues informally may prove productive. Based on the consultation process, a specific plan of action could be drafted to set out the proposed reforms in detail, establish priorities and implementation sequence, and set targets for full implementation [14].

Judicially established measures.

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

Judicial training.

The focus of the subject matter of judicial training should be to assist judges in maintaining a high degree of professional competence and integrity. Possible subject matter could include the review of codes of conduct for judges and lawyers[15], particularly if they have been revised or reinterpreted, and a review of statute and case law in key areas such as judicial bias, judicial discipline, the substantive and procedural rights of litigants and corruption-related criminal offences. Less structured options, such as informal discussions, could be used to explore difficult ethical issues among judges.

A judicial code of conduct.[16]

 Codes of conduct for judges could be developed and applied. Judicial independence does not require that such codes be developed by judges

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[14] For an example of this, see Petter Langseth and Oliver Stolpe, "Strengthening Judicial Integrity Against Corruption", CIJL Yearbook, 2000

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

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

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

The quality of judicial appointments.[17]

The objective in selecting new judges should be to ensure a high standard of integrity, fairness and competence in the law, and processes should focus on selecting for those characteristics. Several measures can assist in ensuring that the best possible candidates are elevated to the bench. Transparency with respect to the nomination and appointment process and to the qualifications of proposed candidates will allow close scrutiny and make improper procedures difficult. Consultations with the practising bar can be used to assess competence and integrity where the candidates are lawyers. The appointment process should, as much as possible, be isolated from partisan politics or other extrinsic factors, such as ethnicity or religion. As a group, judges should generally represent the population at large, which means that appointments to senior or national courts may have to take into account factors such as ethnicity or geographic background. They should not, however, be allowed to interfere with the search for integrity and competence.

The assignment of cases and judges.

Experience with judicial corruption has shown that, in order to improperly influence the outcomes of court cases, offenders must ensure not only that a

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

judge is corrupted in some way, but that the corrupt judge is assigned the case in which the outcome has been fixed. Procedures should thus be established to make it difficult for outsiders to predict or influence decisions about which judges will hear which cases. Features, such as randomness and transparency, can be incorporated into the assignment process, although transparency will inform outsiders which judge will hear which case. Such a situation will also occur in major or appeal cases, where judges may hear preliminary matters or be asked to review written evidence and arguments well in advance of hearing the case.

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

Transparency of legal proceedings.

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

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

The review of judicial decisions.

The primary forum for reviewing judicial decisions is the appellate courts. Appeal judges should have the power to comment on decisions that depart from legislation or case law so radically as to suggest bias or corruption. They should also be able to refer such cases to judicial councils or other disciplinary bodies, where appropriate. Such bodies should have the power to review but not overturn judgments where a complaint is made or on their own initiative, for example where concerns are raised through other channels such as media reports.

Transparency and the disclosure of assets and incomes.

The potential corruption of judges, like other key officials, can be approached on the basis of unaccounted-for enrichment while in office, using requirements that relevant information must be disclosed, and investigations and disciplinary

measures undertaken where impropriety is discovered.[18] Powers to audit or investigate judges affect judicial independence if they are specific to a particular judge or enquiry. Thus, while routine or random audits could be performed by other officials, provided that true randomness can be assured, any follow-up investigations should be a matter for fellow judges.

Judicial immunity.

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

The protection of judges.

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

Dealing with judicial resistance to reforms.

Resistance to reform by judges can arise from several factors. Legitimate concerns about judicial independence can, and should, make judges resistant to reforms imposed from non-judicial sources. In such cases, there is the risk that

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

efforts to combat judicial corruption, even if successful, may set precedents that reduce independence and erode basic rule-of-law safeguards. Resistance of that nature can best be addressed by ensuring that reforms are developed and implemented from within the judicial community, and that judges themselves are made aware of that fact and of the need to support reform efforts. Resistance may also come from judges who are corrupt, and fear the loss of income or other benefits, such as professional status, that derive from corruption or the influence it enables them to exert. Those involved in past acts of corruption may also face criminal liability if such behaviour is exposed. The benefits of reform to such judges, if any, tend to be long-term and indirect and therefore not seen as compensation for the shorter-term costs of ceasing corrupt activity and embracing reforms[19].

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

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

The reform of courts and judicial administration

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

- *Adequate resources and salaries.* Ensuring that courts are adequately staffed with judges and other personnel can help reduce the potential for corruption. Officials who are adequately paid are less susceptible to bribery and other undue influences; systems that deal with such cases quickly minimize the opportunities for corrupt interference or for officials to sell preferential treatment or charge "speed money".

- *Court management structures.* Management structures can set standards for performance, and ensure transparency and accountability by, for example, ensuring proper records are kept and cases are tracked

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

through the system. Where feasible, computerization or the use of other information technologies may provide cost-effective ways of implementing such reforms.

- *Statistical analysis of cases.* The analysis of statistical patterns with respect to how cases arise, how they are managed and assigned to judges and their outcomes can help to establish norms or averages and identify unusual patterns that may be indicative of corruption or other biases. Where misconduct is suspected, the records of specific judges could be subjected to the same analysis.

- *Public awareness and education.* Efforts should be made to educate the public about the proper functioning of judges and courts in order to raise awareness about the standards that should be expected. That usually generates other benefits, such as increasing the credibility and legitimacy of the courts and increasing the willingness of outsiders to participate in or cooperate with judicial proceedings.

- *Alternative dispute resolution.* Alternatives, such as mediation between litigants, can be used to divert cases from the courts. Such a step may allow litigants to avoid a forum suspected of corruption, although the alternative method may be just as vulnerable, if not more so. Such options do reduce court workloads and conserve resources, and are often available for impoverished litigants or for small cases where a judicial trial is out of reach.

PRECONDITIONS AND RISKS

Implementation issues

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

- The independence of the judiciary imposes exceptional requirements that do not apply to the reform of other institutions. Some measures may have to be implemented in ways which are more costly, elaborate or time-consuming, while others may not be possible at all. For example, giving officials a free hand to impose disciplinary measures on public servants found to have engaged in corruption would create problems if applied to judges because it raises the possibility that discipline or the threat of discipline could be used to unduly influence judicial decisions. Article 11 of the United Nations Convention against Corruption requires that anti-corruption measures be applied to judges, "without prejudice to judicial independence". In addition to domestic legal and constitutional requirements, those engaged in the formulation of programmes which apply to judges should consult the relevant United Nations Standards and

Norms in Crime Prevention and Criminal Justice for information on the requirements of judicial independence.[20]

- Many other anti-corruption measures require an effective rule-of-law framework that, in turn, requires competent and independent judges.

- Criminal court judges will be called upon to deal with corruption cases as a national anti-corruption programme is applied. Early cases will set important precedents in areas such as the definition of corruption or acts of corruption, and in deterring corruption.

- As corruption-related cases increase, judges themselves will become targets of corruption. If they succumb, many other elements of the strategy will fail.

- The judiciary is usually the most senior and respected element of the justice system, and the extent to which it pursues and achieves a high standard of integrity will set a precedent for other officials and institutions.

- The judiciary is also likely to be the smallest criminal justice system institution, which makes it relatively accessible by early, small-scale efforts.

- The independence of the judiciary imposes exceptional requirements that do not apply to the reform of other institutions and may take time to achieve. For example, judges will require time to develop their own codes of conduct.

- Judges exercise the widest discretion and have the most powerful positions in both civil and criminal justice systems. While reforms to other institutions, such as the legal profession, prosecution services and law enforcement agencies, are also critical, it is at the judicial level that corruption does the greatest harm and where reforms have the greatest potential to improve the situation.

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

RELATED MECHANISMS

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

1. An independent and comprehensive assessment of the judiciary, usually at the request of the chief justice;

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

2. The development and establishment of a code of conduct for the judiciary;

3. Ethics training for all judges, magistrates and court staff to (i) make them aware of the code conduct and (ii) understand the consequences if caught in breaking the code;

4. Public awareness raising regarding their rights and where to complain when these rights are not honored;

5. The establishment of an independent and credible complaints mechanism for judicial matters;

6. The establishment of a judicial council or similar body with the capability to investigate complaints and enforce disciplinary action when necessary and

7. Mechanisms that may be needed in conjunction with anti-corruption agencies include:

   • An integrity and action planning meeting among all key judicial players to agree on an action plan (usually on initiative of the chief justice);

   • The agreement of measurable performance indicators for the judiciary;

   • The conduct of an independent comprehensive assessment of judicial capacity, efficiency and integrity, and of the degree of public confidence and trust in judges and judicial institutions; and,

   • The dissemination and enforcement of a code of conduct for the judiciary.

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

TOOL #7

CIVIL SERVICE REFORM

Reforming the civil service will be a major element of virtually every national anti-corruption strategy, and in many cases will be sufficiently large and complex a programme to warrant breaking it down both into chronological stages and into thematic elements. One of the main goals is the improvement of service-delivery by determining what should be expected of each public sector element or unit, how that output can best be delivered and then developing and implementing reforms accordingly. Other goals will often but not always overlap. These include the incorporation of effective monitoring and oversight functions, for example, which in some cases may slow – or at least not accelerate – service delivery, but will produce effects such as the improvement of accountability and reductions in losses due to corruption. Critical elements of public service reforms will generally

address individual factors, collective factors and structural or systemic factors. For example, better training and remuneration are intended to change individual behaviours by reducing the incentives to engage in corrupt behaviours. Other forms of training in areas such as ethics and the raising of expectations both inside and outside of the public service operate on civil servants collectively by suppressing cultural attitudes which favour corruption and replacing them with new values which favour integrity. Systemic or structural reforms, such as the reduction of discretion and the de-layering or streamlining of overly-complex bureaucratic structures, are intended to combat corruption by improving transparency and reducing the opportunities for corruption to occur.

WHAT IS CIVIL SERVICE REFORM AND HAS IT WORKED?

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

Numerous service delivery and/or corruption perception surveys have found civil services to be corrupt, and thus inefficient and untrustworthy in curbing corruption. A World Bank paper[21], raising the question, "...have World Bank interventions helped make Governments work better?", answers probably not. With more than 169 civil service reform projects between 1987 and 1999 in 80 countries, that is a serious setback and demands a serious rethink of the current approach to civil service reform.

The World Bank has done a number of things in the name of civil service reform, mainly focusing on the rather narrow area of addressing fiscal concerns, that is bringing balance to government pay and employment practices. Despite that effort, most civil servants do not earn "a living wage"[22], which is one of the major causes of petty and administrative corruption[23].

Civil service reform projects also involve streamlining Government functions and organizational structures, improving human resources policies in central and local Governments, revising the legal and regulatory framework for the public administration, providing institutional support for Government decentralization

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[21] Barbara Nunberg (1999) Rethinking Civil Service Reform, World Bank PREM Notes, number 31

[22] Langseth,P., (1995) Civil Service Reform in Uganda; Lessons Learned in *Public Administration and Development;* Vol.15,365-390

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

and managing the process through which such changes are implemented. Internal analysis at the World Bank suggests that civil service reform operations in past years often missed even their main fiscal targets and were seldom designed to address the corruption issue. During the early 1990s, less than half the civil service reform operations of the Bank reduced wage bills or compressed salaries (a questionable objective in the first place). Moreover, the "right-sizing" of the public service was in the order of a modest 5 to 10 per cent and was often reversed soon after being brought in. Fiscal savings from such cuts were rarely sufficient to finance salary increases for higher level staff[24].

TYPICAL ISSUES IN THE CIVIL SERVICE

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

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

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

• Inadequate pay and benefits (remuneration);
• Insufficient focus on process with inadequate attention to such aspects as transparency, non-partisanship, inclusion of key stakeholders and impact orientation;
• Inadequate human-resource management;
• Dysfunctional organization;
• Insufficient management and supervisory training;
• Inadequate facilities, assets and maintenance culture;
• Unnecessary procedural complexity;
• Abuse of procedural discretion;
• Lack of accountability;
• Inadequate performance management and measurable performance indicators;
• Project focus rather than programme focus;
• Uni-dimensional rather than multi-disciplinary approach; and
• Lack of leadership ethic and code of conduct for civil servants.

ELEMENTS OF A NEW APPROACH

There is broad agreement that a new approach is needed. Helping countries reform their civil services should also include helping build integrity to curb

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[24] Nunberg and Nellis (1995)

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

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

Reforming elements of the civil service to prevent and combat corruption can cover a very broad range of measures, and many elements of the Convention either call for such reforms or support them in some way. The drafters considered such reforms to be principally a matter of prevention, and most of the relevant provisions are found in Chapter II. The most important provision is probably Article 7, which calls upon States Parties to "…endeavour to adopt, maintain, and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants, and where appropriate, other non-elected public officials." It then calls for additional measures in respect of the selection and training of individuals for positions seen as particularly vulnerable to corruption.[25] Three such areas are identified by subsequent articles: those dealing with public procurement, the management of public finances, and judges,[26] but the language leaves it open to States Parties to decide whether other areas should be accorded special attention, taking into account the variables inherent in their own domestic government structures.

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

VISION OF FUNCTIONING CIVIL SERVICE

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

1. In five years the civil service in Country X will be smaller and have better paid, honest, better trained, more motivated, and therefore more efficient and more effective, public servants. Its main focus will be to improve general security

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[25] Article 7, subparagraph 1(b).
[26] Articles 9 and 11.

(rule of law) and quality, timeliness, cost and coverage of service delivery to the public.

2. The Civil Service of Country X will have the following characteristics:

   a. The **shared values** of the civil service will be based on the following principles:

      • Consultation;
      • Service standards;
      • Access;
      • Courtesy;
      • Access to information;
      • Openness and transparency;
      • Discipline; and
      • Value for money.

   b. Those shared values will be established, with the participation of the public servants through **a code of conduct**, made available to the public through a Citizens' Charter. The code will be monitored through a public complaints systems and enforced through disciplinary boards.

   c. A baseline focusing on quality, timeliness, cost and coverage of services and public trust in and satisfaction with the public service will already be in place. A transparent **evidence-based management system** with measurable impact indicators will be monitored against the baseline. Ministries, departments, groups and individuals will all have measurable performance   indicators and targets.

   d. Since most of the direct interface between the Government and the public takes place at the local level, there will be a **decentralization of resources and tasks**, allowing implementation of a functional budgeting system of priorities and resource allocation to local government. Again, evidence-based management will assure accountability based on identified priorities with measurable performance indicators; performance targets will be monitored against an established baseline. Value for money and public satisfaction with the services will be monitored across local governments.

   e. **Rationalization and "right-sizing"** will take place based on the principle that the Government should undertake only those functions that it can effectively and efficiently perform and that cannot be privatized will be undertaken. There is a need for evidence-based establishment control and monitoring.

   f. **Reduced levels of corruption** will be enforced by:

      • Empowering the victims of corruption to report any irregularities;
      • Increased disciplinary follow-up of complaints (enforcement of code of conduct); and
      • Criminalization of corruption.

3. The civil service in Country X:

- Will be paid a minimum living wage and be given an evidence-based performance increase in pay;
- Will have clear and measurable organizational objectives and demonstrate commitment to such goals and objectives;
- Will be fully accountable and responsible for the outputs of their jobs and committed to achieving clearly defined individual objectives;
- Will be regularly monitored by an empowered civil society that know its rights, has access to information and a credible complaints mechanisms, trusts the criminal justice system and is regularly surveyed about quality, cost and timeliness of services received and the security situation.

STRATEGIC FRAMEWORK TO REFORM THE CIVIL SERVICE

The strategic framework and action plan needed to implement the foregoing vision would have at least six major components. Inherent in each would be the importance of paying a minimum living wage and of implementing evidence-based or results-oriented management. The framework would include[27]:

- Strengthening the ministry in charge of civil service reform and establishing a close relationship between it and other anti-corruption agencies (see Tool #3) and institutions representing civil society;

- Introducing an "affordable civil service" through "right-sizing" and rationalization of ministries and local government structures. Independent institutional assessments would be carried out, on the basis of which recommendations would be made as to simplification of procedures, reduction of structural discretion and introduction of evidence-based or results-oriented management.

- Enforced payroll monitoring and establishment control and the use of the rationalization effort combined with a job-grading exercise to "right-size" the civil service, including elimination of "ghost workers".

- Paying the civil servants in the rationalized and "right-sized" civil service a minimum living wage, without delays, on a monthly basis. Based on assessment and results-oriented management, implementation of monetization of benefits and pay.

- Reduction of corruption and improved service delivery through increased accountability via: (i) enforced codes of conduct; (ii) increased supervision; (iii) enforced results-oriented, management-based measurable performance indicators; (iv) empowering the public through citizens' charters; a credible public complaints system; access to information and whistle blower protection.

- Managing public expectations and winning public trust through a credible communication strategy.

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[27] Langseth, Petter., *EDI Staff Working Paper. Washington: EDI, No 95-05*

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

The development of an integrated, holistic strategy involves a clear commitment by political leaders to combating corruption wherever it occurs, and also submitting themselves to scrutiny. Primary attention should be given to prevention of future corruption by introducing system changes such as simplifying procedures, reducing discretion, and increasing accountability through increased transparency, in other words opening up the Government to public scrutiny[28].

Areas of Government activity most prone to corruption should be identified and relevant procedures should be reviewed as a matter of priority, and civil servants who hold high positions or positions which are especially vulnerable to corruption, or where there are high costs to society and governance if corruption occurs should be made subject to additional scrutiny using means such as financial disclosure and review requirements.[29] The salaries of civil servants and political leaders should adequately reflect the responsibility of the post and be as comparable as possible with those in the private sector, both to reduce the "need" for corruption and to ensure that the best human resources can "afford" to serve the State.[30]

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

- Corruption-induced contracts should be rendered void and unenforceable[31]
- Close monitoring of Government activities that involve large financial transactions should be introduced;
- There should be random intensive audits; and/or
- Licences and permits obtained through corruption should be rendered void.

A creative partnership should be forged between the public service and civil society, including the private sector, the professions, religious organizations and relevant pressure groups[32]. One important outcome of the partnership would be to allow a systematic dialogue to develop between the public service and the public it serves. Through systematic service delivery surveys, citizens' charters

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[28] See United Nations Convention against Corruption, Article 10.

[29] See United Nations Convention against Corruption, Article 7, subparagraph 1(b), Articles 9 and 11, and Article 52, paragraph 5.

[30] See United Nations Convention against Corruption, Article 7, subparagraph 1(c).

[31] See United Nations Convention against Corruption, Articles 34 and 35.

[32] See United Nations Convention against Corruption, Article 13.

that explain to the public their rights and credible complaints systems, service delivery should be monitored systematically against a pre-established baseline using measurable performance indicators. In countries with systemic corruption, such service delivery surveys often turn into "corruption surveys ", as one of the main reasons why the public is not being served is corruption: petty, administrative and grand.

ELEMENTS OF A NEW APPROACH

Pay and employment reform.

Many civil service reform operations have focused on reforming Government pay and employment policies. The objectives have been to reduce the aggregate wage bill, right-size and streamline the civil service, and rationalize remuneration structures[33]. Some would argue that such reforms have been driven by narrow fiscal determinants, have been politically difficult, and have had minimal impact both fiscally and otherwise. What was missing was an integrated approach addressing the reform in an integrated and evidence-based manner. With a more serious, systematic and holistic impact assessment, it is said, it would have been realized that the traditional approach to civil service reform did not work. Some observers argue that pay and employment reforms should be abandoned altogether. Others argue that when public servants cannot afford to stay away from corruption, pay reforms need to be deepened, broadened and lengthened.

Pay and employment reforms[34] are often needed to restore fiscal balance, a necessary but insufficient precondition for curbing corruption or for performance and capacity improvements that will lead to improved service delivery to the public. In the past, civil service reforms have generally been too narrow and too modest to achieve any of their key objectives. Most "right-sizing" programmes have sought reductions of 5 to 15 per cent while much bolder cuts are needed to render most government affordable. In Uganda in 1993-94, for example, the public service and the army were both reduced by 50 per cent so that the Government could afford to pay civil servants and soldiers a living wage. Uganda was, comparatively speaking, in an excellent fiscal position, spending less than 30 per cent of recurrent expenditure on the wage bill while other African countries were spending as much as 75 per cent. Yet, five years later, the cut had to be as deep as 50 per cent to implement a living wage with a compression rate of 1-10 five years later[35]. The expected "pain" of the redundancy of nearly 150,000 civil servants was reduced by[36]:

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[33] Lindauer, David (1994), Government Pay and Employment Policies and Economic Performance, Washington, D.C.,: World Bank

[34] Langseth and Mugaju (1996), Post Conflict Uganda, Towards an Effective Civil Service, Fountain Publishers, Kampala Uganda (ISBN: 9970 02 120 6)

[35] The policy decision by cabinet was to keep the wage bill under 45% of the recurrent expenditures

[36] Retrenched staff received a compensation package consisting of three months basic salary in lieu of notice, one month's salary in lieu of leave entitlements, transportation money from workplace to home district by the most direct route (the approved formula was in 1994 the equivalent of US$ 200 plus US$ 2 per

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

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

One of the lessons learned from the "right-sizing" exercises is that where civil servants are paid less than a living wage, they are still making enough to feed their families, either the "half-honest" way where they have multiple jobs, stealing only time from the service, or through the more dishonest way where, through corruption, they are making many times their wage or salary. Thus, reforms can perhaps be pushed further on political grounds as well.

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

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

Even where civil services have been "right-sized", other key reform areas have not been addressed, and it is not uncommon that successful redundancy schemes are followed by rehiring exercises. In Uganda, for example, a

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kilometer to help the retrenched staff reach their hometown or village) and a severance package of equivalent to three months basic salary for each completed year of pensionable service up to a maximum of twenty years.. This package did not apply to people who had yet not been confirmed in their appointment. Such officers were entitled to only one month's basic salary in lieu of leave entitlement, and transport from the place of work to home district. See Langseth and Mugaju (1996), Post Conflict Uganda, Towards an Effective Civil Service, Fountain Publishers, Kampala Uganda (ISBN: 9970 02 120 6)

decentralization reform ran in parallel with the civil service reform, and many of the redundant civil servants found new jobs at the district level.

Towards an integrated approach

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

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

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

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

    The third dimension is the extensive administrative reform occurring throughout developing countries at the decentralized subnational level of Government. Decisions about devolution and deconcentration of staff, functions and resources must be linked to policies on central civil service reform. It is also critical that the decentralization effort is coupled with an evidence-based approach where service delivery baselines are established and monitored by measurable performance indicators across subnational and national units. It is critical that a partnership is established between with civil society and the private sector that allows periodic and independent monitoring of the State.

    The fourth dimension is the link between central Government civil service reform and institutional reforms in individual sectors. That is particularly true of the links between health and education, which are critical to the wellbeing of the public and, at the same time, the largest Government employers, and the anti-corruption bodies, including the criminal justice system. The link to the anti-corruption bodies is critical, especially for countries with systemic corruption, as corruption is often the main reason why the public are not being served in a timely and cost-effective manner. The link to the reforms in the criminal justice system is critical to re-establish rule of law and security. Although corruption within the civil service can be dealt with by reintroducing already existing disciplinary bodies and measures, the serious types of

administrative and grand corruption also need to be criminalized.   The coordination with independent anti-corruption agencies and the judiciary are both critical to the success of the overall reform but, at the same time, a challenge, as the executive must respect the independence of its partners.

Moving from a project to an integrated approach.

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

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

The process is already ongoing; many donor agencies have begun to move away from their earlier project focus and have started applying a more integrated approach. Various high-impact, non-lending operations and a new range of operational instruments provide for a more flexible, more country-driven approach to reform. In addition, thought is being given by the organizations, such as the World Bank, to new types of programme loans that could develop the programmatic approach more systematically. Such loans may support medium-term reforms within a broad policy framework agreed by the World Bank, each Government, the judiciary, the independent anti-corruption agencies and civil society. Establishing overall programme criteria and governance mechanisms for the reform process, conditional on the development of evidence-based and result-oriented reform packages, is key to the success of an integrated programme approach.

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

Learning from best practice.

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

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

PRECONDITIONS AND RISKS

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

Moreover, most industrial country innovations are only now being tested. According to Nunberg[37], debates run high on the reforms, and the jury is still out with respect to some of the more controversial elements of the new public management, including the use of market mechanisms, such as performance-related pay or widespread contractual employment, in core civil services. For three reasons, adapting elements of competing administrative models to the context of Member States will be complex.

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

Secondly, the neutral presentation of options must be balanced with the need to ensure that reforming Governments do not install obsolete systems that, instead of putting the State in the mainstream of 21st century modernizing trends,

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[37] Nunberg, Barabara (1997) Re-thinking Civil Service Reform: an Agenda for Smart Government, Poverty and Social Policy working paper, World Bank, Washington, D.C.: World Bank.

undermine efforts to move Governments towards the cutting edge of governance reform.

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

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

IMPLEMENTING TOOL #7

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

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

TOOL #8

CODES AND STANDARDS OF CONDUCT

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

• It clearly establishes what is expected of a specific employee or group of employees, thus helping to instill fundamental values that curb corruption.

• It forms the basis for employee training, discussion of standards and, where necessary, modification of standards.

• It forms the basis of disciplinary action, including dismissal, in cases where an employee breaches or fails to meet a prescribed standard. In many cases, codes include descriptions of conduct that is expected or prohibited as well as procedural rules and penalties for dealing with breaches of the code.

• Codification, in which all of the applicable standards are assembled into a comprehensive code for a specified group of employees, makes it difficult to abuse the disciplinary process for corrupt or other improper purposes. Employees are entitled to know in advance what the standards are, making it impossible to fabricate disciplinary action as a way of improperly intimidating or removing employees.

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

Codes that support disciplinary structures may also set out procedures and sanctions for non-compliance. Codes may be developed for the entire public service, specific sectors of the public service or, in the private sector, specific companies or professional bodies such as doctors, lawyers or public accountants. Several models have been developed to assist those developing such codes[38]

DESCRIPTION

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

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[38] See Case Study #8 Codes of Conducts for different organizations

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

Means of setting standards or establishing codes of conduct

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

- *Legislation,* usually criminal and/or administrative law, is used to set general standards that apply to everyone or to large categories of people. The criminal offence of bribery, for example, applies to anyone who commits the offence, and usually covers all bribery or bribery involving the public interest or a public official. In some countries, more specific legislation is used to set additional standards applicable to all public officials or, in some cases, even private sector workers.

- *Delegated legislation or regulations*, in which the legislature delegates the power to create specific technical rules, may also be used for setting standards for specific categories of officials, such as prosecutors, members of the legislature or officials responsible for financial accounting or contracting matters.

- *Contract law* is another major source of standards. Using contracts governing employment or the delivery of goods or services, standards may be set for a specific employee or contractor as part of his or her individual contract. Alternatively, an agency or department may set general standards to which all employees or contractors are required to agree as a condition of employment.

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

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

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

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

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

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

ELEMENTS OF CODES OF CONDUCT

General content and format

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

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

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

- Public sector codes can be established either by legislative or contractual means, or a combination of the two. In most cases, private sector codes do not raise sufficient public interest to warrant legislation and are implemented exclusively by contract.

- Public sector codes pursue only the public interest and generally involve provisions that balance the public interest against the rights of the officials to whom they apply. For example, disclosure requirements must balance the public interest in transparency with individual privacy rights. Private sector codes, on the other hand, often protect the private interests of the

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

ELEMENTS OF CODES OF CONDUCT FOR PUBLIC OFFICIALS[39]

General elements

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

Specific elements could include the following:

- Rules setting standards for the treatment of members of the public that promote respect and courtesy;

- Rules setting standards of competence for public servants, such as knowledge of relevant laws, procedures and related areas to which members of the public may have to be referred;

- Rules establishing performance criteria and assessment procedures that take into consideration productivity and the quality of service rendered; and

- Rules requiring managers to promote and implement service-oriented values and practices and requiring that their success in doing so be taken into account when assessing their performance.

Impartiality and conflicts of interest[40]

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

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[39] See case study #10; UN Code of Conduct for Public Servants
[40] See, for example, Royal Canadian Mounted Police External Review Committee, Conflict of Interest, http://www.erc-cee.gc.ca/Discussion/english/eDP10.htm

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

- A general requirement that decisions be made on the facts alone. In some circumstances, there could also be rules prohibiting, for example, discrimination based on characteristics such as race, ethnicity, gender, religion or political affiliation.

- Requirement that senior officials responsible for establishing the criteria for decision making should limit them to those relevant to the decision at hand; further, that all criteria be set out in writing and made available to those who will be affected by the decision.

- Requirement that written reasons be given for decisions, to permit subsequent review.

- Requirement that specified officials avoid activities that might give rise to conflicts of interest. That may, for example, preclude senior public servants from playing an active role in party politics. Those responsible for decisions affecting financial markets are often precluded from investing personally or are required to place investments in "blind trusts" thus preventing officials from making a decision that might affect their personal interests.

- Requirement that officials avoid conflicts by altering their duties. For example, a judge who represented a particular individual prior to his appointment should not hear a case involving the former client. The conflict should be disclosed and the case assigned to another judge. Officials on public boards or commissions are often precluded from debating or voting on agenda items that could affect their personal interests.

- Requirements that officials declare interests that may raise conflicts. Frequently, there are provisions for general disclosure at the time of employment and at regular intervals thereafter, as well as disclosure of a potential conflict of interest as soon as it becomes apparent. Such requirements ensures basic transparency by alerting those involved that action may have to be taken to eliminate a conflict.

- Requirements that officials should not accept gifts, favours or other benefits. Where a direct link between a benefit and a decision can be proved, offences related to bribery may apply but, in many cases, the link, if any, is more general. To prevent such a situation and ensure there is no perception of bias, there can be a "blanket" prohibition of the acceptance of gifts or the prohibition can be selectively applied to those affected by, or likely to be affected by, any past or future decision of the official involved. Depending on custom or the nature of the office, exceptions may be made for very small gifts. Where officials are allowed to accept gifts under certain circumstances, the rules can also require disclosure of information about the nature and value of the gift and the identity of the donor so that there can be an independent assessment of whether the gift is appropriate or not.

Rules for the administration of public resources.

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

- Rules requiring all decisions to be made in the public interest, such interest being expressed in terms of maximizing the benefits of any expenditure while minimizing costs, waste or inefficiency.

- Rules requiring the avoidance, where possible, or the disclosure of actual or potential conflicts of interest, similar to conflict of interest rules for public officials. (See above). In practice, for example, such rules might require an official awarding a Government contract to make full disclosure and step aside if one of the applicants proved to be a friend, relative or former associate;

- Rules requiring that proper accounting procedures be followed at all times and appropriate records be kept to permit subsequent review of decisions;

- Rules requiring officials to disclose information about decisions. For example, winning bidders may be required to submit the details of their bid for review by the losers.

- Rules requiring officials to disclose assets and income to permit scrutiny of sums of money not derived from public employment.

Confidentiality rules

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

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

- Secrecy oaths requiring that confidential information be kept confidential unless official duty requires otherwise.

- Classification systems to assist officials in determining what information should be kept confidential or secret and what degree of secrecy or

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

• Rules prohibiting officials from profiting from the disclosure of confidential information. In some countries, there is civil liability for appearance fees or book publication royalties if generated in part by inside information.

• Rules prohibiting the use of confidential information to gain financial or other benefits. Insiders with advance access to Government budgets are usually prohibited from making investment deals that would constitute "insider trading" in the private sector. The rules should be broad enough to preclude direct use or disclosure of the information, or the provision of advice based on the information to others who may then profit.

• Rules prohibiting the disclosure or use of confidential information for an appropriate period after leaving the public service. The period will generally depend on the sensitivity of the information and how quickly it becomes obsolete. Obligations regarding inside knowledge of pending policy statements or legislation usually expire when they are made public, whereas obligations relating to certain national security interests may be permanent. Officials with broad inside knowledge may be prohibited from taking any employment in which that information could be used, although such a prohibition may possibly be accompanied by some provision for compensation. In drafting requirements for post-employment cases, care should be taken to distinguish between the use of skills and expertise gained in the public service that may be used freely, and confidential information, that may not.

Additional rules for police and law enforcement officials[41]

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

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

Specific rules may include the following.

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

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

- General prohibition on abuse of power;

- Requirement that some sensitive duties, such as interrogating suspects, be carried out only with witnesses present or, where feasible, where audio or video recording are being made; and

- Requirement that records be kept by an agency and its individual officers regarding general enforcement policies and priorities, and that individual officers exercise discretion, so that conduct at variance with the standards will become apparent.

Additional rules for members of legislative bodies and other elected officials

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

Rules that may apply in such cases include:

- Rules governing legislative or parliamentary immunity. Legislators are given a measure of legal immunity to ensure that they cannot be prevented from attending sittings and that threats of civil or criminal action cannot be used to influence their participation or voting. The scope of the immunity should be narrow to ensure that immunity cannot be used to shield the subject from ordinary criminal liability;

- To ensure that elected officials cannot conceal corruption proceeds, rules requiring the disclosure of assets and financial dealings will be required. Essentially, rules may be the same as for other senior public officials;

- Rules requiring elected officials to disclose the sources and amounts of political donations and to account for election expenditure. Such rules may be imposed as a means of ensuring election fairness and combating corruption;

- Rules prohibiting the use of legislative privileges or facilities for private gain or other non-legislative purposes. Such restrictions often prohibit the use of legislative facilities for partisan political purposes to ensure that incumbents do not gain any unfair political advantage; and

- Rules prohibiting the payment of legislative members for work done in the course of their duties, apart from prescribed salaries or allowances.

Rules for cabinet ministers or other senior political officials

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

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

- More extensive rules on the disclosure of assets and incomes and for avoiding conflicts of interest, plus closer surveillance to ensure that any conflicts are avoided or dealt with.

- Accountability to the legislature. The relationship between the executive and legislative varies from one country to another. In the interests of transparency and political accountability, the ministers who formulate and implement Government policy are usually required to appear before legislative bodies to provide information and account for the actions of their departments. Sanctions for failing to appear or for misleading legislatures may apply;

- Post-employment constraints. Constraints are similar to those that may be applied to public servants but are more stringent and, in some cases, last longer. Such constraints exist partly because of the extent and sensitivity of the information ministers hold, and partly because post-ministerial advantages could be linked to undue influence on decision-making by the minister while in office. For example, if a minister takes a job with a company affected by his or her previous duties, suspicions of clandestine employment offers to the minister while in office would undoubtedly be raised. Such employment may also cause concern that the former minister could have inside information, or that he or she may have undue influence with colleagues still in office. In some circumstances, a ministerial office may have involved such broad-ranging powers and interests that a prohibition on post-ministerial employment for some time after leaving office may be necessary. Pensions, severance packages or other compensation may have to take that into consideration.

- Confidential information. Rules governing the disclosure of confidential information are similar to those applicable to other present or former public servants. Closer monitoring may be warranted, however, because of the sensitivity of the information to which ministers generally have access.

- Transitional requirements. Unlike ordinary members of elected legislatures, political ministers and elected heads of State have both political and executive responsibilities that may come into conflict during transitional periods, such as election campaigns and the period between the decision of the electorate and the handing over of office. Broadly speaking, political ministers should be prohibited from using executive powers in ways that confer partisan political advantage, although their accountability in such circumstances may be political rather than legal. Some rules that may be applied include prohibition on the awarding of contracts, hiring people or conferring benefits that are unnecessary for the maintenance of Government; prohibition on the use of public servants for partisan purposes, accompanied by measures prohibiting public servants from engaging in such conduct and protecting those who refuse to do so; rules limiting the destruction of documents (in hard copy or digital format) to records of a political nature; and rules prohibiting public servants from disclosing official records of a political nature to members of subsequently elected Governments.

Rules for judicial officers[42]

As noted in the segment dealing with building judicial institutions, judges should be subject to many of the same rules as other public servants, with two significant differences. Compliance with basic standards of conduct is more important for judges because of the high degree of authority and discretion their work entails. Thus, the formulation and application of codes of conduct for judges must take into consideration the importance of basic judicial independence[43]. The senior and critical function of judicial officers will often make them the focus, at an early stage, of anti-corruption strategies. Thus, the measures developed for judges and the reaction of judges to those measures will serve as a significant precedent for the success or failure of elements applied to other officials.

Possible rules include:
- Rules intended to ensure neutrality and the appearance of neutrality, for example restrictions on participation in some activities, such as partisan politics, that are taken for granted by other segments of the population, and some restrictions on the public expression of views or opinions. Such restrictions may depend on the level of judicial office held and the subject matter that may reasonably be expected to come before a particular judge. In general, the restrictions must be balanced against the basic rights of free expression and free association, and any limitations imposed on judges must be reasonable and justified by the nature of their employment[44]. Judges may also be restricted in their ability to deal in assets or property, particularly if their jurisdiction frequently raises the possibility of conflict of interest. Where such conflicts are less likely, a more practicable approach may be that of disclosure and avoidance.

- Rules intended to set standards for general propriety of conduct. Judges are generally expected to adopt high moral and ethical standards; conduct failing to meet such standards, even if not criminal or a clear breach of a legal standard, may call the fitness of a judge into question. Conduct seen as inappropriate may vary with cultural or national characteristics, and it is important that reasonably clear guidelines, standards or examples are set out. Usually judges will do this themselves. Examples of inappropriate conduct may include serious addiction or substance-abuse problems, public behaviour displaying a lack of judgment or appreciation of the role of judges, indications of bias or prejudice based on race, religion, gender, culture or other characteristics, and patterns of association with inappropriate individuals, such as members of organized criminal groups or persons engaged in corrupt activities.

- Rules prohibiting association with interested parties. The integrity of legal proceedings depends on the basic principle that all elements of a case be laid

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[42] See Case study #9 Bangalore Principles of Judicial Conduct for Judges

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

[44] See International Covenant on Civil and Political Rights of 16 December 1966, Articles 19 and 22.

out in open court to ensure basic transparency, and that all interested parties have an opportunity to understand all the elements of a case and respond accordingly. The appearance of integrity is also critical. Usually, judges   are prohibited from having contact with any interested party under any circumstances; any exceptions to this are set out in detail in procedural rules. Judges should also be prohibited from discussing matters that come before them and should be required to ensure that others do not discuss them in their presence. Rules governing other public servants, and especially those in high professional or political offices, should also prevent them from contacting judges or discussing matters that are before the courts.

- Rules governing public appearances or statements. Judges are often called upon to make public comment on the court system or contemporary legal or policy issues. The integrity of proceedings and any resulting case law depends on the inclusion of all judicial interpretation and reasoning in a judgment; rules should therefore prohibit a judge from commenting publicly on any matter which has come before him or her in the past or is likely to do so in the future. Rules may also require judges to consult or seek the approval of judicial colleagues or a judicial council prior to making any comment, particularly if they hold senior judicial office and likely to hear a wide range of cases.

- Rules limiting or prohibiting other employment. Codes of judicial conduct often either prohibit alternative employment entirely, limit the nature and scope of such employment, or require disclosure and consultations with chief judges or judicial councils before other employment is taken up. Both the nature of the employment and the remuneration paid can give rise to conflicts of interest, and such limitations/prohibitions usually extend to unpaid (pro bono) work.

- Rules requiring disclosure and disqualification. Rules intended to prevent conflicts of interest are often supplemented by rules requiring judges to identify and disclose potential conflicts, and to refrain from hearing cases in which such conflicts may arise. Rules should also provide a mechanism whereby a judge can alert colleagues to an unforeseen conflict that arises while a case is ongoing. The rules may require disclosure and consultation with the   parties, and in extreme cases, self-disqualification and termination of the proceedings and their recommencement before another judge. Mechanisms should   also be in place for parties, witnesses, other participants or any other member   of the public to identify possible conflicts of interest in judicial matters, and for the discipline of any judge who fails to disclose a known conflict.

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

- A personal bias or prejudice concerning a party or issue in contention;

- Personal knowledge of any facts in contention or likely to be in contention;

- Involvement of personal friends, associates, former associates or former clients[45]; and
- The existence of a significant material financial or other personal interest on the part of the judge, or on the part of a close friend or relative that could be substantially affected by the outcome.

Codes of conduct for the private sector

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

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

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

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

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[45] Where judges are recruited from the ranks of the practising Bar, full application of this principle may not be practicable, especially in regions or communities where there are relatively few lawyers.

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

Some possible rules follow but they are by no means exhaustive.[46]

- Rules could require disclosure, create limits or complete prohibition with respect to gifts, gratuities, fees or other benefits that might be offered to the employee. As disclosure is intended to identify potentially conflicting interests, it could be limited to sources that are linked in some way to the business or to the obligation of the employee to the employer.

- Rules could require the disclosure of other personal financial or related information, particularly for employees with significant responsibility for accounting and financial matters.

- Rules could govern the behaviour of employees engaged in particularly sensitive aspects of the business, such as the handling of sensitive information or the preparation or receipt of competitive bids for contracts.

- Rules could require the compliance of employees with the legislative and regulatory requirements that apply to the company, for example for financial disclosure or environmental standards. That ensures that, while the employer may be held legally liable for malfeasance by employees, such malfeasance will also constitute breach of contract by the employee, invoking powers of discharge and discipline.

Rules for journalists.

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

- Rules setting standards for the quality of research and the accuracy of reporting. Generally, negligence or wilful blindness with respect to the accuracy of information gathered or the reporting of information that has not been properly verified or is known to be false or inaccurate, serves the interests of neither the public nor the employer;

- Rules governing the conduct of employees in cases where private and public interests may conflict. One possibility in such cases may be

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[46]IFWEA   Journal,   "Company   Codes   of   Conduct: Raising   Awareness",
http://www.ifwea.org/journal/1099/company_codes_of_conduct_html
Human Rights for Workers - A Hong Kong Critique of Corporate Codes, http://www.senser.com/8-9.htm.

consultations with other experienced journalists or editors during which the relevant private and public interests could be identified and assessed. While the views of the government or particular officials, if known, may be relevant to discussions, they will not necessarily determine their outcome.

- <u>Rules governing attempts to corrupt members of the media</u> will generally be similar to those for other private-sector employees. They may include requirements not to accept gifts or other benefits and to disclose any possible conflicts of interest, including offers of gifts or benefits, other employment, or memberships or other affiliations. The major difference between the media and other areas of private employment is the breadth of their field of activity. Reporters or editors can be called on to deal with news in almost any area, thus there is much more potential for conflicts of interest to be raised. Where such conflicts are seen as inevitable, rules may even prohibit some forms of activity completely. For example, those who report on or analyse stock markets and have the power to influence trading may be prohibited from trading themselves and should disclose in advance any commentary that could, when published, affect trading.

PRECONDITIONS AND RISKS

The implementation of codes of conduct

Examples of cases in which excellent codes of conduct have been drafted, and then implemented ineffectively or not at all, abound. Codes must be formulated with a view to effective eenforcement, which means an effective implementation plan and a strong commitment to ensure that the plan is carried out. Implementation strategies should include a balance of "soft" measures that ensure awareness of the code, and encourage and monitor compliance, and "hard" measures, clear procedures and sanctions to be applied when the code is breached[47].

Effective implementation and enforcement may require the following elements.

- Drafting and formulation of the code so that it is easily understood both by the "insiders" who are expected to comply with it and the "outsiders" whom they serve.

- Wide dissemination and promotion of the code, both within the public service or sector affected and among the general population or segment of the population being served.

- Employees should receive regular training on issues of integrity and on the steps each employee can take to ensure compliance by colleagues. Peer pressure and peer reviews could be encouraged.

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

- Managers should be trained and encouraged to provide leadership, as well as advice on elements of the code and in the administration of compliance (monitoring and enforcement) mechanisms.

- The establishment of monitoring and enforcement mechanisms can range from criminal law enforcement to occupational performance assessment and research techniques.

- The establishment and use of transparent disciplinary procedures and outcomes. Transparency is important to ensure fairness to the employees involved and to assure insiders and the general public that the code is being applied effectively and fairly.

- The effective use of a full range of incentives and accountability structures. Using deterrence measures such as extensive monitoring and threats of disciplinary action are an effective means of ensuring compliance with the code; they are not, however, always the most efficient option. Those who are subject to the code should also be provided with as many positive incentives as possible to comply with it. Those could include education and information programmes to instill professional pride and self esteem; compensation to reflect the higher degree of professionalism expected, and the inclusion of elements of the code in employee assessment mechanisms. Front-line employees should be assessed on their compliance and managers on the way they promote and apply the code in dealing with subordinates.

- The establishment of mechanisms to permit feedback from employees and outsiders, anonymously if necessary, on the administration of the code, to indicate possible areas for expansion or amendment.

- The establishment of mechanisms to permit reports of non-compliance, anonymously if necessary.

- The establishment of mechanisms to enable employees who are uncertain about the application of the code to elements of their duties, to consult prior to making decisions. For example, those facing conflicting obligations to keep information confidential while ensuring transparency in decision-making may consult regarding what information should be disclosed, to whom and in what circumstances.

RELATED TOOLS

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

- Publicity campaigns and the development and promotion of such documents as citizens charters that raise awareness of the code and those it regulates. Such mechanisms establish expectations on the part of the population, particularly those directly affected by corruption.

- Establishment of an independent and credible complaints mechanism to deal with complaints that the standards prescribed have not been met; and

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

- Mandatory integrity seminars for all key personnel raise staff awareness of the new integrity standards but also the consequences if staff are found to be in breach of the code of conduct

- Establish a feedback mechanism keeping the public informed about the number of complaints, types of complaints (serious/frevilous), action taken on the complaints

Tools that may be needed in conjunction with codes of conduct include:
- Tools involving the training and awareness-raising of officials subject to each code of conduct to ensure adherence to the code and identify problems with the code itself;

- The conducting of regular, independent and comprehensive assessments of institutions and, where necessary, of individuals, to measure performance against the prescribed standards;

- The enforcement of the code of conduct by investigating and dealing with complaints, as well as more proactive measures, such as "integrity testing"; and,

- The linking of procedures to enforce the code of conduct to other measures to identify corruption, such as more general assessments of performance and the comparison of disclosed assets with known incomes

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

EXAMPLES

A.   Codes of conduct: International and
      Intergovernmental organizations

A1.   European Bank for Reconstruction and Development, (EBRD) Code
      of Conduct 1991

The Code was adopted by the Board of Governors of the EBRD on 15 April 1991, and is applicable to all officials and staff members of the Bank as well as to

experts and consultants where it is incorporated into their contracts. The Code addresses issues such as confidentiality, business affiliations, gifts and honours, political activities, financial interests, investments, trading activities, and disclosure statements.

A2.   European Union, code of conduct for the Commissioners

The treaty article on the European Commission makes special reference to the complete independence enjoyed by the members of the Commission, who are required to discharge their duties in the general interest of the Community. In the performance of their duties, they must neither seek nor take instructions from any Government or other body. The general interest also requires that, in their official and private lives, Commissioners should behave in a manner that is in keeping with the dignity of their office. The object of the code is to set limits to the outside activities and interests of Commissioners that could jeopardize their independence. It also responds to the need to codify certain provisions relating to the performance of their duties. The issues dealt with in the Code include the outside activities of the Commissioners; their financial interests and assets; activities of spouses; collective responsibility and confidentiality; rules for missions; rules governing receptions and professional representations; acceptance of gifts and decorations; and the composition of their offices

B.   Codes of conduct: Private Sector

Corporate codes of conduct can differ according to the organization they cover. The following sections summarize codes of conduct developed by Governments, industrial groups and non-governmental organizations.

B1.   Codes of conduct for electoral staff

Such a code applies to all connected with an election, ranging from couriers, voter educators, mail sorters, material despatchers to senior electoral managers. Election staff enjoy a position of trust, and are expected to adhere to all relevant rules and regulations to ensure the integrity of the election process.

http://www.aceproject.org/main/english/po/poe03/default.htm

B2.   Code of Good Practices on Transparency in Monetary and Financial
        Policies: Declaration of Principles

The Code identifies desirable transparency practices for central banks in conducting monetary policy and for central banks and other financial agencies in conducting financial policies.

http://www.imf.org/external/np/mae/mft/code/

B3.   European Bank for Reconstruction and Development, Business
        Standards and Sound Business Practices: A Set of Guidelines

The European Bank for Reconstruction and Development has formulated a set of guidelines that bona fide lenders and investors expect companies to follow. The decision to set guidelines was taken in recognition that the success of an organization depends not only on sound strategy, competent management, good

assets and a promising market, but also on maintaining a sound relationship with customers, shareholders, lenders, employees, suppliers, the community in which it operates, and Government authorities.

B4. FMC Corporation, Code of Ethics and Business Conduct Guidelines

Global chemical company, FMC Corporation, has established a Code of Ethics outlining the principles that should guide all FMC employees in their daily work. The Business Conduct Guidelines reflect the policy of FMC Corporation, nationally and internationally, with respect to political contributions, payments to Government personnel, commission payments, proper accounting procedures and commercial bribery.

B5. International Chamber of Commerce, Rules of Conduct to Combat Extortion and Bribery, 1996

The International Chamber of Commerce (ICC) is a global business organization with 63 national committees and over 7,000 member companies and associations in more than 130 countries. It seeks to promote international trade and investments, as well as rules of conduct for cross-border business. The ICC Rules of Conduct are intended as a method of self-regulation by international business. They are of a general nature and, although they have no direct legal force, constitute what is considered to be sound commercial practice in the matters to which they relate. The Standing Committee on Extortion and Bribery, however, established by the ICC seeks, inter alia, to ensure that enterprises and business organizations endorse the Rules of Conduct.

B6. Lobbyists' Code of Conduct/ Canadian Government, 2 June 1997

The purpose of this Lobbyists' Code of Conduct is to reassure the Canadian public that lobbying is being carried out ethically and to the highest standards in order to conserve and enhance public trust in the integrity, objectivity and impartiality of Government decision making.

http://www.lobbyistdirectory.com/2Ethxnws/general.htm

B7. The Defense Industry Initiative (DII), a Code of Conduct for Employees in Private Companies

DII is a consortium of U.S. defence industry contractors that subscribes to a set of principles for achieving high standards of business ethics and conduct. It includes a summary of major applicable laws and regulations, as well as a statement of more general corporate aspired objectives. After identifying the fundamental principles, the Code addresses specific subjects such as business courtesies, kickbacks, conflicts of interest, confidential information, use of company resources, and the importance of keeping complete and accurate books.

http://www.dii.org

B8. OECD Updated Guidelines on Conduct for Multinationals

In June 2000, the Organization for Economic Cooperation and Development (OECD) agreed on a revised set of guidelines on responsible business conduct for multinational enterprises. The guidelines, which were adopted by the

Governments of 33 countries, cover a variety of areas, including employment and industrial relations.

http://www.eiro.eurofound.ie/2000/09/features/eu0009270f.html

C.   Codes of conduct: Professions and NGOs

C1.   United Nations, Principles of Medical Ethics

The Principles are relevant to the role of health personnel, particularly physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982. The 6 Principles were adopted by the UN General Assembly by resolution 37/194 of 18 December 1982.

C2.   United Nations, Basic Principles on the Role of Lawyers, 1990

The Principles were adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, and "welcomed" by the UN General Assembly in its resolution 45/121 of 14 December 1990. The United Nations invited Governments to be guided by the Principles in the formulation of appropriate legislation and policy directives, and to make efforts to implement them in accordance with the economic, social, legal, cultural and political circumstances of each country. In its resolution 45/166 of 18 December 1990, the UN General Assembly invited Governments "to respect them and to take them into account within the framework of their national legislation and practice".

C3.   Charter for a Free Press, adopted by the Voices of Freedom
        Conference, London, 1987

The statement of 10 principles was approved by journalists from 34 countries at the Voices of Freedom World Conference on Censorship Problems held in London in January 1987. The Conference was held under the auspices of the World Press Freedom Publishers, International Press Institute, Inter-American Press Association, North American Broadcasters Association, and the International Federation of the Periodical Press.

C4.   International Bar Association, Standards for the Independence of the
        Legal Profession, 1990

The statement of standards was adopted by the International Bar Association in 1990 and is designed to assist in promoting and ensuring the proper role of lawyers. It seeks to complement the UN Basic Principles on the Role of Lawyers and to provide more detail. While the UN principles are addressed to Governments, the IBA Standards seeks to address the question of independence of the profession from the viewpoint of lawyers.

C5.   Code of Professional Conduct of the Uganda Journalists'
        Association

The Uganda Journalists' Association promulgated its Code of Conduct as a basis for adjudication of disputes between the press and the public in Uganda, and for

disciplinary action when the conduct of a journalist falls bellow the required minimum standards enshrined in the Code.

http://transparency.de/documents/source-book/c/cvK/k1.html

C6. Transparency International (TI): Code of Conduct

TI promulgated a Code of Conduct containing principles of administration, provisions about gifts and conflict of interests, and the establishment of an Ethics Committee.

D. Codes of conduct: Public Officials, including Ministers and Parliamentarians

D1. UN Crime Prevention and Control Division at Vienna: International Code of Conduct for Public Officials.

The Code provides for the loyalty, efficiency, effectiveness, impartiality and fairness of public officials. It also contains provisions about conflicts of interest and disqualification, disclosure of assets, acceptance of gifts, confidential information, political activity, reporting, disciplinary actions and implementation.

http://www.uncjin.org:80/Documents/Corruption.pdf

D2. Law Reform Commission of Australia: Code of Conduct for all Office Holders

The Code refers to principles, such as impartiality and honesty, and to conflicts of interest and misuse of power. It also includes provisions relating to members of parliament and their staffs, ministers and ministerial staff, public servants, members of the defence force, staff of the parliamentary departments, consultants, statutory office holders, members of tribunals, and the media.

D3. Council of Europe: Recommendation No R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials

The Committee, convinced that raising public awareness and promoting ethical values are valuable as means of preventing corruption, recommends the adoption of national codes of conduct for public officials based on the model code of conduct. This model Code contains, inter alia, general principles and provisions about reporting, conflict of interest, declaration of interests, gifts, misuse of official position, observance of the code and sanctions.

http://cm.coe.int/reports/cmdocs/2000/2000cm60.htm

http://www.greco.coe.int/docs/rec10(2000)e.htm

D4. Modern Local Government in Touch with the People: New Codes of Conduct for Councillors in England

A new Model Code of Conduct for Councillors is being promoted under a new ethical framework, where a council embraces the new culture of openness and ready accountability. Elected councillors of local authorities in England are expected to behave according to the highest standards of personal conduct in the performance of their duties.

http://www.local-regions.detr.gov.uk/lgwp/8.htm

D5.   Practical Measures to Promote Integrity in Customs Administrations: A Code of Conduct

By clearly articulating expectations, customs administrations can hold employees accountable for performance and take appropriate action when those standards are not met. The Code refers to maintenance of integrity, confidentiality of information, conflict of interest, appearance and conduct.

http://www.transparency.de/iacc/8th_iacc/papers/crotty.html

D6.   TI, German Chapter: Code of Conduct for Legislators, Ministers and
       Public Officials

Three different codes of conduct relating to the duties of legislators, ministers and public officials are included. The Codes contain provisions about the use of influence, Government property and confidential information, acceptance of gifts, hospitality and sponsored travel.

http://www.transparency.de/

D7.   Africa Leadership Forum, Draft Code of Conduct for African
       Parliaments, 1998

The draft Code of Conduct was adopted at the African Leadership Conference on Democratization of African Parliaments and Political Parties, held in Gaborone, Botswana in July 1998, and attended by representatives from parliaments across the African continent. It was offered to African parliaments to assist the process of developing national codes of conduct to guide the various democratic institutions in the years ahead.

D8.   Australia, Parliamentary and Electorate Travel: Recommendations
       for reform, Independent Commission Against Corruption (ICAC),
       New South Wales, 1999

The second report of ICAC on the subject of parliamentary entitlements analyses the use by members of parliament of their entitlements and allowances and of the administrative systems operating within the New South Wales Parliament, and makes recommendations for change. The first report, released in April 1998, examined the conduct of seven members of parliament regarding the use of travel entitlements.

D9.   Organisation for Economic Cooperation and Development (OECD),
       Principles for Managing Ethics in the Public Service, 1998

On 23 April 1998, the Council of the OECD adopted the Principles and recommended action by Member Countries to ensure well functioning institutions and systems to promote ethical conduct in the public service.

D10. South Africa: Register of Member' Interests, Parliament of the
      Republic of South Africa, 1999

The elected leaders of South Africa are required to disclose shares and financial interests, paid employment outside parliament, directorships and partnerships, consultancies and retainerships, sponsorships, gifts and hospitality, benefits, travel of certain categories, land and property, and pensions.

D11.   South Africa, Code of Conduct for Persons in Positions of Responsibility, Moral Summit, 1998

The Code of Conduct was adopted and signed by all the participants at a "moral summit" convened by President Nelson Mandela in October 1998 to discuss the "moral crisis" of South African political and social life. The participants included representatives of all major political parties and religious leaders.

D12.   South African Police Service Code of Conduct

The introduction of the Code of Conduct is probably the best known example of an attempt to improve professional conduct in the police service. Every employee of the service is requested to endorse this Code of Conduct, sign it and strive to live by it. It focuses particularly on abuse of power and State assets, corruption and discrimination.

http://www.saps.co.za/17_policy/priority/code.htm

D13.   United Kingdom, The Civil Service Code, 1996

The Civil Service Code sets out the constitutional framework within which all civil servants work and the values they are expected to uphold. It is modelled on a draft originally put forward by the House of Commons Treasury and Civil Service Select Committee. It came into force on 1 January 1996 and forms part of the terms and conditions of employment of every civil servant.

D14.   United Nations, International Code of conduct for Public Officials, 96

The Code, contained in Resolution 51/59: Action against Corruption, was adopted by the UN General Assembly on 12 December 1996, and was recommended to Member States as a tool to guide their efforts against corruption. The Code enunciates three general principles, then focuses on conflict of interest, disclosure of assets, acceptance of gifts or other favours, confidential information, and political activity.

E.   Codes of conduct: Judicial Officers

E1.   Amendments to the Rules of Court: Canons of Judicial Conduct for the Commonwealth of Virginia

The Canons are designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the Judicial Enquiry and Review Commission.

http://www.courts.state.va.us/jirc/canons_112398.html#canon1

E2.   Model Code of Judicial Conduct

The Model Code of Conduct was adopted by the House of Delegates of the American Bar Association on 7 August 1990.

http://www.abanet.org/cpr/le-rules.html

E3.   Chief Justices from Africa and Asia Meeting to develop Judicial
        Code of conduct, India, February 2001 (see Case Study 13)

According to the Chief Justices, a judicial code of conduct was necessary for all officers, including those newly appointed. It was felt that self-restraint and avoiding unnecessary social contact would preserve judicial independence and that a code of conduct would be useful in avoiding opportunities for corruption.

http://www.undcp.org/adhoc/crime/corruption_judicprocd.pdf

E4.   Canadian Judicial Council, Ethical Principles for Judges, 1998

A working committee including four Chief Justices and an academic prepared the Statement of Ethical Principles for Judges for the Canadian Judicial Council. It was designed to represent a concise yet comprehensive set of principles addressing the many difficult ethical issues that confront judges as they work and live in their communities. It was also intended as a sound basis to promote a more complete understanding of the role of judges in society and the ethical dilemmas they often encounter.

TOOL #10

NATIONAL INTEGRITY AND ACTION-PLANNING MEETINGS

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

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

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

- Raising awareness about the negative impact of corruption;

- Assessing the state of progress made to curb corruption;

- Helping to build consensus for a national integrity strategy and tailoring action plans or elements of the strategy to apply to participants;

- Helping participants understand the national strategy and how their own efforts are linked to it;

- The development, planning, coordination and assessment of specific elements of the strategy; and

- Creating partnerships, fostering participation and directing group energy towards productive ends.

DESCRIPTION

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

- Assessment of the nature and scope of the problem;

- Development of a preliminary assessment of priority areas for attention; and

- Education and, in some cases, reassurance of participants to secure their support and cooperation

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

- Assessment of past efforts;

- Planning of future efforts; and, where necessary;

- Readjustment of priorities to take account of ongoing efforts and developments.

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

The evolution of meetings as the national strategy proceeds

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

- *Phase I* seeks to build a coalition to support reform, focusing on discussions with local stakeholders to raise awareness of corruption and assess their perceptions of the problem. Their views regarding priorities and modalities are considered and, where possible, reflected in the applicable action plan. That ensures future cooperation and support for the national strategy, and especially those elements of it that directly affect the sector or region involved.

- *Phase II* focuses on a more objective assessment of the problem in the region or sector concerned, using Service Delivery Surveys (SDS) or similar methods. Information is systematically gathered, recorded and analysed during Phase II.

- In *Phase III,* the results of the SDS are considered, and participants are asked to help develop and consider options for dealing with the problems identified. Priorities may also be set or adjusted at this stage, taking into account not only the seriousness of specific problems but also sequencing issues, in which reforms in one area may be needed at an early stage to support later reforms planned for other areas. An action plan, setting out specific activities and the order in which they should be undertaken, is developed.

- *Phase IV* usually involves implementation of the various elements of an action plan according to an agreed timetable.

- *Phase V* involves the assessment of progress and, where necessary, the adjustment of substantive actions or priorities in accordance with that assessment. Meetings for such purposes could be held regularly or as necessary.

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

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

- Ensure that content is focused and that the scope of the content is clearly defined; and

- Ensure that the process enhances the sharing of information and transfer of knowledge.

Other important process components include:
- Creation of a learning environment;

- Enabling networking and cooperation between participants;

- Generating enthusiasm and motivating participants to take follow-up actions; and

- Encouraging participants to focus on the development of solutions rather than merely dwelling on the problems themselves.

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

Based on previous experience, meetings could employ the following general pattern:
- A series of preparatory activities is conducted to build organizational capacity, foster broad-based consultation, collect credible data, select key workshop personnel and publicize the meeting and its objectives. Some of those requirements may be met using standardized materials or personnel, while others will be specific to each meeting and to the entity or entities in which it is to be held.

- Most meetings held thus far have been two-day events, which provides sufficient time to explore the issues involved and does not overtax leaders or participants.

- A first plenary session is held to raise general awareness, launch the meeting and build pressure on participants to deliver on the objectives of the meeting. Such sessions usually begin with a keynote address and a review of workshop objectives and methodology. Foreign experts, survey analysts and local analysts may be called upon to offer brief presentations.

- The opening plenary should set the tone for the meeting, with presentations covering the full range of topics within the chosen theme. Content should cover problems and possible solutions. Speakers may include some experts from outside the host country, region or participant group, but domination by "outsiders" should be avoided if possible.

- A series of working group sessions follows the opening session, using small (fewer than 15) groups and trained chairpersons to analyse substantive areas and build consensus on facts and issues. For example, a group may be called upon to examine the causes and results of corruption and/or lack of integrity, and to identify actions to address those problems. A range of separate topics can be developed to allow participants to select those they wish to address. If appropriate, separate groups can be asked to consider similar, related or

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

- Where separate groups are used, each group should designate a member to report to the plenary on its deliberations to ensure clarity and facilitate documentation.

- A final plenary session should be held to synthesize the results of the working groups. That session is also a forum for publicly presenting the findings of the workshops and other outcomes of the meeting, such as action plans or recommendations. It helps to ensure that the outcome of the meeting is documented and disseminated.

Procedural objectives of meetings.

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

- To initiate a sharing and learning process appropriate for the participants involved;

- To establish an atmosphere in which participants can contribute effectively and are encouraged to do so; and

- To create partnerships or linkages between participants from different stakeholder groups.

PARTICIPATION.

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

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

CREATING PARTNERSHIPS.

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

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

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

MANAGING GROUP DYNAMICS.

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

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

CONTENT OBJECTIVES OF THE MEETING.

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

WORKSHOP TOPICS, KEY ISSUES AND ELEMENTS.

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

General themes or topics that might be discussed include:

- The need to build a workable national integrity system, the development of specific recommendations for action and the assignment of responsibility for improving the system;

- How society as a whole might participate in a continuing debate on such issues and work with like-minded political players in a creative and constructive fashion;

- Issues of leadership, including the sort of leadership required, whether the right kind of leadership is available and, if not, what can be done to fill leadership vacuums, and whether available leaders are appropriately trained;

- Identification of the results to be achieved and best-practice guidelines that could be followed to achieve them;

- The need to foster partnership, action, learning and participation. The focus should be on partnerships between the types of organizations represented: how such partnerships can be established and what is needed from individuals and organizations to achieve that; and

- The creation of political will and commitment: whether a commitment for change exists and how to develop or reinforce it.

Some possible areas for specific discussions could include the following.

- Role of the Government in promoting or establishing key elements of the national strategy, such as transparency and accountability structures;

- Role of the political process, including the legislature, the bodies that conduct and validate elections, and the democratic political process in general;

- Role of civil society, such as non-governmental organizations, the media, religious groups and professional organizations;

- Role of the private sector; and

- Role of specific officials or institutions, such as Auditors General, the judiciary, law enforcement agencies and other constitutional office holders.

PREPARATION OF MATERIALS

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

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

Materials could include the following.

- Background papers and other relevant documents distributed in advance or handed out on the first day;

- Short oral remarks by the authors of the papers;

- General comments from a number of speakers on the first morning of the workshop; and

- "Trigger" questions formulated by the facilitators for each small group discussion to help identify key issues and stimulate the interest of participants.

MATERIALS PRODUCED BY MEETINGS

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

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

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

Where feasible, documentation should include the following:

- A list of all participants, including their basic "contact information" to enable those involved to meet or discuss after the meeting;

- If the meeting is convened by a specific authority, based on a specific mandate, or as part of a series of meetings, basic historical and reference information about these should be included;

- A statement of the basic purpose of the meeting, the issue or issues taken up and the basic organizational framework or process used;

- The results of discussions, and enough information about the tenor and substance of discussions to indicate how results were reached, or if they were not reached, the reason(s) why;

- Texts of papers or speeches presented during the meeting (full texts, extracts or summaries), edited for uniformity and consistency;

- Observations, reports or other notes provided by presenters or other participants; and,

- Any suggested follow-up actions, conclusions and recommendations[48].

Role of organizers and other personnel

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

Some typical roles are described below.

Workshop Management.

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

- The selection and briefing and training of chairpersons, facilitators, rapporteurs and other personnel, as needed;

- Visiting small groups during discussions and supporting or assisting group facilitators where necessary;

- Management of time;

- Passing information between groups; and

- Providing feedback to organizers as the meeting proceeds.

Chairpersons.

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

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

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

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

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

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

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

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

PRECONDITIONS AND RISKS

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

- It may be difficult to identify a full range of stakeholders, given the needs of the country or region involved and the specific themes and topics to be covered. It may also be difficult to ensure the maximum possible breadth of representation.

- It is usually difficult to strike a balance between process and substance. Too much emphasis on process results in a well run meeting without substance. Too much emphasis on substance can lead to detailed discussions that produce no clear outcomes.

- Sizes of working groups may be too large or too small. Experience has shown that a maximum of 15 participants works well. Larger groups make it difficult for everyone to contribute, and smaller groups may not have enough participants to represent a good range of knowledge and views.

- It may be difficult to produce output materials, such as action plans, that are reasonable and credible, or to mobilize support for those outputs. The true purpose of meetings and workshops is to consider issues and develop appropriate responses that lead to action. Where the outputs are unreasonable or lack credibility, further action is unlikely.

- Where meetings involve specific groups, a balance of "inside" and "outside" participation is important. Meetings sponsored by foreign donors, for example, could include foreign participation but should reflect the perceptions and priorities of the participants and not the donors. Foreign experts can be used to support discussions, if needed, but should not dominate them. The same principle applies where participants are drawn from smaller communities, such as law enforcement personnel or judges. Outsiders can support the efforts of such groups to identify problems and develop solutions but should avoid the perception of imposing solutions from outside.

RELATED TOOLS

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

- A credible agency or body with a formal mandate and necessary resources to organize the meeting;

- Where an action plan or similar instrument is produced, the organization and capacity actually to implement or supervise implementation of the plan. Plans

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

- Tools that raise awareness of the meeting itself and the role of the different stakeholders at the meeting, and that establish appropriate expectations on the part of populations;

- Where a meeting is likely to identify specific complaints or problems, the institutions and mechanisms needed to deal with such complaints should be in place;

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

- The institution or entity that convened and mandated the meeting should be prepared to receive and follow up on any report or recommendations the meeting produces;

- Where multiple meetings are held, the convening entity should retain and compile reports. A parent agency, such as a national commission or committee, may also be charged with making collective periodic reports synthesizing the information from many meetings to the national legislature or executive; and

- Basic transparency is important to ensure that results are credible and that they are widely disseminated for use by others. An independent media to report on the outcome of the meeting and to monitor the implementation of action plans or recommendations is important. Reports can also be made to public bodies such as legislative assemblies or committees.

TOOL #11

ANTI-CORRUPTION ACTION PLANS

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

- Setting out clear goals and timelines puts pressure on those expected to contribute to the achievement of goals. Participants do not want to be seen as responsible for failing to meet the goals; and in some cases, may even face legal or political accountability for malfeasance or inaction if they do fail;

- Clear plans of action can and should be made public, ensuring overall transparency and helping to mobilize popular support and pressure to achieve the expected goals;

- Clarifying what actions must be taken, at what time and by whom assists in planning future actions and evaluating past or ongoing actions;

- The exercise of developing and drafting action plans assists in planning, by forcing planners to consider issues such as how to implement each element, the timing and sequencing of various elements and a realistic assessment of what can be achieved within the specified timeframe;

- The development of a national plan of action serves as a framework against which more specific and detailed action plans for specific regions or agencies of Government can be developed; and

- The development of a realistic general and specific action plans forces a degree of vertical integration, in which national planners must consult their local counterparts, and vice versa, to determine what is feasible.

DESCRIPTION

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

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

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

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

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

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

National action plans

National action plans should take the following factors into consideration:

• National action plans often involve input and support from outsiders, including donor or other foreign Governments, foreign experts, non-governmental organizations and international institutions such as United Nations agencies, World Bank or International Monetary Fund. Their input can be invaluable, allowing a country to profit from the experience of others before starting its own anti-corruption efforts. Outside input should not, however, be allowed to dominate when an action plan is being formulated or an assessment made of what is feasible for the country concerned. Domestic "ownership" of the process is vital. The most realistic assessment of what must be done and how to avoid obstacles or deal effectively with them is often a combination of the high expectations, demands and pressures of outsiders and the profound knowledge of insiders.

• Within each country, diversity of input and consultation is also important. As noted above, those who are expected to take actions, those affected by the actions and those who will monitor and assess actions should all be consulted. In the case of a national action plan, much wider consultations and much greater transparency are needed to ensure the plan is reasonable and to mobilize popular support and political pressure to achieve the goals. Thus the involvement of the political or legislative and executive elements of Government, as well as most elements of civil society[49], are all required.

• Substantively, action plans can include elements in five important areas: awareness raising, institution building, prevention, anti-corruption legislation, enforcement and monitoring.

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

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

- Those expected to take action under the national plan should be held accountable for achieving results.

The major substantive measures in national action plans can be broken down into the following major actions and actors[50]:

- Public sector or executive measures;

- Legislative measures;

- Law enforcement measures;

- Private sector measures;

- Civil society measures; and,

- International measures.

Some action plan objectives for executive and other public sector actors

- Make Government programmes and activities more open and transparent by inviting civil society to oversee aid and other Government programmes; establish and disseminate service standards; establish a credible and open complaints mechanism;

- Generate transparency and clarity with respect to the delivery of public services by a clear statement of what services are to be delivered, by whom, to whom, to what standard and within what timeframe, thus creating standards for those who deliver services and expectations from service users. As a priority, establish legislative requirements and administrative procedures to ensure appropriate public access to Government information;

- Develop and implement civil service reforms to increase levels of professionalism; increase the focus on integrity and service standards; replace patronage and other irregular structures with clear, codified consumer rights; establish the principle of meritocracy in staffing, promotion, discipline and other areas;

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[50] Petter Langseth, Prevention: An Effective Tool to reduce Corruption. "Best Practices", presentation at the 9th ISPAC Conference in Milan, November 1999.

- For prevention and to mobilize popular support for the national action plan itself, launch projects that educate society about the true nature, extent and harmful effects of corruption and instill a moral commitment to maintaining   integrity in dealings with business and Government officials;

- Establish Government agencies, such as specialized anti-corruption agencies, if needed; strengthen all State institutions by simplifying procedures, improving internal control, monitoring, enforcement and efficiency; establish meaningful incentives and remuneration;

- Strengthen the independence and competence of investigative, legislative, judicial and media organizations; and

- Develop legislative and administrative measures that permit and encourage the use of civil remedies and allow those affected by corruption to take direct   action against it.

Some action plan objectives for law enforcement

- Clarify the roles and functions of law-enforcement officers, prosecutors and judges, including judicial and prosecutorial independence and, where applicable, the role of prosecutors in advising law enforcement and reviewing criminal charges.

- Establish basic standards for integrity and professional competence in law-enforcement functions; develop codes of conduct or similar to provide specific guidance to law- enforcement officers and specific target groups, including senior officers and training officers or instructors[51].

- Establish basic principles and standards for recruitment, training, active service and disciplinary matters, or adjust existing principles and standards to incorporate integrity or anti-corruption elements.

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

Some action plan objectives for prosecutors

- Clarify the basic roles and functions of law enforcement, prosecutors and judges, including judicial and prosecutorial independence, and, where applicable, the role of prosecutors in advising law enforcement and reviewing criminal charges.

- Establish basic standards for integrity and professional competence in prosecutorial functions; develop codes of conduct or similar to provide

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

specific guidance to prosecutors[52]. In many countries the new codes will supplement codes of professional conduct for the legal profession.

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

Some action plan objectives for legislators and legislative bodies

- Address issues such as transparency and integrity on an internal basis and, where a legislature has the necessary competence, adopt or enact legislative elements of the national anti-corruption strategy.

- Clarify the role and functions of the legislature and its relationship with other key elements of Government and political structures, particularly those which influence law- and policy-making functions, such as political parties, the professional/neutral public service and judicial elements.

- Establish or clarify the standards of conduct expected of elected members of the legislature and their partisan political supporters, bearing in mind both legal and political accountability.

- Establish internal bodies and procedures for dealing with staff who do not perform in accordance with applicable standards.

- Establish or clarify requirements for disclosing of incomes and assets and for disclosing and dealing with conflicts of interest.

- Enact or adopt the anti-corruption laws called for by the national strategy covering areas such as the establishment and independence of anti-corruption agencies, audit authorities, anti-corruption commissions or other bodies; the regulation of political and campaign financing; freedom of information, media and other transparency measures; conflict of interest legislation; whistleblower and witness protection provisions; public service reforms such as limits on discretion, reducing complexity or merit-based compensation; amnesty provisions, where needed, and law enforcement powers needed to investigate corruption, test integrity, and provide international cooperation; and trace, freeze, seize and confiscate the proceeds of corruption.

Some action plan objectives for civil society and the private sector

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

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

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

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

- Plans for private-sector institutions could include elements dealing with fiduciary or trust relationships; conflicts of interest; auditing practices and other safeguards; transparency in business dealings, particularly on public exchanges or stock markets; the regulation of anti-competitive practices; and general awareness-raising with respect to topical issues such as corporate criminal liability for corruption offences and the relationship between private-sector corruption and the public interest.

- Plans for civil society institutions could include academic research on corruption and related topics; measures to ensure professional competence; diversity and independence in the media and academic institutions; the consultation, awareness-raising and empowerment of the population groups served by civil society; and the development of the expertise and infrastructure needed to support genuine transparency and open monitoring of public institutions and their functions.

The incorporation of international measures into action plans

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

- The stricture that all forms of corruption, whether domestic or transnational in nature should be dealt with appropriately;

- A national commitment to developing, ratifying and fully implementing international instruments against corruption;

- Action plans for legislatures and national Government agencies should encourage and support effective international cooperation in corruption cases through adequate policies, legislation and administrative infrastructure. Major forms of cooperation would include education and other forms of prevention; mutual legal assistance and other investigative cooperation; willingness to prosecute multinational cases, where appropriate; extradition of offenders to other jurisdictions undertaking such prosecutions; and assistance in recovering the proceeds of corruption[53].

- Plans for public sector, private sector and civil society elements should all provide for exchange of information about the nature and extent of

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

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

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

PRIORITIZING MEASURES WITHIN AN ACTIONPLAN

To help stakeholders arrive at consensus regarding the sequencing and prioritization among different measures of the action plan, a selection matrix needs to be developed. Important variables in this selection matrix are the:
- Expected impact of the measure
- complexity of the measure
- cost
- how long it will take to implement
- extent of control over the implementation

PRECONDITIONS AND RISKS

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

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

RELATED TOOLS

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

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

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

TOOL #13

DISCLOSURE OF ASSETS AND LIABILITIES BY PUBLIC OFFICIALS

The purpose of Tool #14 is to increase transparency with respect to the incomes and assets of public servants. The assets of public servants must be declared, and any increases accounted for. Such a process deters illicit enrichment from sources, such as bribery, or investments made with inside knowledge. It also ensures that unlawful behaviour is quickly identified and dealt with. The disclosure of information concerning the incomes and assets of public servants also raises privacy concerns, thus "transparency" in such cases does not necessarily entail full public disclosure. Where possible, disclosure is made to specially established bodies, such as inspectors or auditors general, that are trusted to take any necessary actions. Where this is done, full public disclosure need only be made in cases where improper conduct is discovered.

DESCRIPTION

he obligation to disclose can be established either by legislative means, such as statutes or regulations, or as a contractual condition of employment. To clarify the exact nature, scope and reasons for disclosure, new employees may be required to sign documents such as "integrity pledges" setting out their disclosure obligations (53). Usually, it is neither necessary nor practicable to subject every member of the public service to a disclosure process; normally, such a process applies only to officials at or above a fixed level of seniority or those in certain positions. In both cases, the purpose is to target public servants whose positions place them in a position with sufficient potential for illicit enrichment. Examples commonly include:

- Those who are responsible for Government expenditures, the allocation of contracts or other benefits;
- Those who have discretion in dealing with public funds or assets;
- Those whose positions entail access to valuable confidential information or information that can be used to gain wealth or advantage outside Government;
- Those whose decisions carry economic impact on others; and
- Those responsible for audit and watchdog functions in such areas.

Initial disclosure should be required either upon entry into the public service or on employment in (or promotion into) a position for which disclosure is required. Thus, basic information is generated, against which later disclosure can be compared to assess whether there has been enrichment that must be accounted for. Disclosure itself would contain elements similar to that required by many income-tax systems, including basic income from all sources and any large expenditures. For public-service disclosure, however, requirements would go beyond that, requiring information about assets, including investments, bank accounts, pensions and other intangibles, as well as real property and major items of personal property. It should require the disclosure of holdings and

transactions both domestically and in other countries and currencies. Also required would be disclosure of locations and dates of payment, who made the payment, and other basic information to permit verification of any element of the disclosure. The official should also be required to consent to further disclosure by others holding information on his or her behalf, such as banks or financial institutions. Officials can also be compelled to provide further assistance, up to the point where criminal malfeasance is suspected, at which juncture rights against self-incrimination will usually apply.

Penalties for failing to disclose as required, or for making false or misleading disclosure, must be severe enough to act as a significant deterrent. Usually at least the same penalties as apply for the types of misconduct the disclosure is intended to discover will be required, otherwise corrupt officials will simply refuse the disclosure as the lesser penalty. Disclosure requirements are intended to deter corruption and to identify and exclude corrupt officials, which requires that two distinct types of penalty should apply. Discharge and other disciplinary sanctions flow from breach of contractual requirements either to disclose (non-disclosure) or to refrain from corrupt behaviour (malfeasance), and from breaches of criminal or other offence provisions. The first category results in action to remove the official from the public service or from a position open to abuse, and the second leads to criminal punishment intended to deter others. Since only one category is of a criminal law nature, double-jeopardy rules do not, and should not apply.

PRECONDITIONS AND RISKS

The major difficulties with disclosure requirements arise from the fact that they must strike a balance between controlling illicit enrichment and invading the privacy of those required to make disclosure. Legitimate employees may feel that they are being treated as offenders, or untrustworthy employees, and private harm may occur if personal information is made public without good cause.

The interests of controlling corruption and illicit enrichment generally favour some disclosure with respect to associates and relatives of officials, but this is more problematic. They are not parties to any employment contract and therefore cannot be contractually obliged to make any disclosure. The employee can be obliged to disclose information about transactions that he or she has with a relative, but cannot compel the relative to disclose information the employee does not have. Legislative requirements can be imposed, but that will usually require political justification and, in some cases, constitutional justification, for invading the privacy of non-employees. Difficulties would also be encountered in defining the class of individuals who would be subject to the obligation in respect of each official.

When the obligation to disclose extends beyond immediate family, a greater need emerges to verify the disclosures. For example, when evaluating the lifestyle of the disclosure subject, it is important to take into account that, in some cultures, it is not unusual for extended family members to provide significant financial support either in money or housing. An initial judgment that an individual is living beyond his or her means can easily be explained by financial assistance from family members. At the same time, however, enquiries should be made

regarding the means of the family donors. It would not be unusual for a corrupt official to use the extended family as a conduit to receive ill-gotten gains. Any verification method should aim to produce an accurate initial lifestyle evaluation. The method should be clear and to avoid criticism.

RELATED TOOLS

Tools that may be used in conjunction with disclosures of assets and liabilities by public officials include:

- Codes of conduct and/or legislation outlining the requirement for the declaration of assets and the consequences if somebody is either not complying with the rules by not reporting their assets or not reporting them accurately.
- Tools giving the public access to the declared assets
- Tools establishing an asset declaration monitoring body. Successful enforcement requires an entity with a clear mandate, capacity and resources to build a system that keeps records and monitors the timeliness and validity of the assets declared. The asset declaration monitoring body needs to be mandated as part of the legislation introducing monitoring of assets; sufficient resources have to be budgeted to ensure proper records management, investigation and enforcement through a disciplinary body.
- Tools that establish and raise public awareness and expectations, such as citizens' charters and public-relations campaigns.
- Tools that establish and support mechanisms to enforce compliance, disseminate, monitor and investigate cases. In most cases, enforcement of political standards consists of simple transparency, leaving voters to interpret the appropriate standards and the conduct of political officials, and to decide for themselves whether standards have been met.

There are no tools that should be specifically avoided if a body is established to develop and administer declaration of assets. Questions of overlap with other applicable standards, especially legal standards, will arise, however. If legal compliance mechanisms are applied, the standards must become more clear and certain in order to be enforceable, effectively making such standards indistinguishable from employment codes of conduct or legislative standards (see Tool #5).

To increase transparency with respect to the incomes and assets of public servants, it is important that the declaration of assets is enforced and monitored.

TOOL #17

RESULTS- OR FACT-BASED MANAGEMENT

The term "results-based management" (RBM) is used to describe management structures that set clear goals for achievement, as well as criteria and processes for assessing whether they have, in fact, been achieved. The effect of RBM is to increase overall accountability. Corruption becomes more difficult to conceal because performance is continually monitored and reviewed. It is also clear when stated goals are not met. RBM and similar assessment and accountability structures are not dealt with specifically in the United Nations Convention against Corruption, but do fall within the scope of measures which could be used to implement a number of provisions, notably those requiring such things as pre-determined, clear and objective criteria for decision-making.[57]

DESCRIPTION

The exact description of results-based management systems will vary considerably according to the nature of the organization in which they are applied and other situational factors. Generally, however, they have the following elements:

- The setting of clear goals and objectives for the overall process or the bureaucracy as a whole, as well as for specific elements of either;
- A performance measurement system that focuses on results;
- A learning culture grounded in evaluation and feedback;
- Stakeholder participation at all stages of programme design and implementation;
- Where the organization is decentralized, clear lines of authority and accountability among the   various units; and
- Concrete links between results, planning and resource allocation.

RBM functions both as a management system and a performance reporting system. The requirement to establish clear goals at the outset, as well as a

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[57] See Article 5, paragraph 2 (general practices aimed at the prevention of corruption), Article 9, paragraph 1 (public procurement) and in particular subparagraph 1(c) (objective and predetermined criteria for public procurements), Article 10 (transparency and public reporting on decision-making), and Article 12, subparagraph 2(f) (audit controls in the private sector).

system for assessing performance effectively, operates as a management tool, clarifying lines of authority and responsibility and quantifying expected and actual performance. Establishing the measurement and reporting of results as an institutional norm makes it difficult to conceal substandard results. The standardization of goals and assessment methods throughout the system also facilitates comparisons, which tends to make it apparent when one element is not functioning at the same level as the others. That, in turn, alerts management to the possible presence of corruption or inefficiencies.

Typical RBM structures are characterized by the following results chain:

PRECONDITIONS AND RISKS

INPUT → PROCESS → OUTPUT → OUTCOME → IMPACT

Terminology and concepts must be understood and accepted.

Even though the basic concept is easy to understand, many Government organizations experience confusion and misunderstanding related to certain terms. The implementation process must begin with the clarification and definition of important terms. A process to create ownership and commitment is also necessary.

Information must be clear and easy to assess.

Many organizations publish a broad array of handbooks on the topic, reports and guidelines, both in hard copy and electronically through the Internet and Intranets. Systematic training and dissemination of "best practices" are also commonly offered.

RBM may be too complicated and comprehensive for some applications.

Implementing comprehensive management reforms is a major task that may not always be practicable or cost-effective, given the nature of the problem encountered.

RBM is difficult to apply to occupations or structures in which performance is hard to quantify.

The nature of the function or service performed by a particular structure should be carefully considered against any criteria that will be used to assess performance. Criteria, such as how many files are processed or how many clients are seen, are at best meaningless and at worst counterproductive without some realistic assessment of the quality of the service provided. Encouraging those who license drivers to process more applicants, for example, may simply result in the exclusion of fewer sub-standard drivers and higher accident levels. Genuinely effective qualitative criteria may be virtually impossible to produce or monitor for some public sector activities.

RELATED TOOLS

Institutional reforms intended to prevent and combat corruption in public-sector institutions will often be integrated within much more broadly-based public sector reforms. While the immediate focus may in some cases be on corruption, larger

reform efforts should incorporate anti-corruption elements wherever possible. Tool #21, therefore, could be used in any programme intended to bring about changes in public-sector institutions.   Moreover, the reduction of corruption should be an ongoing effort in which no opportunity should be wasted. Failure to incorporate anti-corruption measures and expertise into more general public-service reform programmes may result in unintended consequences in which other reforms create new opportunities or incentives for corruption or roll back previously achieved efforts.

Specific tools that may be used together or combined into general public-service reform programmes include:

- Tools for reducing and structuring discretion;
- Tools establishing and monitoring public service standards, such as codes of conduct, public complaints mechanisms and service delivery surveys; and,
- Tools providing positive and negative incentives for reforms, including improvements in compensation, professional status and working conditions, as well as disciplinary and other deterrence measures.

TOOL #19

ACCESS TO INFORMATION

The dissemination of information about public affairs and the management of public issues is one of the most frequently-cited anti-corruption measures. Populations which are made and kept aware of governance issues which affect them develop expectations about standards and are in a position to put pressure on officials to meet those standards. Many of the tools in this Tool Kit are either specifically intended to bring about transparency as an objective or contain elements of transparency in support of other objectives. Tools #19, 20 and 221 fall into this category, seeking to ensure that accurate and timely information about public issues is available to people when they ask for it (access to information); that information is disseminated proactively so that people who do not ask have some information and those who seek information will have a better basis on which to formulate requests (public information); and that those who specialize in obtaining information and presenting it to the public – journalists –

are equipped and motivated to play the most effective role possible. All of these fall within the ambit of Chapter II of the United Nations Convention against Corruption. The general obligation of Chapter II, Article 5, paragraph 1, calls for anti-corruption policies which:

> …promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Subsequent articles then deal with more specific requirements, many of which can be implemented, in whole or part, through the use of one or more of Tools #1920, and 21.[60]

The participation of society in public affairs is a major objective of the Convention, and ensuring that the public has effective access to information is specifically set out as one of the means whereby this objective can be attained.[61] Effective access can also be seen as a means of empowerment, both in the substantive sense that having information about issues and options carries with it the ability to exert influence and affect outcomes, and also in the procedural sense that access to information structures are generally user-initiated. People obtain information because they have asked for it, and having obtained it previously, will ask for it again in the future, often with a growing skill and sense of confidence as their knowledge of public affairs increases. As with all transparency mechanisms, the underlying objective is to educate the public and shed light on public affairs with a view to ensuring a high degree of public accountability.[62]

DESCRIPTION

The primary distinction between access to information systems and other transparency and public reporting mechanisms is that access systems are user-initiated. Where public information systems involve information generated and disseminated by, and on the initiative of, government agencies, access systems generate information when people actually ask for it. In a well-regulated system, there is a balance which ensures that outsiders set the agenda with respect to what information is sought and which issues are pursued, and that some form of independent review ensures that officials cannot arbitrarily or unreasonably deny access or avoid scrutiny, while at the same time shielding from disclosure some

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[60] See in particular Article 7, subparagraph 1(a) (efficiency, transparency and objective criteria for hiring, promotion, etc. of civil servants and non-elected public officials); Article 7, paragraph 4 (systems that promote transparency and prevent conflicts of interest); Article 9, paragraph 1 (procurement systems based on transparency, competition and objective criteria) and subparagraph 1(a) (public distribution of information on procurements); Article 10 (transparency in public administration) and subparagraphs (a) (information on decision-making and other specific areas) and (c) (publication of information); and Article 13 (participation of society).

[61] See Convention Article 13, subparagraph 1(b).

[62] See Alasdair Roberts, "Access to Government Information: An Overview of Issues", TI Working Paper, http://www.transparency.de/documents/work-papers/martin-feldman/4-preconditions.html, also Marsh, N., QC (ed.), *Public Access to Government-Held Information*, British Institute for International and Comparative Law, London, 1987.

limited categories of information for which disclosure might benefit the individual requesting it, but would not be in the general public interest.[63]

Access to Information laws usually incorporate some or all of the following elements:

- Every government agency is required to publish basic information about what it does and how, in order to provide a basic level of information both for purposes of general information and transparency and in order to provide a basis for rational requests for more specific information. Requirements commonly include the publication of such things as legislative and other mandates, budgets, annual or other regular reports summarizing activities, and information about complaint or other oversight bodies, including how they can be contacted and reports on their work or the locations where such reports can be found.[64]

- A legally enforceable right of access to documented information held by the Government is recognized, subject only to such exceptions as are reasonably necessary to protect public interests or personal privacy. The subjects generally excluded from scrutiny include cabinet discussions, judicial functions, law enforcement and public safety, intergovernmental relations and internal working documents. Access is provided by giving applicants a reasonable opportunity to inspect the document or by supplying them with a copy.

  - An independent review mechanism for determining whether information sought is subject to or exempt from access is established and maintained. Usually, for the sake of efficiency, the process involves a presumption that information is accessible, placing the burden of establishing that it should not be disclosed on the government agency involved.[65] There is a review of information by the agency which holds it to identify documents or other elements which in its view should not be disclosed. There follows a review by an independent authority, and if his or her decision is not to disclose any of the material, this can be appealed top a court or other independent tribunal. The independent review is usually needed because the information must be reviewed by someone who is not biased in favour of the government agency, but who at the same time can be relied upon not to disclose sensitive information if the decision to withhold it is maintained. This function is critical – information in dispute is often extremely sensitive, and it is essential that both

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[63] Examples include *bona fide* national security or criminal intelligence information, personal information about private individuals, privileged legal advice to the government, and sensitive commercial information held by the government. Without such limits, access to commercial information would unfairly benefit competitors, and access to such things as criminal intelligence could be used by organised criminal groups to gain information about the efforts against them by law enforcement, for example.

[64] In the case of anti-corruption bodies, publication of this information is required by the United Nations Convention against Corruption (Article 13, paragraph 2). The location of oversight bodies and their reports is often different from that of the agencies they oversee due to the requirements of functional separation and independence.

[65] This is also a matter of procedural fairness, since the person requesting the information is not allowed to review it at this stage and is therefore not in a position to argue that it should be disclosed based on the content of the information itself.

sides respect the discretion, integrity and neutrality of the review process without either being in a position to fully review its work.

- Time limits and time frames are often established to allow sufficient time for government agencies to search for, gather and review the information sought, and if it proposes not to disclose any of it, for the independent review process to proceed, while at the same time not permitting excessive or indefinite delay.

- Information about private individuals is usually protected from general access, but may be requested by the private individuals themselves. Often rights of individual access are accompanied by rights to dispute information on the basis that it is incomplete or inaccurate and if this is established, to have it amended. Some systems also allow the individual to place challenges or countervailing information on the record if a decision is made not to change the challenged information.

PRECONDITIONS AND RISKS [66]

For the most part, two decades of experience of implementing public information systems has not borne out the initial reluctance and fear of Governments to provide access to information. Governments in all parts of the world have conceded that the public has a right to know about Government operations and functions. Studies indicate that most Government departments have soon adapted to the innovation without much difficulty, and that the cost of providing access to information still represents only a small fraction of the information budgets of Governments.

Having said this, there are some grounds on which government agencies should be entitled to withhold information from the public and some practical limits on access to information policy and practice. For some Government functions, the greater public interest may lie with confidentiality, or confidentiality may be essential to the basic process at hand. For example, the need to respect personal privacy, as in health records, or issues involving national security, can legitimately be excluded from public access. More generally, the fact that such things as discussions between public officials become subject to access requests may stifle discussion or the keeping of records about discussion, with harmful effects on accountability and other aspects of governance. For this reason, the education of public officials about the importance of transparency and openness in government should accompany access to information programmes, and in some cases it may be necessary to shield discussions from access in order to ensure full and frank consideration of important issues in specific areas.[67]

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[66] Robert Martin and Estelle Feldman, "Access to Information in Developing Countries", T.I. Working Paper, http://www.transparency.de/documents/work-papers/martin-feldman/4-preconditions.html

[67] In Parliamentary systems based on the UK model, for example, members of cabinets are by convention bound by the principle of solidarity, so that in public ministers of the cabinet speak with one voice. To arrive at a common position and make decisions, on the other hand, it is necessary that ministers be able to disagree and debate in an environment which is shielded from public access and disclosure. For an outline of the issues which have arisen in the UK itself, see

There may also be practical limits on access rights in some cases. Even when dealt with by motivated, well-intentioned officials, responding to requests can be costly and complicated. Large numbers of government files may have to be reviewed to identify information which might fall within the scope of the request, and large volumes of information may then need to be carefully reviewed to identify and screen out information which should not be disclosed on legitimate grounds. This may be a great burden, particularly in developing countries, which are under-resourced and lack such things as automated data-filing and processing to accelerate and simplify the search, retrieval and screening processes.

Access to information laws are often accompanied by other laws in related areas, including:

- Privacy laws to ensure the protection of information which is not accessible for reasons of personal privacy or other reasons (e.g., proprietary commercial information);

- Official secrecy legislation to define and identify categories of information which should not be subject to access requests or disclosed for other reasons due to national security or other fundamental interests; and,

- Internal rules imposing requirements for the creation and retention of official files and other records, and limiting the conditions on which records can be destroyed.

DeSmith, S. and Brazier, R., *Constitutional and Administrative Law*, Penguin Books, London (new ed.), Chapter 10, "ministerial responsibility".

RELATED TOOLS

Access to information is one of a series of tools intended to help mobilize civil societies through public education and awareness raising, including:

- Public complaints systems;
- Anti-corruption agencies relying on public inputs;
- Citizens charters and code of conducts;
- Whistleblower legislation;
- National and international ombudsman; and
- Public education and awareness raising.

TOOL #23

PUBLIC EDUCATION AND AWARENESS-RAISING MEASURES

The dissemination of information about public affairs and the management of public issues is one of the most frequently-cited anti-corruption measures. Populations which are made and kept aware of governance issues which affect them develop expectations about standards and are in a position to put pressure on officials to meet those standards. Many of the tools in this Tool Kit are either specifically intended to bring about transparency as an objective or contain elements of transparency in support of other objectives. Tools #22, 23 and 24 fall into this category, seeking to ensure that accurate and timely information about public issues is available to people when they ask for it (access to information); that information is disseminated proactively so that people who do not ask have some information and those who seek information will have a better basis on which to formulate requests (public information); and that those who specialize in obtaining information and presenting it to the public – journalists – are equipped and motivated to play the most effective role possible. All of these fall within the ambit of Chapter II of the United Nations Convention against Corruption. The general obligation of Chapter II, Article 5, paragraph 1, calls for anti-corruption policies which:

> …promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Subsequent articles then deal with more specific requirements, many of which can be implemented, in whole or part, through the use of one or more of Tools #22, 23, and 24.[68]

Structures for disseminating information can be characterized as proactive or reactive. Reactive structures, in which information is produced in response to a request, include mechanisms such as access to information structures, where the requests may come from members of the general population or private organizations such as the news media, and audit functions, where the information is requested by inspectors or auditors with specific mandates to obtain, review and assess the information. Proactive structures are those in which public sector entities produce information on their own, without any specific request. These include such mechanisms as the routine regular production of reports and similar documents, and more specific activities in which information is provided about ongoing activities, both in the interest of general transparency, and often in an effort to assess the public reaction to an ongoing or proposed course of action.

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[68] See in particular Article 7, subparagraph 1(a) (efficiency, transparency and objective criteria for hiring, promotion, etc. of civil servants and non-elected public officials); Article 7, paragraph 4 (systems that promote transparency and prevent conflicts of interest); Article 9, paragraph 1 (procurement systems based on transparency, competition and objective criteria) and subparagraph 1(a) (public distribution of information on procurements); Article 10 (transparency in public administration) and subparagraphs (a) (information on decision-making and other specific areas) and (c) (publication of information); and Article 13 (participation of society).

Both are important. The routine production of reports provides general background information which can provide the basis for more specific requests or public discussion, and because it is routine, will be difficult to resist. Even without legal requirements to produce a report, an annual report which is delayed or missing is conspicuous, generating political pressures to disclose the information. More general forms of reporting occur when public officials understand the value of good relations with the public when developing and implementing government programmes and the value of taking the initiative to explain what is being done and why proactively. These mechanisms include press-releases and press conferences, public appearances by officials, open access to legislatures, courts and various other decision-making *fora* where possible, and a general bureaucratic culture in which officials are presumed to be permitted to disclose information to the news media and other interested parties unless there is some compelling public-interest justification for secrecy.

An important achievement for any anti-corruption programme is to inform the population. Information about how government works, or how it should be working, develop popular expectations of ethical and effective performance of public functions and make it generally apparent when public sector individuals or institutions are not performing to an acceptable standard. Information about the nature of corruption and the scope and magnitude of the harm it causes raise awareness of its true costs – which are often not readily apparent to general populations in corrupt environments – and mobilises support for anti-corruption policies and programmes. The long-term effects of this process include the mobilisation and empowerment of populations: where people learn how to fight corruption and participate in anti-corruption activities, they also have incentives to participate in public functions in general, and the knowledge and skills needed to do so effectively.

The United Nations Convention against Corruption encompasses all of these policies and objectives. In addition to the general goal of transparency (Article 5, above), specialized anti-corruption bodies are charged with the responsibility of increasing and disseminating knowledge about the prevention of corruption;[69] mechanisms for public procurement should ensure proactive dissemination of information about how the processes work and about the requirements and conditions for specific procurements;[70] mechanisms for proactive dissemination of information about public finances;[71] and the publication of specific information about the risks of corruption.[72] Article 13, dealing with the participation of society, also calls for measures to ensure the proactive dissemination of

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[69] Article 6, sub-paragraph 1(b). Article 36, which deals with specialized bodies in law enforcement, does not include the same language, since the drafters saw those bodies as more reactive in nature. Nevertheless, some element of communication between the two bodies – if indeed they are kept separate – may be seen as appropriate, since information about past cases of corruption often provides the basis of future materials for training and general public-awareness-raising. Note that countries have the option of establishing unified bodies or separate bodies under Articles 6 and 36. See agreed notes for the *travaux préparatoires*, A/58/422/Add.1, paragraphs 11 and 39.
[70] Article 9, subparagraphs 1(a)-(c).
[71] Article 9, subparagraphs 2(a)-(b).
[72] Article 10, subparagraph (c).

information both generally,[73] and with respect to information to promote the non-tolerance of corruption[74] and the activities of specialized anti-corruption bodies.[75]

One purpose of Tool #23 is to increase checks and balances by guaranteeing independence of the judiciary, legislative and executive, while at the same time empowering civil society to oversee all organs of State, including the executive, legislative and judiciary. Another purpose of Tool #23 is to show how to earn or win back the trust of the public in anti-corruption efforts, and the importance of managing that trust.

DESCRIPTION

Proactive information mechanisms include a range of options for identifying and developing relevant information, producing it in a form that target audiences can understand,and disseminating it. Often this is a multi-stage process, and some elements may be more reactive than proactive. In many countries, information either produced proactively or reactively by government entities is then digested and analysed by the public news media, academic researchers, opposition politicians or others before being passed on to the general population. Governments, sometimes concerned that the information is altered or distorted in the process, often develop mechanisms of their own in an effort to impart information to the public directly, with as few intermediaries as possible. In a pluralistic information society, accuracy of the information is often less important than ensuring that information from many different sources and perspectives reach the public more-or-less intact, so people can decide for themselves.

Specific options include the following.

Public information campaigns

Information generated by anti-corruption agencies may be disseminated directly to the population using whatever media are available in a particular society. The actual media used can range from the use of the Internet and computer networks; radio and television broadcast media; print media such as newspapers; and personal appearances by government officials. Apart from the degree of availability of these various media, considerations such as literacy levels and the use of appropriate languages an cultural references will generally be important.

Journalistic media

The technical nature of the media (print, broadcast etc.) should be distinguished from their substantive nature. As noted above, the technical media can be used to disseminate information directly, as occurs when governments purchase advertising time, but arguably their greatest role is as independent journalistic reporters and commentators. Media independence allows journalists the

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[73] Article 13, paragraph 1.
[74] Article 13, subparagraph 1(c).
[75] Article 13, paragraph 2.

freedom to present information in ways and at times that may be seen as inconvenient or even hostile by politicians and public officials, but it is important to understand that media independence and competence provide far greater benefits in anti-corruption programmes by providing members of the public with reliable and trustworthy information. This is essential not only to identifying and combatting corruption, but in establishing the credibility of programmes and areas of government which are not affected by corruption. Populations will only trus this information if they are confident that journalists are both independent and competent, and independence can only be assured by the demonstrated freedom of the media to identify the issues they choose, to gather, analyze and publish reports on those issues, and to do so at a time and in a format entirely of their own choosing.[76] Apart from not seeking to restrict or regulate the jouralistic media, governments may take measures to support the competence of journalusts, provided that this does not compromise independence. Arguably their most important contribution, however, is simply by ensuring that journalists are given the maximum possible access to information, both proactively and reactively.

Academic, non-governmental organizations and other expert commentary

Academics, interest groups and others who specialize in good governance, anti-corruption efforts, financial analysis and similar matters also play a valuable role. Their principal advantage is their expertise on corruption or related matters, which increases the value and credibility of their analysis. This may at times make it less accessible to the general population, but it can be used directly by those charged with anti-corruption efforts, and made more accessible to the general population by secondary publication in mass-circulation journalistic media. An academic study finding corruption in a public sector such as a criminal courts or military procurement, for example, can attack the problem in a series of public information efforts. In the hands of the appropriate officials, it can form the basis of countermeasures ranging from prevention measures to criminal prosecutions. In the hands of other expert commentators, it becomes part of the larger effort to assess corruption and develop countermeasures. Mass media reporting on the study generates public awareness of the problem, pressure to resolve it, and when measures are taken, places the population in a position to assess for themselves whether enough has been done and whether the problem has been corrected.[77]

Direct access mechanisms: the Internet and other media

As discussed above, direct access to the public is often sought by government entities using mechanisms such as press-conferences, public speeches and the

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[76] Regarding the freedom and role of the media, see United Nations Convention against Corruption, Article 13, subparagraph 1(d).
[77] See United Nations Convention against Corruption, Article 13, paragraph 1, calling for promotion of the active participation of individuals and groups outside of the public sector, including civil society, non-governmental and community-based organizations. The work of interest groups and academics would also fall within the ambit of Article 13, subparagraph 1(d), discussed in respect of the mass media, above.

use of advertising, to ensure that the message chosen by the government reaches the public *verbatim*, although it will still be subject to journalistic and other commentary afterwards.

Many experts believe that the Internet has revolutionized direct communications. It is an inexpensive medium and is rapidly becoming a global network as public access proliferates in developed and developing countries alike. It is also amenable to formatting information in accessible formats. Illustrations or audio materials can be used to reach audiences where literacy is limited, for example, and apart from costs associated with basic translation, materials can usually be disseminated in many languages at the same time, allowing users to select the most appropriate.[78] Another important factor is that the Internet is also interactive, allowing the recipients of anti-corruption materials to communicate back, for reporting corruption or other purposes. The Internet is also very difficult to suppress or manipulate, which increases the range of information which can be obtained, but also generates some cause for caution. The same factors which make it difficult for repressive governments to impede the flow of information also eliminate other factors such as journalistic professionalism and editorial integrity, which increase the reliability of information disseminated by more traditional media. Hence, one can find the widest possible range of information on-line, but one cannot always rely on the accuracy of the information available. Governments engaged in anti-corruption efforts can use the Internet first, by ensuring that it is kept independent and made as accessible as possible to as many people as possible. This assists not only anti-corruption information campaigns, but government efforts to educate populations for purposes of social and economic development and efforts in other specific areas, such as HIV-AIDS education and other public-health matters. More specifically, the Internet can be used to disseminate all of the elements of public information campaigns set out below, and as a mechanism whereby people can comment on the messages they are given and can report corruption or other problems directly, and where appropriate, anonymously.

Substantive elements of information programmes

Having chosen the most appropriate media, the messages to be communicated must then be considered. In some cases, these are chosen by the participants themselves: journalists, academics and interest groups, and not the State, choose the timing and subject-matter of the information the access and the reports or commentaries they produce. General information campaigns

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[78] For an example of Internet multilingualism, one need look no further than the United Nations's own site, www.un.org, in which materials can be selected and examined in Arabic, Chinese, English, French, Russian and Spanish, and other sites in which UN materials appear in other languages which are not used officially within the UN system. The United Nations Convention against Corruption, as an official UN document is also available in these languages, and this Toolkit will be made available in languages other than English as these become available. See the web site of the United Nations Office on Drugs and Crime, www.unodc.org for details. Many non-governmental organizations are also "on-line". See for example Transparency International at www.transparency.org.

formulated by government entities or dedicated anti-corruption organizations, however tend to incorporate the following elements:

- Not to engage in corrupt conduct themselves. General populations accustomed to paying bribes and similar conduct must generally be made aware that this is unacceptable, and usually criminal conduct.

- The true costs of corruption. Those involved in low-level corruption are often unaware of or at a distance from the costs, as are others around them. It is necessary to demonstrate to corrupt officials and those who pay bribes that there are significant costs and that these costs accrue not at a distance, but against them and their families. The same information disseminated to general populations mobilises opposition and intolerance to corruption.[79]

- The nature and variations of corruption. Set out elsewhere in this Tool Kit, this information assists those who receive it in identifying corruption when it occurs and in accruately labelling it as such.

- The stigma and punishments for corruption. Populations should be made aware that corruption is morally wrong, and subject to criminal, disciplinary and other sanctions for purposes of deterrence.

- The nature and importance of anti-corruption efforts in specific contexts, such as government procurement programmes, elections and other political activities, judicial and other critical sectors.

- The existence and availablilty of anti-corruption elements, such as places where it can be reported and sources of anti-corruption information.[80]

PRECONDITIONS AND RISKS

The cost of an effective public awareness campaign is often underestimated. Powerful and permanent political and budgetary commitments are essential. Altering public thinking is the most difficult and expensive aspect of anti-corruption work. To be successful, given that public attitudes cannot usually be changed overnight, time and consistency in awareness raising will be necessary. In fact, a level of dedication is the only way to achieve sustainable results. In the Hong Kong SAR, ICAC has been educating the public for more than 25 years. In 1998 alone, it spent US$90 million to offer 2,700 workshops for public and private organizations and other public-awareness projects.

RELATED TOOLS

Public Education and Awareness Raising is also one of the basic tools that will be part of most anti corruption strategies attempting to establish new institutions and measures relying on public trust and inputs. Access to information is therefore likely to be combined with any of the following tools:

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[79] See United Nations Convention against Corruption, Article 13, subparagraph 1(c).
[80] See United Nations Convention against Corruption, Article 13, paragraph 2.

- Access to information;
- Mobilizing civil society through public education and awareness raising;
- Public complaints systems;
- Anti-corruption agencies relying on public inputs;
- Citizens charters and code of conducts;
- Whistleblower legislation; and
- National and international ombudsman.

TOOL #24

MEDIA TRAINING AND INVESTIGATIVE JOURNALISM

The media is often underestimated in its ability to shape public attitudes and influence national and international policy. Journalists play an important interface role between the public and the Government. They have a responsibility to report information objectively, fairly and honestly, and where they are sufficiently competent and independent, they provide an essential source of independent, credible and broadly accessible information about the state of corruption and of efforts to control it. A key element of government-media relations is that governments and public officials must realize that, however inconvenient an aggressive and independent media sector might prove on specific occasions, any such disadvantage is far exceeded by the advantages of having a competent and credible source of independent public information and an aware, active and well-informed population.

The dissemination of information about public affairs and the management of public issues is one of the most frequently-cited anti-corruption measures. Populations which are made and kept aware of governance issues which affect them develop expectations about standards and are in a position to put pressure on officials to meet those standards. Many of the tools in this Tool Kit are either specifically intended to bring about transparency as an objective or contain elements of transparency in support of other objectives. Tools #22, 23 and 24 fall into this category, seeking to ensure that accurate and timely information about public issues is available to people when they ask for it (access to information); that information is disseminated proactively so that people who do not ask have some information and those who seek information will have a better basis on which to formulate requests (public information); and that those who specialize in obtaining information and presenting it to the public – journalists – are equipped and motivated to play the most effective role possible. All of these fall within the ambit of Chapter II of the United Nations Convention against Corruption. The general obligation of Chapter II, Article 5, paragraph 1, calls for anti-corruption policies which:

> …promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Subsequent articles then deal with more specific requirements, many of which can be implemented, in whole or part, through the use of one or more of Tools #22, 23, and 24.[81] Of particular relevance to the public mass media are Article

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[81] See in particular Article 7, subparagraph 1(a) (efficiency, transparency and objective criteria for hiring, promotion, etc. of civil servants and non-elected public officials); Article 7, paragraph 4 (systems that promote transparency and prevent conflicts of interest); Article 9, paragraph 1 (procurement systems based on transparency, competition and objective criteria) and subparagraph 1(a) (public distribution of information on procurements); Article 10 (transparency in public administration) and subparagraphs (a) (information on decision-making and other specific areas) and (c) (publication of information); and Article 13 (participation of society).

10, calling on the public sector to make information available, and Article 13, dealing with the participation of society, and in particular calling on State Parties to respect, promote and protect: "…the freedom to seek, receive, publish and disseminate information concerning corruption."[82] Article 8, dealing with codes of conduct for public officials, might also be of use, with some adjustments, in the formulation of codes of conduct for journalists within private media organizations.

The purpose of Tool #24 is to strengthen the credibility, integrity and capability of the media to provide unbiased and responsible coverage and broadcast of corruption cases and anti-corruption initiatives. Such measures will ultimately lead to an increased risk of exposure of corrupt individuals and organizations. A strong media can also increase the knowledge and trust-level between the public and the Government regarding anti-corruption policies and measures.

DESCRIPTION

The role of the media is critical in efforts against corruption. As a result, there must be careful structuring of the relationship between anti-corruption officials and, in many cases, there must also be efforts to develop or enhance the capabilities of the media to ensure that they can function effectively as recipients of information about corruption, appraise such information in an independent manner, use it meaningfully as the basis of further communications and disseminate it to the general public. As noted in the preceding Tools,[83] in addition to independence and credibility, critical functions of the journalistic media include their ability to digest and render detailed technical materials accessible to the general population. This is essential to general awareness-raising and public education, but also entails a high degree of responsibility and the exercise of discretion, since it necessarily involves editorial or "gatekeeping" exercises, in which the media must decide which information to report and which to leave out.

Some of the critical issues in Government-media relations are as follows.

- The autonomy of the media is essential to enable it to assess Government information critically and objectively and to ensure its reports are credible to the population as a whole. Thus, Government contacts with the media   must be transparent, and they must not compromise the essential autonomy of the media, either in practice or in public perceptions. Also critical to autonomy and objectivity is the separation of media ownership from Government or political factions or, if this is impossible, ensuring that there is a diverse media to represent a full range of political opinion. Similarly, the staffing of individual media should be multi-partisan, if possible.[84]

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[82] Article 13, subparagraph 1(d).
[83] See in particular Tool #22 (Public awareness raising).
[84] Politically neutral or multi-partisan media are critical in media-government relations and autonomy. For the same reasons, more general diversity is also desirable: the media should represent society and reflect the diversity of language, cultural religious or other sectors present in the society as a whole. This results in better access and more accurate reporting, and in more credible communications with society.

- For the media to assess anti-corruption efforts critically and independently they must possess adequate technical, legal, economic and other expertise. In many cases, other sources, such as retained professional or academic experts, can supplement the knowledge of general media reporters. Training, awareness-raising and technical briefing of media personnel in anti-corruption efforts may also be useful.
- The media should be encouraged to develop and enforce adequate standards of conduct regarding their professional competence and their objectivity.
- Media presentations should clearly distinguish between factual and fictional programmes and between news reporting, which reports fact, and analysis or editorial commentary, which comments on facts.
- The media should be able to reach as much of the population as possible. Where that involves use of public resources, for example to enable coverage of remote areas, there should be controls in place to ensure that the Government cannot withhold such resources to exert influence on the media. The media not only raises public awareness by disseminating information regarding the misuse of public power, but it can influence civil society to support Government anti-corruption initiatives. Moreover, journalists, editors and newspaper owners can take on an active role against corruption by facilitating public debate on the need to introduce anti-corruption policies and measures.

- It is essential to raise awareness on the part of the media of the causes, costs, levels, types and locations of corruption in their country, as well as to explain the on-going efforts of all stakeholders against corruption. Furthermore, journalists should be taught how to evaluate and monitor Government activities, and informed about the achievements and standards of anti-corruption work in the region and at the international level. If journalists are to compare the validity of the policies of their own Government with others and to report on them in the proper perspective, such background information is essential. Internal diversity and pluralism within the media community also develops a capability whereby the media can report on corruption in their own profession.[85]
- Media training should also focus on building an effective information network. That includes informing journalists about governmental and non-governmental institutions active in the field of anti-corruption, about specific areas of responsibility, contact addresses and all other available information. If possible, representatives of those institutions should be chosen to inform journalists about their work, both the successes and the failures. Creating a continuing and interactive exchange of ideas will contribute towards building trust, and that should ultimately guarantee unbiased reporting and encourage Government institutions to ensure an open information policy.

Attention must be given to the commitment, responsibilities and risks involved in investigative journalism. Self-regulation should be promoted and the

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[85] This includes diversity in both the institutional and individual senses. Diversity of media control and ownership, for example, creates an environment in which one newspaper may be free (and motivated) to report on corruption at another.

development and adoption of a code of conduct should be encouraged. Knowledge of the professional techniques of obtaining information ethically must also be enhanced on the part of the journalists. Ways of controlling the credibility of sources of information must be discussed. Journalists must be encouraged to respect privacy and to check references, not only for the sake of correct reporting, but also in order to avoid loss of credibility. They must be informed about the risks involved with investigative journalism and about what they can do to limit those risks. They should also be informed about the possibility of seeking protection by Government institutions.

PRECONDITIONS AND RISKS

Media training and training in investigative journalism will be a wasted effort if the media is not free and independent of political influence and if access to information is not guaranteed. The media should be free to decide what stories must be published and whether or not to delve more deeply into researching for more detail. There should be no censorship and Governments should not discriminate against any media by withdrawing advertising, denying access to newsprint, or in any way restricting the work of the media. Thoroughly researched articles and radio programmes reaching a broad cross-section of the public will deter participation in corrupt practices, and increase the risks, cost and uncertainty for those involved in corruption.

The media must also have integrity and credibility in the eyes of the public. Unfortunately, the media is often "for sale" to the highest bidder and in countries with systemic corruption, corrupt individuals and organizations often use the media to enhance their image or suppress or confuse information about their activities. The media as an institution must be strengthened and checks and balances within the media itself introduced. In some countries, professional journalist associations have been established to monitor the integrity of newspapers and journalists. Media councils can also perform such monitoring.

Due consideration must also be given to the particular risks to which investigative journalists are exposed. In recent years, murders of journalists have been attributed to their investigations of corruption cases. It is essential to facilitate their work and to reduce the risks involved, and several institutions are running training courses in this area. The media itself, however, is affected by corruption. Journalists accept payments to write articles against the political opponents of their paymasters while others are paid to prevent stories from appearing. The media itself needs to initiate mechanisms to make it possible for the media to police and monitor itself. That can be done by enforcing codes of conduct, and by establishing media councils that receive and respond to complaints about corruption or other unprofessional or unacceptable practices.

RELATED TOOLS

For the media to do its job of awareness raising and investigative reporting, the following other tools would be useful:
- Public information and awareness-raising
- Access-to-Information Legislation
- Institutions overseeing the enforcement of access to information such as anti-corruption agencies.

TOOL #26

PUBLIC COMPLAINTS MECHANISMS

The objective of a public complaints mechanism is to enable anyone who becomes aware of acts of corruption, corrupt practices or general maladministration, to report this to the competent authorities. This serves the specific objectives of identifying and eliminating corrupt practices or individuals and deterring further corruption by others. More generally, it serves as a powerful tool for increasing expectations with respect to integrity and acceptable standards of service, and instills a sense of public empowerment. Reporting mechanisms must confront some difficult issues, however. First and foremost is the fact that reporting corruption and other crimes may leave the reporting individual open to retaliation and place him or her in danger. For this reason many reporting systems provide for anonymity and other protective safeguards. Another common problem is that reporting systems are sometimes used to falsely report malfeasance in order to settle personal grievances or divert attention away from other problems. This generally makes it necessary to balance the protection of those who report corruption with some process for assessing complaints, and possibly providing for liability in cases of intentionally false, misleading or malicious reporting.

A number of provisions of the United Nations Convention against Corruption deal with these issues. Articles 6 and 36 call, for the establishment of anti-corruption bodies, to which complaints may be reported, particularly the law-enforcement bodies envisaged by Article 36, where these are established separately. Article 13, paragraph 2 calls for measures to ensure that the existence and roles of these bodies are known to the public and accessible for the anonymous reporting of corruption. Article 33 calls specifically for the protection of those who report corruption, with additional protections for victims and witnesses under Article 32 when there are legal or other proceedings. Article 37, paragraph 1 calls for cooperation with law enforcement on the part of those who may have been involved in corruption, and for possible mitigation of punishments where such cooperation is given. Article 8, paragraph 4 calls for more specific measures to encourage and protect reporting by public officials who encounter corruption in the course of their duties or employment.

The expected impacts are:

• To increase the reporting and investigation of corrupt practices;

• To deter corruption by increasing the likelihood of detection and punishment;

• To provide a further mechanism for the identification and reporting of corruption, thereby adding to the overall assessment of the nature and extent of corruption, and to public awareness of the problem;

- To improve public empowerment by involving citizens in enforcing anti-corruption measures; and
- To heighten public confidence in Governmental anti-corruption efforts.

DESCRIPTION

Complaints about corruption trigger investigation, prosecution or other sanctions. Thus complaint mechanisms form an important element of overall strategies, and it is important to provide a number of accessible and secure points at which corruption can be reported throughout the public sector. There should be different institutions to ensure that both citizens and public servants can report corrupt behaviour such as disloyalty, breach of trust, self-promoting or bad judgment without personal or financial disadvantage.

a) Internal and external mechanisms

Mechanisms may be internal to specific agencies or other entities, or external in the sense that they operate over the entire public sector. The former tend to be more accessible and can be staffed by experts specialized in dealing with corruption in the agency at hand, such as military or law-enforcement entities, the judiciary or public procurement systems. Since they are closer to the actual sources of corruption, however, greater precautions may be needed to ensure that they are not subverted and that those who report to them are adequately protected. External agencies may be specialized with respect to corruption and similar malfeasance, such as auditors, ombudsman and inspectors, or law enforcement agencies with general criminal justice mandates that include corruption offences.

Procedures should establish clear obligations for every member of the Government, as well as criteria as to what constitutes a reportable incident or allegation and to whom and how that report must be made. Each organization can develop rules appropriate to its own culture and to that of counterpart organizations. The supervisor would normally be the first point of contact of any allegation but an ethics officer for the entire organization may be designated as primary referral point if the allegation concerns the supervisor. The chain of referral to the appropriate investigating authority should be clear, with time limits and explicit standards governing which allegations must be referred for review by a criminal justice authority.

b) Awareness and independence.

Critical to the success of reporting mechanisms is the awareness of potential sources of information that they exist and afford an environment where malfeasance can be reported without fear of retaliation or other consequences. The measures used to ensure awareness may depend to some degree on whether the mechanism has been established for reporting in a particular

context, or for more general reporting.[86] As with other anti-corruption bodies, a sufficient degree of independence is needed, both to ensure that guarantees of protection can be delivered, and to ensure that cases of reported corruption are acted upon effectively and not compromised.[87]

RELATED TOOLS

Related tools to strengthen social control mechanisms could be:

- Establish, disseminate, discuss and enforce a code of conduct for public servants;
- Establish and disseminate, discuss and enforce a citizens' charter;
- Establish an independent and credible complaints mechanism whereby the public and other elements of the criminal justice system can file complaints;
- Establish a disciplinary mechanism with the capability to investigate complaints and enforce disciplinary action when necessary;
- Conduct an independent comprehensive assessment of the levels, cost, coverage and quality of service delivery, including the perceived trust level between the public service and the public;
- Simplify complaints procedures;
- Raise public awareness as to where and how to complain, for example through campaigns giving the public corruption "hotlines";
- Introduce a computerized complaints system allowing institutions to record and analyse all complaints and to monitor actions taken to deal with the complaints.

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[86] See United Nations Convention against Corruption, Article 13, paragraph 2 (general awareness or reporting mechanism) and Article 8, paragraph 4 (reporting and protection of public officials).
[87] Both of the provisions of the United Nations Convention against Corruption which refer to specialized anti-corruption bodies, Articles 6 and 36, include independence as essential elements.

TOOL #27

CITIZENS' CHARTERS

Many anti-corruption measures, including those in this Tool Kit, involve elements intended to establish expectations with respect to ethical and practical standards and best practices. Officials can be trained in good practice and threatened with negative consequences if they fail to meet at least minimum standards, but experience suggests that such measures are less effective in an environment where there are low expectations on the part of those for whom functions are performed and services are delivered. As a result, anti-corruption efforts usually incorporate elements intended to develop, establish and promote basic standards for ethical conduct and good practices. In this context, citizens' charters and similar documents can be seen as complementary to codes of conduct. Where codes of conduct set and enforce standards from within public sector organizations, citizens' charters establish those same standards from outside, by codifying the standards and making outsiders who deal with the organization in question aware of them. Often they are composed in terms of rights or legitimate expectations, in the sense that consumers or users of a service are told that they have a right to expect certain specified standards. In some cases a remedy may be provided for where the standards are not met, and consumers are usually told how to complain.

The key objectives of citizens' charters are:
*   To promote better government that provides   high quality, efficient and effective public services and regulation, delivered in an accountable, open, accessible and responsive way; and
*   To maintain and enhance professional and ethical standards of the civil service and non-departmental public bodies and promote high standards of accountability and openness in the wider public sector.

DESCRIPTION

The principles of a citizens' charter are:

Standards
Explicit standards regarding quality, timeliness, cost, integrity and coverage of services must be published and monitored as a service that individual users can reasonably expect. Performance against those standards must also be published.

Information and Openness
Full and accurate information must be made readily available in plain language about how the service is run, what it costs, how it performs and who is in charge.

Choice and consultation

Wherever possible, choice must be provided. There must be regular and systematic consultation with users, and their views must be taken into account before final decisions are reached on standards.

Courtesy and helpfulness

Public servants must be courteous and provide helpful service. Services are available equally to all who are entitled to them and must be run   for   their convenience.

Putting things right

If things go wrong, an apology, together with a full explanation and a swift and effective remedy, must be made. An easy-to-use complaint systems must be publicized.

Value for Money

Services must be efficient and economical, within the resources the country can afford. Independent validation of performance against standards must be made.

Where are citizens' charters found? [88]

As an example, there are 40 national charters covering the major public services in England and Wales, Scotland and Northern Ireland, of which the most important are the Patients' Charter, the Parents' Charter and the Passengers' Charter, as these are the public services that affect most people. Each charter sets standards, tells people what they can expect and what to do if they wish to complain. Each organization publishes information showing how well it has performed against the standard. For example, some local railway stations publish information every month showing what percentage of train services have been on time. Every November, the Government publishes league tables of the performance of schools, showing how well the students in every school in the country have performed in the summer national examinations.

A more recent development has been the publication of standards by local bodies such as schools, hospitals and police forces. They cover the same items as the national standards, but are directed at showing how local organizations serve the local community. There are now some 10,000 such standards in the United Kingdom.

Charter Mark

One of the key developments in the United Kingdom was the Charter Mark scheme, a form of quality assurance. Organizations are assessed against six standards and have to show an area of innovation in customer service. If they match the overall standard, they are awarded a Charter Mark that they hold for three years. They then have to reapply.

In the first year (1991) 296 organizations applied and 36 Charter Marks were awarded climbing to 945 applications in 1997. Members of the public were invited

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[88] Citizens Charter, by Jim Barron, Head of the Office of Civil Services Commissioners, United Kingdom, Paper presented in Ukraine National Integrity Meeting, 1997

to nominate organizations they think provide good service and in 1997 there were 25,000 such nominations.

One of the aims is to improve customer service by encouraging competition both within the organization and externally.

COMPLAINTS[89]

Another key development was the attention given to complaints procedures. A British Minister once described complaints as "the jewels in the crown", meaning that not only could one correct the mistake but one also had an opportunity to see what had caused the complaint and make improvements to the system.

When a Courts' Charter was mooted in the United Kingdom, public reaction was that such a mechanism was too complicated as it depended on whether a complaint was to be made about the police, the prosecution or the court administration and no one person had responsibility for or knew all the systems. After a heated discussion, it was agreed that members of the public could not be expected to understand that. Thus, one person in every court was given the task of dealing with initial complaints and pointing people in the right direction.

A Charter Unit in the United Kingdom carried out a survey of complaint systems among a range of public services and found much variation. Representatives of consumer groups were therefore asked to participate in a study to develop the key features of a good complaints procedure. The procedure was published as an example of good practice, and organizations were invited to match their systems against it.

The Citizens' Charter Unit

The unit started out in 1991 with 10 people. The number grew rapidly to 30 and staffing remains at that level. The Citizens' Charter Group in the UK worked with the office of the Prime Minister to draw up the national charters. It also led studies into particular topics, such as complaint systems. As the Charter took hold in the public imagination and among public services, the role of the unit changed. The Citizen Charter Group staff became more like facilitators, spreading good practice through discussion with departments, working groups and the annual report and regular newsletters. Instead of assessing Charter Mark, the scale of the scheme now means that the Citizens' Charter Unit now manages a team of assessors who do the work on their behalf. The core function of the unit, however, remains the same: to think about the strategic purpose of the Charter and the way ahead.

The Advisory Panel

The Citizens' Charter Unit in the United Kingdom is assisted by an Advisory Panel. The panel was appointed by Prime Minister to advise on the Charter and how it should be implemented.

Each member has wide experience of customer service in the private or public sector, and is able to work closely with the unit on individual charters and on the strategic development of the initiative.

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[89] See United Nations Convention against Corruption, Article 8, paragraph 4.

PRECONDITIONS AND RISKS

Important preconditions for success are:

Top level commitment.
In the United Kingdom, the Prime Minister held seminars of all Ministers and Permanent Secretaries every six months to ask them what progress they had made. Having to report in such a forum encouraged departments to take the initiative seriously and make sure that they kept up with the pace of other departments.

Public support.
The programme was working hand in glove with development in the public sector. Public services could see that and learn from wider experiencesalthough, in some instances, public services were ahead of what even the private sector was doing.

Measurable performance standards.
The publications both of standards and of measurement of performance against them was key. People knew what to expect   and   how   to   complain. Organizations did not like to be shown publicly to be failing, with schools league tables being a prime example, and that led to pressure for improvements,

Incentives.
Rewarding achievement through the Charter Mark scheme was also key. Paradoxically it was shown by failure. One large utility, that had been awarded Charter Mark, began to attract many complaints about its service. There was a great deal of speculation in the press about why it had been given the award, and whether it should keep it. Rather than risk applying again and failing, the utility decided to withdraw from the scheme. That served to emphasize that Charter Mark was an award worth having: indeed a number of private sector organizations applied for it, but of course they were ineligible.

National and local charters.
The move to local charters was also important, as it stressed and encouraged the role of local providers in the local community. Central Government may set out principles, but it cannot manage the many thousands of local services through which most people have contact with the Government.

Lessons learned from mistakes

Be realistic.
> In the UK a Charterline was developed. The idea was to provide one telephone number that anyone could ring to find out about standards of service across the public sector and how to complain. Market research had showed there was the potential for such a service and a sophisticated call-management system was developed in partnership with the private sector. When the Charterline was pilot tested, very few calls were received.

The programme had been too ambitious as:
- It was trying to provide information on too many services;
- The cost of storing that information and keeping it up to date was prohibitive; and

- The public had not at that stage seen the difference that the Citizens' Charter would make and so did not see the need for the service.

RELATED TOOLS

Tools that may be required before a citizens' charter can be successfully implemented include:

- Development and promotion of citizen charter and similar documents;
- Tools that raise awareness of the code of conduct and the citizens' charter and establish appropriate expectations on the part of populations, particularly those directly affected by the actions of those subject to the charter, such as publicity campaigns;
- The establishment of corresponding codes of conduct;
- Establishment of an independent and credible complaints mechanisms to deal with complaints that the prescribed standards have not been met;
- Establishment of appropriate disciplinary procedures, including tribunals and other bodies, to investigate complaints, adjudicate cases and impose and enforce appropriate remedies or other outcomes.

Tools that may be needed in conjunction with citizens' charters include:
- Tools that involve the training and awareness-raising of officials subject to each citizens' charter to ensure adherence and identify problems with the charter itself;
- The conducting of regular, independent and comprehensive assessments of institutions and, where necessary, of individuals, to measure performance against the prescribed standards;
- The enforcement of the citizens' charter by investigating and dealing with complaints, as well as more proactive measures such as "integrity testing"; and,
- The linking of procedures to enforce the charter with other measures that may identify corruption, such as more general assessments of performance and the comparison of disclosed assets with known incomes

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

TOOL #36

WHISTLEBLOWERS: PROTECTION OF PERSONS WHO REPORT CORRUPTION

The purpose of whistleblower protection is to encourage people to report crime, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of justice and health and environmental threats by safeguarding them against victimization, dismissal and other forms of reprisal.

Corruption flourishes in a culture of inertia, secrecy and silence. People are often aware of misconduct but are frightened to report it. Public inquiries into major disasters and scandals have shown that such a workplace culture has cost lives, damaged livelihoods, caused thousands of jobs to be lost and undermined public confidence in major institutions. In some cases, victims may have been compensated but no one was held accountable for what happened. Cultures of silence persist when those who "blow the whistle" are victimized. To overcome that and to promote a culture of transparency and accountability, a clear and simple framework should be established that encourages legitimate reporting of corruption and other malfeasance and protects such "whistleblowers" from victimization or retaliation. The particular importance of such protections in anti-corruption efforts is illustrated by the fact that, in drafting the United Nations Convention against Corruption, Member States not only provided the same basic protections for victims and witnesses used in the earlier Convention against Transnational Organized Crime, but also added a further article dealing specifically with the protection of persons who report corruption "…in good faith and on reasonable grounds…"[90]

A LAW TO PROTECT WHISTLEBLOWERS.

The main purpose of whistleblower laws is to provide protection for insiders who report cases of maladministration, corruption and other illicit or improper behaviour. This provides incentives to report, or at a minimum, prevents potential whistleblowers from being deterred by the possibility of retaliation or other unpleasant consequences. It also ensures fair and just treatment for those who risk their own position for the good of the organization. Most potential

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[90] On the protection of victims and witnesses, see United Nations Convention against Transnational Organized Crime (2000), Articles 24 and 25 and United Nations Convention against Corruption (2003), Article 32. The later instrument merges the provisions and incorporates protection for experts who testify in corruption cases, but otherwise the provisions are similar. On the protection of those who report corruption, see article 33 of the Convention against Corruption, which provides that:

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

whistleblowers will be affected not by the mere existence of a law, but by some plausible assurance that they will actually be protected from consequences that may range from minor harassment to murder. It is therefore essential that, once laws are in place, they be actively enforced and administered, and that this is readily apparent.

Whistleblower laws also require the striking of a balance. While reporting genuine malfeasance is important, false or malicious reports also occur by those seeking to conceal their own wrongdoing, settle scores or for other purposes. This can waste valuable investigative resources and damage the credibility of anti-corruption programmes, and it is therefore important that whistleblower laws provide for some test of legitimacy, and that they are administered so as to distinguish between genuine and false reporting. This in turn could be used improperly against genuine whistleblowers, but this can be addressed by establishing a presumption in favour of the whistleblower. In a provision based on Article 33 of the United Nations Convention against Corruption, for example, the protection would apply to any person who reports corruption *in good faith and on reasonable grounds*. Good faith should be presumed in favour of the person claiming protection, but where it is proved that the report was false and not in good faith, there should be sanctions against that person. Those who exploit anti-corruption measures improperly are arguably just as great a threat as the corruption itself.

Immediate protection.

The first aim of any whistleblower law is to prevent the person making the disclosure from being victimized, dismissed or treated unfairly in any other way, for having revealed the information. The best way to do this is to keep the identity of the whistleblower and the content of the disclosure confidential for as long as possible. Where this is not possible or cannot be assured, an immediate assessment of the extent of the threat to the person should be made, and if it is serious, removal to a safe location and subsequent concealment may be needed. Under the United Nations Convention against Corruption, in the case of someone who only reports corruption, unspecified "appropriate measures to provide protection" are required. Where the individual becomes a witness in proceedings, this may extend to physical protection, remote testimony, relocation, and even relocation to another country.[91]

Deterrence.

The law should establish an offence for employers or others who retaliate against or take any adverse action against whistleblowers for disclosures made in accordance with the law.

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[91] Article 32, subparagraphs 2(a) (physical protection and relocation), 2(b) special rules for testimony) and paragraph 3 (relocation to another State). Under paragraph 3, foreign relocations would be based on specific agreements or arrangements between countries, and need not necessarily be to another State Party to the Convention itself.

Compensation.

The law should oblige the recipient of the disclosure to treat its content and the identity of the whistleblower confidentially. It should also contain rules providing for compensation or reinstatement in case whistleblowers suffer victimization or retaliation for disclosing the information. In the case of dismissal, it may not always be acceptable for whistleblowers to be reinstated into their position. The law should therefore provide for alternative solutions by obliging employers either to provide for a job in another branch or organization of the same institution, or to pay financial compensation.

Coordination with the legal framework.

The part of the whistleblower law that seeks to protect whistleblowers from unfair dismissal must be coordinated with labour laws. The degree of protection may depend to some degree on the extent to which workers are protected in general. Where employment standards and remedies for unjust or wrongful dismissal apply, for example, it will be necessary only to ensure that these are extended to whistleblowers and not circumvented in some way. In countries where "employment at will" or similar policies apply that allow for dismissal or other measures without any cause on the employer's part, stricter and more carefully tailored protections may be needed. Employees need to be protected against dismissal, but where whistleblowing places the employee in a stronger position than otherwise, precautions against false reports may be needed as well. Related to this would also be the extent to which abuses are criminalized (see preceding paragraph).

Who to report to.

Generally, the law should provide for at least two levels of institutions to which whistleblowers can report their suspicions or offer evidence. The first level should include entities within the organization for which the whistleblower works, such as supervisors, heads of the organization or internal or external oversight bodies created specifically to deal with maladministration. If the whistleblower is a public servant he or she should be enabled to report to bodies such as an ombudsman, an anti-corruption agency or an Auditor General.

Whistleblowers should be allowed to turn to a second level of institutions if their disclosures to one of the first-level institutions have not produced appropriate results and, in particular, if the person or institution to which the information was disclosed:

- Decided not to investigate:
- Did not complete the investigation within a reasonable time;
- Took no action regardless of the positive results of the investigation; or
- Did not report back to the whistleblower within a certain time.

Whistleblowers should also be given the possibility to directly address the second level institutions if they:

- Have reason to believe that they would be victimized if they raise the matter internally or with a prescribed external body;
- Reasonably fear a cover-up.

Second-level institutions could be designated members of the legislature, the Government or the media.

Implementation.

Experience shows that whistleblower laws alone will not encourage people to come forward. In a survey carried out among public officials in New South Wales, Australia, regarding the effectiveness of the protection of the Whistleblower Act 1992, 85 per cent of the interviewees were unsure about either the willingness or the desire of their employers to protect them. Some 50 per cent stated that they would refuse to make a disclosure for fear of reprisal. The Independent Commission against Corruption (ICAC) of New South Wales concluded that, in order to help the Whistleblower Act work:

•   There must be a real commitment within the organization to act upon disclosures and to protect those making them; and
•   An effective internal reporting system must be established and widely publicized in the organization.

A law to protect against false allegations.

Since whistle blowing can be a double-edged sword, it is necessary to protect the rights and reputations of persons against frivolous, vexatious and malicious allegations. The events in the post-war United States and the phenomenon of the "informer" in authoritarian States, underscores the danger. Whistleblower legislation should therefore include clear rules to restore damage caused by false allegations. In particular, the law should contain minimum measures to restore a damaged reputation. Criminal codes normally contain provisions penalizing those who knowingly come forward with false allegations. It should be made clear to whistleblowers that those rules apply also to them if their allegations are not made in good faith. As noted above, there should generally be a presumption that a report was made in good faith, but where it is proved that a report was false and not in good faith, appropriate sanctions should be applied.

Dealing with whistleblowers and managing their expectations.

In order to ensure effective implementation of whistleblower legislation, those people or institutions that receive the disclosures must be trained in dealing with whistleblowers. Whistleblowers often invest much of their time and energy on the allegations they make. They suffer from a high level of stress. If their expectations are not managed properly, it might prove fatal for the investigation and damage trust in the investigating body. In particular, the investigation process and the expected outcome (criminal charges, disciplinary action) must be explained to the whistleblowers, as well as the likelihood of producing sufficient evidence to take action, and the duration and difficulties of investigation. Whistleblowers should also be informed that the further the investigation proceeds, the more likely it will become for their identity to be revealed and for them to be subjected to various forms of reprisal.

Make the whistleblower "last the distance".

During the investigation, whistleblowers must be kept updated about progress made. Concern about the effectiveness of protection must be acknowledged. The law will never be able to provide full protection, and whistleblowers must be made aware of that. It is therefore essential for the investigating body to make every effort to ensure that whistleblowers "last the distance" by informing them about all of the steps taken and to be taken and the implications for the continued anonymity of the whistleblower, reactions they may encounter as well as other factors that may impact the willingness of whistleblowers to continue providing information to authorities. In addition, they should be given legal advice and counseling.

Avoid leakage of information.

The most effective way of protecting whistleblowers is to maintain confidentiality regarding their identity and the content of their disclosures. Some country experiences, however, show that the recipients of disclosures do not pay enough attention to that important factor. Quite often, information is leaked, rumours spread, and whistleblowers suffer reprisals. It is not enough to sanction the leakage of information. Instead, it may be more effective to train the recipients of disclosures on how to conduct investigations while protecting the identity of the whistleblower for as long as possible.

PRECONDITIONS AND RISKS

Perception that commitment is lacking.

If whistleblowers are not convinced that the investigating body is committed, to both their own protection and action against corruption, they will turn away and probably not take any further steps.

Credible investigating body.

If there are no external independent bodies to which whistleblowers can directly turn, many potential whistleblowers will not voice their concern.

Clarity of the law.

Since the law must instill trust and the target audience may often have modest educational backgrounds, it must be drafted in an way that is easily understood.

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