

GUIDES TO GOOD GOVERN- ANCE

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Anti-corruption policies and agencies



CENTRE FOR INTEGRITY
IN THE DEFENCE SECTOR



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The Centre for Integrity in the Defence Sector (CIDS) is promoting integrity, anti-corruption measures and good governance in the defence sector. Working with Norwegian and international partners, the centre seeks to build competence, raise awareness and provide practical means to reduce risks of corruption. CIDS was established by the Norwegian Ministry of Defence in 2012.

The views expressed in this booklet are those of the author and do not necessarily represent the views of, and should not be attributed to, the Norwegian Ministry of Defence.

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FOREWORD

Guides to Good Governance

Guides to Good Governance are a series of small booklets each of which discusses a particular topic of importance to good governance in the defence sector. The format is meant to be easy to read without oversimplifying issues that are, by their nature, multifaceted and sometimes technical. However, the guides are written for non-specialists and do not require a professional background in any particular field. They can be read by individuals with an interest in learning more about one or several topics of direct relevance to good governance in the defence sector – or the public sector more generally – and they can also be used for educational purposes.

Centre for integrity in the Defence Sector (CIDS) is a competence centre under the Norwegian Ministry of Defence and plays an active role in NATO's Building Integrity Programme. Its mandate encompasses both national and international work, including projects, courses, and competence and capacity building. The reason for promoting integrity in a systematic way is to reduce the risk of corruption and other unethical behaviours while

improving transparency and accountability in order to establish the necessary conditions for good governance within a framework of democracy and rule of law. For this undertaking, public servants with personal as well as professional integrity and high ethical standards are crucial.

The guide *Anti-corruption policies and agencies* was written by Francisco Cardona and edited by Ingrid Busterud. I would like to thank them for their inspiring work.

Comments and responses concerning the *Guides to Good Governance* are always welcome (cids@ifs.mil.no). More information about CIDS may be found at www.cids.no.



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Introduction

Corruption is a symptom of deeper ills in a society and of 'unsolved governance problems resulting from the incompleteness of the process of building an effective and accountable state'¹. It denotes weak governance institutions, failings of the political elites to administer the state resources and, if corruption is systemic, it may also represent a major threat to a country's security. The same institutional weaknesses that produce corruption also may negatively affect national and international security. Corruption bears a high economic cost for the public coffers and represents a major hurdle to economic development. It has destructive effects on the social fabric. Corruption devastates social trust in public institutions and governments.

The paper deals with the institutionalisation of anti-corruption policies through specialised anti-corruption bodies or agencies. These have proliferated in recent years in many countries, particularly under the influence of international organisations and international treaties, as instruments to prevent and combat corruption. A recent tally put the number of Anti-Corruption agencies (ACAs) around the world at around a hundred. The most influential international convention on ACAs remains the United Nations Convention against Corruption adopted by the UN General Assembly on 31 October 2003 (UNCAC).

¹ OECD, 2007; "Policy Paper and Principles on Anti-Corruption: Setting an Agenda for Collective Action", Paris: OECD-DAC Publishing. At: <http://www.oecd.org/dac/governance-peace/governance/docs/39618679.pdf>

What is an Anti-corruption Agency?

An Anti-corruption Agency (ACA) may be defined as an independent institution, located at arm's length from executive government institutions, whose main function is to coordinate all activities geared towards the implementation of a country's anti-corruption strategy and to provide feedback for the redesign and improvement of that strategy. How the ACA is designed and located in the overall government structure are crucial both to preserve its professional autonomy and institutional independence, and to ensure its professional accountability and the evaluation of the agency over time. Design weaknesses, along with performance failures, will probably be conducive to an ACA's irrelevance.

This definition is one among many, but the two major elements, functions (competences) and location (and therefore accountability lines), are the two variables that underlie the different definitions of ACA and various national models. As we will see, there are several models of ACA in different countries depending on their functions, jurisdiction and established accountability lines.²

² OECD, 2013; "Specialised Anti-corruption Institutions: Review of Models", Paris: OECD Publishing. At: <http://www.oecd.org/corruption/acn/specialisedanti-corruptioninstitutions-reviewofmodels.htm>

Functions, powers and responsibility

The main and most common functions attributed to Anti-Corruption Agencies are:

1. anti-corruption policy proposals
2. coordination, monitoring and knowledge creation through research on corruption
3. prevention of corruption
4. anti-corruption awareness raising and education
5. investigation of presumed cases of corruption
6. prosecution of corruption

These functions can be combined differently in different countries. Some ACAs stress preventive functions rather than investigation and prosecution. Others work in reverse of that pattern. Usually, the functions of an ACA consist of developing and coordinating anti-corruption strategies and action plans, monitoring and coordinating implementation and assessing efficiency and effectiveness of anti-corruption measures. Research on corruption can tell us how widespread corruption is in a country

and what sectors are most exposed to it. ACAs are focal points for international cooperation and exchange of experiences on anti-corruption policies and practices.

Prevention of corruption is a key responsibility usually attributed to the ACAs. Prevention of corruption is a complex endeavour. It usually comprises many measures or an array of either simultaneous or sequenced actions that need to be carefully coordinated in order to ensure consistency and effectiveness. Such measures can include the promotion and protection of officials' integrity, including the judiciary and persons involved in financing political parties. Protection of integrity may include management of the conflict of interest regime, not least by screening compliance and keeping records of asset declarations and interest disclosures of public officials, including elected ones. Preventive policies may also include in-depth assessments of specific sectors or activities such as public procurement, administrative procedures, access to information of public interest, and evaluation of corruption risks in the private sector.

Anti-corruption awareness-raising and education include basically pro-integrity advocacy,

including development of training and education activities targeting specific social groups or sectors. It may also involve establishing partnerships with civil society organisations.

Anti-corruption investigation may be a more problematic activity for an ACA, as criminal investigations normally are handled by the police, investigative magistrates or prosecutorial services. The investigation and scrutiny of public managers' decisions and their handling of public funds are usually entrusted to internal comptrollers and external auditors. An ACA wielding investigative powers can clash with these bodies in never-ending conflicts of role and responsibilities. There is no consensus on whether an ACA should have powers to step into the domains of the police, prosecuting officials or financial auditors. Nevertheless, some ACAs wield investigative powers in some specific areas (i.e. where they undertake preliminary investigations in cases of citizens' complaints or whistle blowing by staff members of public institutions, to determine whether there may be a criminal case before forwarding the file to the prosecutor).

Anti-corruption prosecution is also problematic if it is assigned to ACAs, as in principle the defence of the public interest in a criminal procedure is the responsibility of the public prosecutor. The victims of crime may also have standing rights, and it is unclear whether granting standing rights onto an ACA in a criminal procedure would produce any added value. On the other hand, it could be useful to involve an ACA in order to pursue an accusation against presumably corrupt individuals in cases where the prosecutor has decided to dismiss the case on the basis of insufficient investigation.

Success factors

The standards for ACAs set up by international conventions, especially the UNCAC (article 6) and the Council of Europe Criminal Law Convention on Corruption (article 20), are:

- independence
- specialisation
- expertise
- adequate resources and staff size

Independence has degrees. An ACA may enjoy a very high degree of independence or be awarded a lower degree, depending on the functions allocated to the agency. Independence means an ability to decide and act impartially and without external influence, especially when it comes to investigative activities. This translates, inter alia, into protection from political interference and from undue pressures of any kind. Independence is thus a value that cannot be achieved if the political will to fight corruption is weak or non-existent. If the main responsibility of the ACA is to educate, raise awareness or fulfil a limited number of prevention responsibilities, the degree of independence required beyond the general pro-

fessional autonomy of the civil service will be rather low. The same is true of the functions of policy analysis and policy recommendation. The more the functions lean in the direction of investigation and law enforcement, the more independence is required.

Specialisation means that the law has established a focused, specific mandate for the agency and that the staff are professionally specialised. The staff as a whole must encompass all relevant skills needed for the ACA to fulfil its mandate or mission. Specialisation is first and foremost required by the CoE Criminal Law Convention on Corruption (article 20); for example, law enforcement bodies such as anti-corruption prosecutors. In developed countries, specialisation is often ensured by assigning anti-corruption tasks to existing persons or units within existing law enforcement bodies. In developing countries and countries in transition, where corruption is serious and the involvement of donors is more widespread, the trend has been to establish separate anti-corruption bodies to better guarantee specialisation.

Generally speaking, in order for them to have some success, specialised anti-corruption bod-

ies aimed at actively countering corruption, especially anti-corruption prosecution offices, require at least the following capacities: First, they need to specialize in and focus on serious criminality by leaving petty corruption to the regular prosecution offices. Second, ACAs should work in close cooperation with a police unit highly specialized in complex economic and financial criminality and have access to relevant expertise of different types, in particular auditors and other professionals from ministries of finance or audit institutions, as well as IT specialists. Third, judges need to have an equivalent degree of specialization to that of prosecutors. Fourth, the jurisdiction of the ACA as well as that of specialized judges needs to be national and cover the whole territory without restrictions. Fifth, the description of criminal corruption-related actions in the penal code has to be clear and unambiguous (see below) and the legislation on criminal proceedings must be coherent. Sixth, the lines of accountability of specialized anti-corruption prosecutors, from the bottom up to the general prosecutor, need to be clear and effective in practice. The professional independence of prosecutors must also be sufficiently protected by legislation. Finally, investigative capacities and effective means of gathering evidence through undercover investigations, wiretapping, access to bank accounts and sound witness protection measures, are indispensable.

Although these are the international standards on which the success of ACAs relies, the sustainability of these institutions is never guaranteed. Many countries face serious difficulties in meeting the international standards for political or other reasons. Corruption prevention and control are highly competence-based governmental and non-governmental policy processes aimed at curbing the incidence and

scope of corruption. Those processes need to rely on and use a combination of guiding principles and instruments. Efforts to make corruption control more effective require a complex mix of repressive and preventive approaches, of incentives and restraints, of internally and externally imposed standards of integrity, of procedural, institutional, structural and educational measures, of interrelated control mechanisms, as well as of enforceable laws, ethics principles and moral guidance.

International public and private standard-setting organisations have endeavoured to facilitate and harmonise these principles and instruments in order to create synergies across borders in Europe and around the world. That notwithstanding, for all the above-mentioned elements to function as a sound integrity system, a good deal of national political will and governmental commitment is necessary. As always, good and committed leadership at the top is crucial.

The original rationale behind an ACA may determine its future success. There are many reasons why a government decides to create an ACA. A significant number of countries, usually outside the OECD membership, have created ACAs under combined international and domestic pressure to implement article 6 of the UNCAC.

UNCAC Article 6: Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate that prevent corruption by such means as:

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

- (b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence.

The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

The implementation of the UNCAC provision referred to above may have various motivations such as a government's need to respond to corruption scandals, to crises of confidence in public institutions, or declining public trust in the political class.

Whatever the case might be, it is important that the anti-corruption effort is viewed within the broader context of governance – including governance reform -- and that responsibility for reform is in the hands of those with the

legitimacy and decisional capacity to manage a process of strengthening the public integrity framework. Such legitimacy can only be ensured by the political representatives voted in by the electorate. It is very difficult, especially for foreign observers, to identify politically feasible strategies or reform paths, whereas for national governments, the difficulty lies in the risk of alienating powerful local business people, politicians, or criminal networks that form the main and strongest corruption constituency and have vested interests in preserving the status quo.

Whilst acknowledging the government as the ultimately responsible for anti-corruption policies, systemic anti-corruption reform advocates a comprehensive and inclusive approach to law-making and law implementation. Multi-stakeholder consultation practices with an aim to assist the drafting of legislation are crucial to success. Context matters, which means that different countries require different policy mixes and country-tailored legal-institutional combinations. Reformers should understand that the various issues of concern in the area of public governance – capacity and competence development, coordination difficulties, results orientation, public participation, institutional trust, etc. – are also part of the anti-corruption effort and need to be addressed in a systematic manner.

Success also depends on the expectations placed on an ACA from its inception. More specifically, an ACA can neither substitute for an incompetent or corrupt government nor remedy its failures. An ACA cannot by itself compensate for the lack of credibility of other institutions, especially the government, the public administration, and the judiciary. As Unsworth points out, corruption is increasingly

seen as a result of poor governance and combating it still is excessively focused on institutional models rather than on political processes.³ Overstated expectations of an ACA without introducing reforms to improve the general governance of a country, not least the political processes of a society, are misplaced and may be counterproductive.

The way in which an ACA interacts with its political environment is also a factor of success. In this regard, the case of the Portuguese ACA (*Alta Autoridade Contra a Corrupção*) is illustrative. According to de Sousa, the demise of the Portuguese ACA was not related to its objective performance, which was reputed to be good, but to the tensions between the agency and the political class.⁴ The agency's work often challenged the interests of politicians. The Portuguese agency was perhaps the first ACA to appear in the Western world. It was established in 1983 by government decree as part of a political thrust to minimise public discontent with patronage-ridden party politics. It was not supposed to look into corruption in political parties. In 1986 it was given investigative powers and started to make inroads into and threaten the interests of the political establishment. It was terminated, without any debate on its performance, by act of parliament in 1992, just when other Western countries were thinking of creating anti-corruption agencies.

³ Unsworth, Sue. 2007; "Rethinking Governance to Fight Corruption". *U4 Brief 2007:7*. Available at: <http://www.u4.no/publications/rethinking-governance-to-fight-corruption/>

⁴ De Sousa, Luis. 2009; "Does Performance Matter to Institutional Survival? The Method and Politics of Performance Measurement for Anti-corruption Agencies". *EUI Working Paper RSCAS 2009/9*. Available at: <http://anchorage-net.org/content/documents/does%20performance%20matter%20to%20institutional%20survival.pdf>

Johnsøn et al. systematise the existing literature on success factors into the following five factors:

1. Contextual factors: The degree of success of ACAs must be seen in context. Organisational cultures, levels of national development, and political stability set the background scene for these bodies. It can hardly be expected that an ACA will function adequately in a country with serious governance problems.
2. Legal framework and policy factors: ACAs encounter various constraints to their mandate as a result of policy choices during the legislative process, which may determine their legal status, institutional location, special powers, sharing of competences and information, financial autonomy, reporting procedures, etc. Under their statutes, all ACAs are in some sense independent. In practice, however, the degree of operational autonomy varies considerably from one agency to another. In many cases, ACAs are operationally and financially independent in name only.
3. Organisational factors: Low levels of performance also derive from inadequate recruitment and accountability procedures and inadequate or non-existent management arrangements that determine the organisation's capacity to operate and deliver on its mandate. The technical capacity of an ACA can also be hampered by ineffective collaboration with other authorities. Difficulties in obtaining evidence about corruption practices or information about risk areas from other state bodies or agencies reduce the effectiveness of ACAs. ACAs also often lack the authority to ensure their recommenda-

tions are enforced by other public institutions. In most cases, the legal framework for inter-institutional collaboration is not properly addressed at the outset. In addition, ACAs often find themselves stretched to deliver on overly broad mandates. Those that are multipurpose agencies are often expected to clamp down on corruption (a fear-based function) while at the same time serving as an advisory body on prevention (a trust-based function).

4. Financial factors: Lack of sufficient financial resources is a constant threat to any organisation. While large budgets do not necessarily generate greater levels of productivity, it is important to note that some ACAs work under strained financial conditions that may seriously compromise the effective pursuit of their objectives.
5. Leadership and expertise factors: The individual skills, experience, and knowledge of ACA staff are fundamental to their success. Capacity issues concern both the technical capacities of ACAs and their overall functional capacities (such as leadership, human resource management, planning, and organisational learning). One of the advantages of ACAs in comparison to traditional law enforcers is their capacity to generate a knowledge-based approach to the fight against corruption through risk assessments and other specialized studies. In principle, these bodies ought to be provided with a team of experts while, at the same time, also be able to draw on the knowledge and experience of other monitoring and regulatory units and to share their own in exchange. In practice, however, very few ACAs have access to in-house research and

similar knowledge-production capacities.⁵

An additional set of success factors would include the ACAs cooperating with anti-corruption stakeholders both domestically and internationally, including the media, major NGOs, universities and other ACAs around the world. Such cooperation is useful to gather information, develop knowledge, obtain technical and political support, and to create synergies concerning specific corruption investigations domestically and across borders. To disseminate 'good practice', through international and domestic networking, may represent a strong endorsement to the role and position of an ACA.

Adequate accountability mechanisms help ensure the legitimacy and credibility of an ACA, and therefore increase its likelihood of success. Indeed, however autonomous and independent an ACA might be on paper, it has to be integrated in the system of checks and balances of the country. As said earlier, independence has degrees. International standards on ACAs, especially the UNCAC and the CoE Convention on Criminal Law, do not demand the same degree of independence as required of judges. According to the OECD, the forms of accountability have to be tailored to the ACA's level of specialisation, institutional placement, mandate, functions and powers against other institutions and individuals.⁶

Overall accountability should include a dimension of accountability to the public in order to muster the support of the population in cases of politically motivated attacks against the agency. One sort of public accountability is to

⁵ Johnsøn, Jesper et al. 2011; "How to monitor and evaluate anti-corruption agencies: Guidelines for agencies, donors, and evaluators". *U4 Issue 2011:8*. Available at: <http://www.cmi.no/publications/file/4171-how-to-monitor-and-evaluate-anti-corruption.pdf>

⁶ OECD. 2013.

ensure public access to the agency. The ACA should develop real corruption complaints mechanisms through which citizens can report, under the protection of anonymity acts to help fight corruption. That has proven to be a good way to involve the citizens in the corruption prevention effort. Anonymous reports of corruption require a minimal, preliminary investigation by the ACA to substantiate and initially verify the received information, before the case can be forwarded to the prosecutor or the police or, alternatively, dismissed as unsubstantiated.

As is the case for most public bodies, determining the success or failure of an ACA is not an easy task.⁷ The temptation may be to use only management indicators to measure performance. These may be helpful but the political dimension of the anti-corruption effort cannot be measured through managerial frameworks. In addition, as we have seen earlier, the sustainability of an ACA does not necessarily, nor mainly depend on its performance. To provide substantial results it needs to be embedded within a broader political anti-corruption effort.

⁷ Johnson, Jesper et al. 2011.

Typology and models of ACAs

Considering the multitude of anti-corruption institutions worldwide, their various functions and performance, it is complicated to identify all main functional and structural patterns. According to the OECD, any new institution needs to adjust to the specific national context by taking into account the varying cultural, legal and administrative circumstances.⁸ Identifying 'good practice' and workable models in the establishment of anti-corruption institutions is possible. However, there is no conclusive evidence indicating which model is the most effective in preventing or combating corruption.

A comparative overview of different *models of specialised institutions fighting corruption* can be summarised, according to their main functions, as follows.⁹

- Multipurpose anti-corruption agencies
- Law enforcement institutions specialised in anti-corruption
- Agencies on Anti-corruption Policies and Prevention

⁸ OECD, 2013.
⁹ Ibid.

1. Multi-purpose anti-corruption agencies

This model represents the most prominent example of a single-agency approach based on three key pillars: (a) investigation, (b) prevention, and (c) public outreach and education. However, in most cases prosecution remains a separate function so as to preserve its full independence, that is, the checks and balances within the system. Multi-purpose agencies, therefore, should wield broad powers and be independent both in legal and practical terms.

Such a model is commonly exemplified with the Hong Kong Independent Commission against Corruption and the Singapore Corrupt Practices Investigation Bureau. It has inspired the creation of similar agencies on all continents, including the Independent Commission against Corruption in New South Wales, Australia; the Directorate on Corruption and Economic Crime in Botswana; the Special Investigation Service in Lithuania; the Corruption Prevention and Combating Bureau in Latvia; the Central Anti-corruption Bureau in Poland; and, the Inspector General of Government in Uganda. A number of other agencies, for example in Korea, Thai-

land, Argentina and Ecuador, have adopted elements of the Hong Kong and Singapore strategies, while following these two models less rigorously.

2. Law enforcement type institutions

The anti-corruption specialisation of law enforcement can be implemented in detection, investigation or prosecution bodies. Sometimes, the law enforcement model also includes elements of prevention, coordination and research functions. This model can also result from combining detection, investigation and prosecution of corruption into one single law enforcement body or unit. This is perhaps the most common model in OECD countries. It is the model on which the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) is based, as are the Central Office for the Repression of Corruption in Belgium; the Special Attorney General's Office for the Repression of Economic Offences related with Corruption in Spain; the Office for the Prevention of Corruption and Organised Crime in Croatia; the Romanian National Anti-Corruption Directorate; and the Central Investigation Office of the Public Prosecution Service in Hungary. This model could also apply to internal investigation bodies with a limited jurisdiction to detect and investigate corruption within the law enforcement bodies. Examples of such bodies are the Department of Internal Investigation in Germany; the Metropolitan Police/Anti-corruption Command in the United Kingdom, and the Internal Control Service of the national police in Albania.

3. Preventive institutions

The preventive institution model is the approach on which most ACAs are based. It encompasses quite heterogeneous set-ups. Roughly, three main categories can be singled out:

- a) *Anti-corruption coordinating councils:* Such bodies are usually created to lead the anti-corruption reform efforts in a country, in particular the development, implementation and monitoring of a national anti-corruption strategy. The anti-corruption councils (commissions or committees) consist of responsible government agencies and ministries, representatives of executive, legislative and judicial branches of power, and may also involve civil society actors. The anti-corruption councils are usually not permanent institutions but operate through regular meetings. They may be supported by permanent secretariats. As examples can be mentioned the Anti-corruption Policy Coordination Council in Georgia supported by the Secretariat in the Ministry of Justice; the Commission on Combating Corruption in Azerbaijan; and, the Inter-ministerial Commission of the Fight against Corruption in Albania with its secretariat within the Cabinet of Ministers. High-level anti-corruption councils also exist in Tajikistan, Ukraine and Russia.

- b) *Corruption prevention bodies:* These institutions are also created for the explicit purpose of preventing corruption, but they are permanent and have a broader mandate. The prevention bodies are also entrusted with the coordination of anti-corruption strategies but have other functions too, such as assessment of corruption risks and integrity plans for public institutions and sectors; anti-corruption awareness-raising and education; conflict of interest prevention; asset declaration; political party financing; lobbying; and anti-corruption assessment of legal acts. Examples of this model are the Commission for the Prevention of Corruption (Slovenia); the Directorate for Anti-Corruption Initiative (Montenegro); the Anti-Corruption Agency (Serbia); the Central Service for the Prevention of Corruption (France); the Central Service for Corruption Prevention (ICPC, Morocco); and to some extent also the Commission on Combating Corruption (Azerbaijan).

- c) *Public institutions which contribute to the prevention of corruption and are not explicitly referred to as 'anti-corruption institutions':* Some countries have created dedicated bodies for more narrowly defined issues related to prevention of corruption, such as prevention of conflicts of interest, ethics, integrity or control of asset declarations in the public administration or parliaments. Examples include the National Integrity Agency in Romania; the National Integrity Office in the Netherlands; the Office of Government Ethics in the United States; the Chief Official Ethics Commission in

Lithuania; the Parliamentary Commissioner for Standards in the House of Commons in the United Kingdom; the High Inspectorate of Declaration and Audit of Assets in Albania; and the Independent Commission for Evaluation, Transparency and Integrity in the Public Administration in Italy, to list just a few.

Furthermore, many existing state institutions contribute to the prevention of corruption as part of their designated responsibilities. These include state audit institutions (for example, the Office of the Comptroller General in Brazil) or institutions in charge of public procurement (for instance, the Complaints Board for Public Procurement in Norway). Public internal and external audit institutions, tax authorities and similar public control bodies, can play an important role in preventing and detecting corruption as well. Central election commissions in some countries play a role in enforcing rules on financing of political parties and electoral campaigns, for example, the Electoral Commission in the United Kingdom. Business ombudsmen have been established in several countries to prevent corruption involving companies, for example, in Russia and Georgia.

Public and civil service commissions play a key role in preventing corruption in public service. Their role is to ensure a merit-based and professional public service and to protect it from undue political influence. They may also provide advice and training to public servants on ethical standards and/or collect and verify their asset declarations. Examples include the Council of Ethics for the Public Service in Turkey; the Department of Public Administration and Public Service within the Ministry of Finance in Estonia; and

the Federal Chancellery in Austria. Finally, internal integrity/ethics units in ministries and public bodies promote or enforce anti-corruption and ethical rules from within the body of which they are a part.

Prior to the above OECD classification, Heilbrunn had proposed a classification of the then proliferating anti-corruption commissions into four types:

- the universal model, after the Hong Kong ICAC (Independent Commission Against Corruption)
- the investigative model, after the Singapore CPIB (Corrupt Practices Investigation Bureau)
- the parliamentary model, after the Australian New South Wales ICAC
- the multi-agency model, after the United States Office for Government Ethics (OGE)¹⁰

In a nutshell, the fundamental features of these four models are as follows:

In the Hong Kong universal model the commission has a component of investigation, another of prevention and still another of communication and awareness-raising. After its creation in 1974, the Hong Kong ICAC

encountered difficulties in establishing itself within the institutional landscape. Citizens despised it. Nowadays, many experts consider it to be one of the most successful commissions worldwide.

In the Singaporean investigative model, the Bureau concentrates, subsequent to its restructuring in the 1970s, on investigation and law enforcement. Efforts have been oriented to create a favourable investment climate. The Bureau has a strict hierarchy from the President down, to the point that many observers see it as an instrument of the existing semi-authoritarian political regime.

The New South Wales ICAC concentrates on prevention both in the public and private sectors. The ICAC is governed by the persuasion that it is better to prevent corruption than to cure its effects and to punish perpetrators, and more important than efficiency in management. The ICAC is directed by a Commissioner. The ICAC reports to a joint parliamentary committee of both houses and an Operations Review Committee. The ICAC conducts investigations and analyses of alleged incidents of corruption, in liaison with parliamentary oversight committees. The Australian ICAC is considered to have contributed to create a stronger culture of integrity in Australia.

The US model is based on the co-existence of numerous cross-cutting agencies that investigate, prevent and educate on anti-corruption and integrity in the public sector. The Office of Government Ethics (OGE), founded in 1978, is one of the components of that multi-agency landscape. Its focus is prevention and education, especially on avoiding conflicts of interest and fostering ethical standards, while cooperating with investigative agencies at the same time. Since 1989, it is an autonomous office reporting to the President and Congress.

¹⁰ Heilbrunn, John R. 2004; *Anti-corruption Commissions: Panacea or Real Medicine to Fight Corruption?* Washington: World Bank Institute. Available at: <http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>.

The dilemma between suppression and prevention

As we have seen throughout this paper, anti-corruption efforts vary across countries, cultures, and different models, as well as between an emphasis on suppression of acts of corruption versus prevention of corruption and promoting integrity. Obviously, both approaches are necessary and should be adopted simultaneously. In the OECD classification cited above, there is a rather clear-cut division between law enforcement approaches and prevention approaches. This classification clearly distinguishes between national policy choices.

Countries that rely almost exclusively on the penal code and the criminal justice apparatus to deal with corruption tend to have more perceived corruption than countries devoting significant resources and efforts to corruption prevention policies.

However, the penal code, albeit indispensable, is insufficient in itself and has insurmountable limitations in the fight against corruption. In the Western tradition, the presumption of innocence -- fortunately -- is a fundamental tenet of criminal law, and in many countries this principle has been given constitutional status. Nobody can be convicted of a crime unless he

or she is proven guilty beyond any reasonable doubt, as judged from the evidence presented by the prosecutor. This evidence must be clear and convincing because a criminal proceeding may result in a prison term -- the loss of the fundamental right to liberty -- and severely damage the offender's reputation and property. The outcomes of a criminal trial are much more severe than those of civil or administrative proceedings, where the obligation to pay an amount of money (a fine) is the usual remedy to infringements. This initial presumption of innocence is firmly enshrined in an understanding of justice as fairness, especially procedural fairness.

Acts of corruption tend to be extremely difficult to prove. By definition, corruption is a concealed, clandestine activity. Those who are enmeshed in corrupt behaviours tend to disguise their illicit activities. Everybody may know that a politician or public official is corrupt, but the justice system may find it extremely difficult to find sufficient evidence to persuade a court 'beyond reasonable doubt'. No criminal judge with professional integrity will convict a politician or public official or a corporate tycoon without clear and convincing evidence. This represents a major limita-

tion of the penal code in the effort to fight corruption.

In addition, the penal code needs to be clear in defining the criminally punishable offences. Vague wording in the legal description of illicit behaviour in the penal code may lead a judge to acquit a suspect because of another very deeply entrenched tenet in the Western culture: no penalty without a law (*nulla poena sine lege*). But any law may not meet this requirement. It has a) to have been enacted previously to the deeds (*nulla poena sine lege praevia*); b) according to the formal procedures established in the constitution (*nulla poena sine lege scripta*); c) it has to be clear and definite, which represents the strongest prerequisite of legal certainty required by criminal law (*nulla poena sine lege certa*); and d) the law has to be strict (*nulla poena sine lege stricta*), meaning that analogy is forbidden in the interpretation and application of criminal law. Clearly, the wording of corrupt behaviour in law is very difficult if it has to meet all four of these fundamental requirements. The challenge is that corrupt behaviour may not necessarily meet all these requirements at the same time.

In practice, the reason for this is as follows: It is virtually impossible to encapsulate the complexity of corrupt acts in a few clear, concrete and unambiguous words. Deeds and behaviour have to be disaggregated into more abstract components in order to be expressed adequately in words. This disaggregation, albeit logical, may easily become a stumbling block to achieving the distinctiveness required according to the wording of the penal code. Effectively, if we look at the major international conventions against corruption, we will see that the wording is generally vague because it

represents the endpoint of usually protracted political negotiations. Signatory states are required to translate them into their national penal codes, however. The question then arises: which exact acts are to be punished?

By combining the substance of the major international conventions against corruption, it should be possible to specify what is meant by corrupt acts. The punishable behaviour can be said to comprise the intentional acts (active, passive, by commission or omission) of public officials (or public authorities) while in office, either directly or through others, in violation of their official duties (impartiality, objectivity, etc.) which creates illicit or undue advantages or benefits for themselves or for others. Punishable behaviours should include the promise of illicit advantages made possible by public officials (passive corruption), as well as specific behaviour by particular individuals (active corruption).

To provide an example: Should suspicious enrichment of public officials be criminally investigated as a potential public crime, or does it belong to the private sphere of an individual and should be investigated as such? It is easy to see how difficult it is to draft a penal code with an appropriate wording that captures all these nuances but which, at the same time, foresees and properly describes any possible illicit, corrupt behaviour.

Finally, what we may call systemic corruption needs to be thought of as a crime committed mainly by the rich and powerful in a society. The poor and the excluded have little opportunity to arrange corrupt deals beyond being included in patronage networks. What is frequently referred to as petty corruption falls more in between (for example, a policeman

demanding some money in order not to give a speeding ticket). Economic crimes are usually committed by high ranking officials and senior executives in high places. Because serious corruption is a crime of the social and political elites, such corruption is a structural crime, a crime affecting the fundamentals of a state and society. That is why it may be referred to as systemic – as part of the way a society functions. Because of the social and political relevance of its perpetrators, corruption is detrimental to the rule of law, to fundamental political and social rights, to the functioning of a free market economy, and to the public trust in governmental institutions. The limitations of an approach based only or mainly on the suppressive aspects of the penal code are insufficient to protect all of the crucial public goods listed above.

Prevention by way of fostering and protecting public integrity, therefore, is indispensable. Democratic political regimes and countries with strong preventive policies in place are perceived as being less corrupt than authoritarian countries without such policies in place. Preventive policies require an administrative and public law framework capable of reducing vulnerabilities to corruption in public bodies in a pro-active way, while preserving values like the efficiency and effectiveness of well-functioning public administrations. This is the policy followed by countries such as Australia, the United States, Germany and, especially, the Scandinavian countries. They have endeavoured for years, some of them even for centuries, to promote transparency in public administration, with strong checks and balances, accountable administrators and professional, patronage-free civil services. These are the most robust pillars of preventive anti-corruption policies.

Lessons learned in institutionalizing anti-corruption policies

1. Diagnosis is important – but only a first step in the treatment of corruption. Corruption is such a complex phenomenon that more harm than good can be done by pursuing simplistic approaches. Corruption will only be reduced by steadily and resolutely upgrading all the essential elements of the integrity system, both at the political and administrative levels and in both the public and private sectors. To achieve this, both preventive and repressive measures are needed. Building a robust integrity system represents a major political and technical effort that needs to be sustained over time.
2. Combating corruption is a multifaceted endeavour. All major international treaties recognise the multi-dimensional feature of the phenomenon. The 2003 UNCAC is a good example of the diversity of aspects and fields that are to be addressed in order to make any anti-corruption effort both credible and workable. The same complexity is observable in the two conventions – criminal and civil – of the Council of Europe against corruption. A single institution concentrating all or most powers is unlikely to cope effectively with all the aspects that need to be addressed.
3. Concentrating all anti-corruption efforts within a single institution (especially if it is new) could jeopardise the anti-corruption effort and facilitate the illicit capture of the anti-corruption struggle itself. A plurality of institutions acting in several fields (parliament, government, judiciary, public administration, and local governments) may prove to contribute better to the anti-corruption effort as a whole, provided that they are adequately institutionalised, resourced and networked.
4. Around the world, integrity has become a critical consideration for administrators when filling civil service positions and for voters when comparing candidates for elected or political office. Integrity is now promoted through a broad variety of means, including the introduction of leadership codes, codes of conduct, declarations of personal assets, monitoring personal assets, training and education, transparency in public administration and politics, and personal accountability.

5. The realization that institutions are interrelated and that reforms often must be coordinated has also led to an expansion of the notion of 'separate' institutions and of the list of institutions commonly included in anti-corruption strategies. While much of the focus remains on key elements of public administration, including financial control agencies, the court system, prosecutorial law enforcement and other criminal justice agencies, as well as bodies that deal with public service staffing and the procurement of goods and services, it is now understood that other institutions of government and civil society require attention as well. Only then will a systemic approach to combatting corruption be truly systemic.
6. Key public sector groups that normally must be included in such systemic strategies are parliaments, governments and public administrations at the national, regional and local levels; the judiciary and its supporting institutions; key watchdog agencies, such as auditors or inspectors; and law enforcement agencies and other elements of criminal justice systems. Any credible strategy should always include local self-governments and financing of political parties and electoral campaigns.
7. International experience around the world shows that centralised watchdog agencies have achieved some success only in countries where governance is generally good. In the majority of OECD countries, however, the anti-corruption effort and implementation of pro-integrity policies are not monopolized by a single agency or

institution. A plurality of institutions and mechanisms are in place, each with different responsibilities and roles and usually with the capacity to check on each other while, at the same time, networking. In weak governance environments, anti-corruption agencies have been created, usually upon external pressure but they often lack credibility and may even extort benefits for themselves. Often they have been captured by vested interests – either licit or illicit or both. In general, they prove to be ineffective.

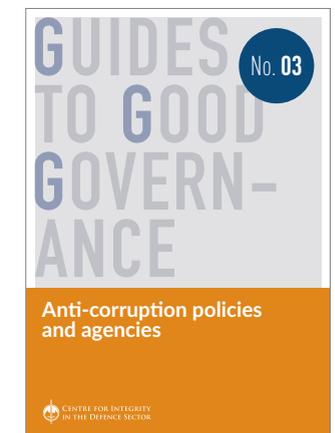
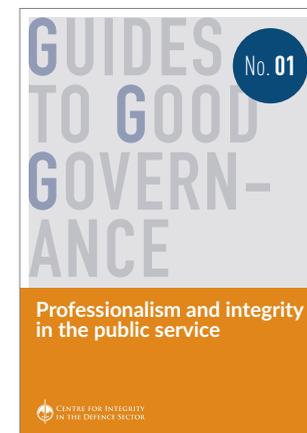
8. Poorly embedded anti-corruption bodies in the broader political and administrative institutional landscape tend to be another major and more universal cause of failure. The chief lesson to be drawn from such failures is that the priority should be given to concentrating on reform efforts that strengthens all the various democratic governance systems in the country. Without this groundwork on the key governance components, any specialised institution is likely to fail.
9. Political will shapes the role of the government in preventing and fighting corruption, particularly a democratically elected president or cabinet of ministers with a determined political will. Moreover, political will is crucial for the effective enforcement and review of existing legislation, and for proposing amendments to fill gaps and loopholes. Political commitment is vital to reforming those governance systems so as to make them function effectively.

10. International cooperation is valuable provided that international organisations or bilateral cooperation do not impose any specific institutional or organisational solutions. Policy dialogue should concentrate principally on governance principles to be promoted and guaranteed, and outcomes to be produced, rather than on the ways and means to achieve them. This is crucial to prevent cultural rejection of foreign-imposed models, which are often presented as having universal application although they grew out of specific historic and political circumstances. Local context is vital and local ownership paramount. Principles and standards, however, are universal.

CONCLUSIONS

1. Professionalism in public service requires a firm application of the merit principle in human resource management. Favouritism, nepotism, patronage and clientelism are inimical to impartiality and ultimately an obstacle to the development of a professional public service.
2. Professionalism requires stability. The necessary know-how cannot emerge and acquire robustness without stable public services. Politicisation is inimical to stability, as it generally leads to the replacement of many public servants whenever there is a government changeover.
3. Professionalism requires separation of politics and administration and a refining of their interface. The autonomy of the public service should be legally and managerially protected. This value of autonomy should be embedded in the relationships between politically elected officials and administrative officials appointed on merit, even if it is acknowledged that an autonomous public service and a good public administration are a constant political endeavour and a goal still to be fully attained in many national jurisdictions. Delegation of administrative decision-making may promote professionalism.
4. Professionalism requires resilient integrity on the part of public officials, both elected and appointed. The law and management should promote and protect the integrity and accountability of public servants. Training and disciplinary arrangements are indispensable management instruments. Codes of conduct and integrity plans may offer helpful guidelines for public officials' behaviour.
5. Military and security sector institutions will be unable to professionalise their staffs in a sustainable manner if the public administration as a whole in a country is ridden by corruption, patronage networks and politicisation. Professionalism and integrity in isolation in one public institution only are virtually impossible and will inevitably be short lived.

Guides to Good Governance series



The guide *Anti-corruption policies and agencies* deals with the institutionalisation of anti-corruption policies through specialised anti-corruption bodies or agencies. These have proliferated in recent years in many countries, particularly under the influence of international organisations and international treaties, as instruments to prevent and combat corruption. A recent tally put the number of Anti-Corruption agencies (ACAs) around the world at around a hundred. The most influential international convention on ACAs remains the United Nations Convention against Corruption adopted by the UN General Assembly on 31 October 2003 (UNCAC). The author, Francisco Cardona, is associate international expert at CIDS and a renowned expert focused on designing and assessing civil service and public administration reforms, administrative law and justice, anti-corruption policies and institution building.

Guides to Good Governance is a series of small booklets each of which discusses a particular topic of importance to good governance in the defence sector. The guides can be read by individuals with an interest in learning more about one or several topics of direct relevance to good governance in the defence sector – or the public sector more generally – and they can be used for educational purposes.

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