Chapter 2
Elements of International Standards

This section reviews the main features of the specialised anti-corruption bodies according to international standards and practices.[1] These elements include mandate and functions; specialisation; independence and autonomy; transparency and accountability; adequate resources, means and specialised and trained staff; inter-agency co-operation; co-operation with civil society and the private sector; and international co-operation and networking.

Main anti-corruption functions

International instruments identify the following main anti-corruption functions: *investigation and prosecution of corruption; prevention of corruption; education and awareness raising; and co-ordination, monitoring and research.* In fact anti-corruption bodies undertake these and a variety of other tasks, for example, receive and respond to complaints, gather intelligence, conduct investigations, impose administrative sanctions; conduct research on corruption; provide ethics policy guidance, scrutinise asset declarations; provide anti-corruption information and education; ensure international co-operation. Anti-corruption functions and tasks can be assigned to one or more specialised institutions.

The mandate of *investigation and prosecution* provides for the enforcement of anti-corruption legislation, with a focus on criminal law. It is usually performed by separate specialised structures within the existing institutions – the police (or the multi-purpose agency) and the prosecution service. Depending on the fundamental principles of the respective national criminal justice system, the prosecution service can also employ investigators; on the other hand, very few investigation services also have powers to prosecute. The main challenge of institutions mandated to fight corruption through law enforcement is to specify their *substantive jurisdiction* (offences falling under their competence), to avoid a conflict of jurisdictions with other law enforcement agencies and to ensure efficient co-operation and exchange of information with other law enforcement and control bodies.

"Corruption" is not an exact criminal law term. For the purposes of substantive jurisdiction of specialised law enforcement bodies it needs to be further defined, *e.g.* by enumerating offences under their competence such as serious forms of passive and active bribery, trading in influence, abuse of powers etc. However, these criminal offences are often committed in concurrence with other financial and economic crimes as well as in the course of organised criminal activity. In many countries, the investigation and prosecution of financial and economic crimes are the responsibility of other specialised law enforcement departments. To address this problem, specialised law enforcement institutions for the fight against corruption are sometimes combined with *specialised economic or organised crime services*. This option can have its own pitfalls and can

dilute anti-corruption priorities in the larger context of the fight against economic and organised crime.

An important question is to what extent the jurisdiction of such a law enforcement body should be mandatory. Experience shows that mandatory jurisdiction results in overburdening the institution with cases and in particular with "street corruption" cases. One of the solutions is to limit the jurisdiction of the service to important and high-level corruption cases. If this approach is adopted, it is crucial that the law prescribes precisely the factors for determining such jurisdiction to avoid abuse of discretion and conflicts of jurisdiction with other bodies.

Another issue related to jurisdiction is how much discretion the anti-corruption agency should exercise in the selection of cases, and whether its focus should be retrospective (dealing with acts committed before the establishment of the institution). In many countries, including transition economies in Eastern Europe, specialised anti-corruption institutions have been created after the change of government which gained power on a strong anti-corruption platform. As a result, there are political and public expectations not only to ensure good governance of the new administration, but also to pursue abuses of the previous governments. While this expectation might be highly legitimate in some circumstances, focus on the past gives rise to two important caveats: it can taint (rightfully or wrongly) the newly established anti-corruption institution with a label of pursuing politically motivated persecutions. It can result in a disproportionate allocation of resources of the newly established institution on past cases – making it impossible to pursue current cases effectively. Accordingly, as much as possible, the jurisdiction should be prospective and oriented towards the future. Its retrospective focus should be limited to only the most severe and clearly indicated cases.

Preventive functions are numerous and diverse, and often cannot be performed by a single institution. The UNCAC requires States parties to develop and maintain anti-corruption policies and effective measures to prevent corruption. It contains a number of mandatory requirements to prevent corruption without explicit reference to "corruption". Namely, countries should take measures that promote transparency and integrity in the public sector, ensure appropriate systems of public procurement, promote transparency and accountability in the management of public finances, promote integrity in the judiciary and take measures aimed at preventing corruption involving the private sector, including enhancing accounting and auditing standards and ensuring an appropriate regulatory and supervisory regime to prevent and detect money-laundering activities. Moreover, to prevent corruption, according to the UNCAC, countries are required to involve the civil society in anti-corruption efforts and disseminate information concerning corruption. The UNCAC also includes preventive measures that countries have an *obligation to consider*, including transparent and merit-based employment policies and practices in the public sector, appropriate remuneration, education and training of public officials, transparency in funding of political parties, prevention of conflict of interest in the public sector, codes or standards of conduct for public officials, facilitation of reporting of corruption by public officials, declarations of assets of public officials.

Co-ordination, monitoring and research are also important functions necessary for comprehensive national anti-corruption strategies and can be entrusted to specialised anti-corruption bodies.

Co-ordination is required at two levels: policy co-ordination and co-ordination of implementation measures. Where different law enforcement agencies are responsible for detection and investigating of corruption, a co-ordinating function is essential. Even

where a single law enforcement specialised body has jurisdiction to investigate and prosecute corruption, institutionalised co-ordination with other state control bodies is needed, *e.g.* tax and customs, financial control, public administration. Furthermore, any comprehensive national anti-corruption strategy, programme or action plan requires a multidisciplinary mechanism charged with overseeing and co-ordinating its implementation and regular progress reports. Such a mechanism will have to be institutionally placed at an appropriate level to enable it to exercise its powers throughout different state institutions. Ideally, it will also involve civil society.

Monitoring of implementation and research are vital functions to develop anti-corruption policies and to properly implement them. Research on corruption helps to see how widespread the corruption is, what areas and sectors are mostly exposed to corruption risks, what specifically these risks are and how possibly they can be remedied. In a number of countries, regular sociological surveys on corruption are conducted among the population and the businesses. Usually they show their perception of causes of corruption, attitudes towards corruption or how well respondents are informed about government's anti-corruption efforts (examples of such surveys can be found in Armenia, Tajikistan, Ukraine and Latvia).[2]

Comparing prevention functions of dedicated corruption-prevention bodies and multi-functional anti-corruption bodies with preventative functions covered in Part II of this report, most popular prevention functions entrusted to these bodies are anti-corruption education, and training and awareness-raising; review of corruption risks in public sector and development of integrity plans/methodologies/recommendations; centralising, analysing and verifying asset declarations/personal wealth reports of public officials; receiving of corruption complaints; as well as the development and implementation of anti-corruption policies; research on corruption; anti-corruption assessment of legal acts; prevention of conflicts of interest; control of financing of political parties; registers of lobbyists; and serving as focal points for international co-operation in anti-corruption field.

Many corruption-prevention functions, which do not specifically refer to "corruption", are performed by existing state institutions. The use of public funds is controlled by supreme audit institutions and financial control bodies; procedures in public procurement are developed by relevant departments in ministries or public procurement bodies; public service commissions and academies are in charge of recruitment and training in the civil service. Important work to prevent corruption is done by ethics commissions; commissions for prevention of conflicts of interest; tax services, ministries of economy; financial intelligence units and others.

The role of the existing/conventional state institutions should not be underestimated. They are better established in traditions of some countries and better equipped to reach out to their constituencies and make improvements. Hence, the existing public institutions, where they function effectively and their integrity is not questioned, can specialise in the anti-corruption field and play a prominent role to prevent corruption in their sectors. A study in 2009 noted that assigning the corruption prevention functions solely to specialised agencies may cause difficulties, mainly because of the capacity constraints of such agencies that make outreach difficult to achieve on a substantial scale, and in countries that are large in size and with significant rural communities.[3] However, assigning corruption prevention across existing bodies should still be part of a strategy to fight corruption; there should be a central point for anti-corruption efforts, which looks at the progress made in a comprehensive manner and ensures it is visible.

Specialisation

It is widely acknowledged that specialisation is essential for the effective fight against corruption. Corruption needs to be approached at various levels and requires specific expertise, knowledge and skills in a variety of fields, including law, finance, economics, accounting, civil engineering, social sciences, and other domains.[4] There are few criminal phenomena, if any, that require such a complex approach and a *combination of diverse skills*. These skills are normally scattered across various institutions, but are rarely concentrated in any particular body specialised in tackling corruption. When all these skills are brought together in a specialised institution, this brings a level of *visibility and independence* to those dealing with corruption. Without an adequate level of independence, the fight against serious corruption is destined to fail.

Specialisation may take different forms. *International standards do not imply that there is a single best model for a specialised anti-corruption institution*. International standards, while requiring the establishment of specialised bodies or persons in the field of prevention and law enforcement, do not directly advocate for institutional specialisation at the level of courts. Furthermore, there is no strict requirement of a dedicated institutional entity for the fight against corruption through investigation and prosecution. Strictly speaking, the designation of an adequate number of specialised persons within existing structures already meets the requirement of international treaties. It is the responsibility of individual countries to find the most effective and suitable institutional solution adapted to the local context; level of corruption; and existing national institutional and legal framework.

A comparative overview of different types of specialised institutions can be summarised as follows:

- *Multi-purpose model*

This is possibly the only approach that would – strictly speaking – live up to the name "anti-corruption agency" as it combines in one institution all three main functions: enforcement (usually investigation), prevention, and public education and support. A multi-purpose single-agency model has attracted most visibility and triggered most of the discussions in the international arena.

- *Law enforcement model*

This model takes different forms of specialisation in the field of investigation and prosecution or the combination of the two. Sometimes the law enforcement model also possesses some important elements of preventive, co-ordination and research functions. What distinguishes this from other models is the level of independence or autonomy and of visibility, as it is normally placed within the existing police or prosecutorial hierarchy.

- *Preventive bodies*

This is the most diverse category and covers a variety of institutional solutions. It includes specially created, dedicated corruption prevention agencies, commissions and units, but also existing state institutions which contribute to prevention of corruption as part of their normal responsibilities, often without referring to "corruption".

Independence and autonomy

The independence of a specialised anti-corruption institution is considered to be a fundamental requirement for the proper and effective exercise of its functions. This consensus is reflected in all major international legal instruments.

The level of independence of an anti-corruption agency can be assessed based on various parameters discussed below in more detail. Key is, however, the "[a]bility (of the anti-corruption agency) to engage in its activities and carry out its functions — especially to investigate and/or prosecute concrete allegations — effectively and efficiently and without undue influence or undue reporting obligations at its own discretion without prior consultation or approval."[5]

While the political and institutional context of anti-corruption agencies varies, it is key for the independence of these agencies that they *operate in environments characterised by the rule of law, and a "comprehensive and stable statutory/constitutional legal framework."*[6] In absence of these preconditions, independence of anti-corruption institutions can hardly be ensured.

Reasons why the independence criterion ranks so high on the anti-corruption agenda are closely linked with the nature of corruption. Corruption in many respects equals abuse of power. In contrast with other illegal acts, in public corruption cases at least one perpetrator comes from the ranks of persons holding a public function; the higher the function, the more power the person exercises over other institutions. The level of "required" independence of a given anti-corruption institution is therefore closely linked with the level of corruption, good governance, rule of law and strength of existing state institutions in a given country. Prosecution of "street corruption" (corruption of rather low level public officials, for instance traffic police officers, with little or no political influence) does not normally require an institution additionally shielded from undue outside political influence. On the other hand, tackling corruption of high-level officials (capable of distorting the proper administration of justice) or systemic corruption in a country with deficits in good governance and comparatively weak law enforcement and financial control institutions is destined to fail if efforts are not backed by a sufficiently strong and independent anti-corruption institution.

While formal and fiscal independence is required by international instruments and is an important factor influencing the institution's performance, it does not in itself guarantee success. Any kind of formal independence can be thwarted by political factors.[7] It is genuine political commitment, coupled with adequate resources, powers and staff, which are as crucial as formal independence, if not more so, to the success of an anti-corruption institution. Consequently, in light of international standards, one of the prominent and mandatory features of specialised institutions is not full independence but rather an adequate level of *structural and operational autonomy* secured though institutional and legal mechanisms aimed at preventing undue political interference as well as promoting "pre-emptive obedience".[8] In short, "independence" first of all entails de-politicisation of anti-corruption institutions.

The adequate level of independence or autonomy depends on the type and mandate of an anti-corruption institution. Institutions in charge of investigation and prosecution of corruption normally require a higher level of independence than those in charge of preventive functions;[9] multi-purpose bodies that combine all preventive and repressive functions in one single agency call for the highest level of independence, but also the most transparent and comprehensive system of accountability.

The question of independence of the law enforcement or prosecutorial bodies that are institutionally placed within existing structures in the form of specialised departments or units requires special attention. Police and other investigative bodies are in most countries highly centralised, hierarchical structures reporting at the final level to the Minister of Interior or Justice. Similarly, but to a lesser extent, this is true for prosecutors in systems where the prosecution service is part of the government and not the judiciary. Finally, in certain countries the Prosecutor General or head of an anti-corruption body can be appointed by, and directly report to the President. In such systems the risks of undue interference is substantially higher when an individual investigator or prosecutor lacks autonomous decision-making powers in handling cases, and where the law grants his/her superior or the chief prosecutor substantive discretion to interfere in a particular case. Accordingly, the independence of such bodies requires careful consideration in order to limit the possibility of individuals abusing the chain of command and hierarchical structure, either to discredit the confidentiality of investigations, or to interfere in crucial operational decisions such as commencement, continuation and termination of criminal investigations and prosecutions. There are many ways to address this risk. For instance, special anti-corruption departments or units within the police or the prosecution service can be subject to separate hierarchical rules and appointment procedures; police officers working on corruption cases, though institutionally placed within the police, should in individual cases report only and directly to the competent prosecutor.

Specific preventive functions could also influence the level of independence and condition the institutional placement of the body. For instance, a central control institution that is responsible for declarations of assets and prevention of conflicts of interest, which collects and inspects information on all elected and high-level officials, including members of the government, parliament, judges and prosecutors, cannot be situated within the government as this could amount to the breach of the separation of powers.

A number of factors determine the independence of an anti-corruption body:

- *Legal basis*

An anti-corruption institution should have a clear legal basis governing the following areas: mandate, institutional placement, appointment and removal of its director, internal structure, functions, jurisdiction, powers and responsibilities, budget, personnel-related matters (selection and recruitment of personnel, special provisions relating to immunities of the personnel if appropriate, etc.), relationships with other institutions (in particular with law enforcement and financial control bodies), accountability and reporting, etc. The legal basis should, whenever possible, be stipulated by law rather than by-laws or governmental or presidential decrees. Furthermore, internal operating, administrative, and reporting procedures and codes of conduct should be adopted in legal form by regulations and by-laws.

- *Institutional placement*

A separate permanent institutional structure – an agency, unit or a commission – has *per se* more visibility and more independence than a department or a unit established within the institutional structure of a selected ministry (interior, justice, finance, etc.). Similarly, a body placed within an institution that already enjoys a high level of autonomy from the executive (e.g. the Prosecution Service, the Supreme Audit Institution, the Ombudsman, the Information Commissioner, the Public Administration Reform Agency, etc.) could benefit from such existing autonomy.

- *Appointment of senior management*

The symbolic role played by the head of an anti-corruption institution should not be underestimated. In many ways, the director represents one of the pillars of the national integrity system. The selection process for the head should be transparent and facilitate the appointment of a person of integrity and competence, on the basis of high-level consensus among different power-holders and branches of power.

It is important to set out adequate and clear appointment *criteria* for the post of director. There are numerous examples in countries with specialised anti-corruption agencies. Among the requirements feature professionalism; reputation; outstanding achievements and working experience; substantial experience in a management position; and strategic thinking and leadership. Besides, in the case of Hong Kong anti-corruption commission, the Commissioners have been appointed "from outside the Commission, on the basis that a fresh pair of eyes was a safeguard against bad habits becoming institutionalised".[10] These criteria are aimed to ensure that candidates are not politically affiliated and are capable and experienced to lead the anti-corruption agency.

Box 2.1. Approaches to selection of management in anti-corruption bodies

In *Latvia*, the candidates to the position of the Director of the Corruption Prevention and Combating Bureau are first selected through an open vacancy announcement. Then the Prime Minister asks the Prosecutor General; the Supreme Justice; and the Director of the Constitution Protection Bureau for an opinion about shortlisted candidates. Further, the candidates are interviewed by the Cabinet of Ministers, which then discusses them. Shortlisted candidates are then examined by the National Security Council. Finally, the Director is elected by the Parliament.

In *Lithuania*, the President plays an eminent role, selecting the Director and proposing his candidature to the Parliament. Upon consent of the Parliament, the President appoints the Director.

In *Serbia*, the Anti-Corruption Agency is led by the Board and the Director. Board members are nominated by nine different state authorities (the National Assembly; the President of the Republic; the Government; the Supreme Court of Cassation; the State Audit Institution; the Protector of Citizens and Commissioner for Information of Public Importance; the Social and Economic Council; the Bar Association of Serbia; and the Association of Journalists). The Board members are then elected by the National Assembly. Ultimately, the Board selects the Director through public advertisement based on professional criteria designed to ensure that a non-political and professional person is selected. The Parliament cannot dismiss the Director or any member of the Board.

In *Slovenia*, the Director and deputy Directors of the Commission for the Prevention of Corruption are appointed through a special procedure, consisting of an open recruitment procedure and nomination by a special board of representatives of the Government; the National Assembly; NGOs; the Independent Judicial Council; and the Independent Council of Officials, and screening and interviewing the Candidates.

Approaches to the appointment of management of anti-corruption agencies vary, but a common denominator is opting for a specific appointment procedure combining various levels of decision-making; appointment by a single political figure (*e.g.* a Minister or the President) is not considered a good practice. Besides, the post of director of anti-corruption institutions is frequently subject to an open competition and this vacancy is publicly advertised.

The future head of anti-corruption body can be nominated by the Government, following an open vacancy announcement and asking opinions by the Prosecutor General,

the Supreme Justice, the Constitution Protection Bureau and the National Security Council, which is then followed by an election by the Parliament (Latvia); nominated by the President to the Parliament and appointed by the President upon consent of the Parliament (Lithuania); appointed by the Prime Minister upon consent of the President, the Committee for Special Services and the relevant Parliament's commission (Poland); shortlisted by a special committee and then elected by the Parliament on the proposal of the President (Indonesia); appointed by the President following open recruitment procedure and nomination by a special board (Slovenia); by the Prosecutor General following opinion of a minister and a collegial body (Croatia); following the opinion of the President (Azerbaijan); appointed by the President, at the proposal of the Minister of Justice and with prior opinion of the Superior Council of Magistracy (Romania); or by a board nominated by various institutions and elected by the Parliament (Serbia).

The director's tenure in office should also be protected by law against unfounded dismissals. A study suggests that heads and key personnel in anti-corruption institutions should be appointed for a minimum of two legislative periods, in order to avoid incoming governments' interference with the post, without the possibility of reappointment for a second term. In many instances, there are mechanisms in place to avoid the arbitrary dismissal of the head of the agency by the parliament or the executive.[11]

- *Budget and fiscal autonomy*

Adequate funding is of crucial importance. While full financial independence cannot be achieved (at the minimum, the budget will be approved by the Parliament and in many cases prepared by the Government), sustainable funding needs to be secured and legal regulations should prevent unfettered discretion of the executive over the level of funding.

Accountability and transparency

No state institution can be fully autonomous, and due consideration should be given to the need to preserve *accountability and transparency* of the institutions, especially if it possesses intrusive investigative powers. In the discharge of its duties and powers, anti-corruption bodies should strictly adhere to the principles of the rule of law and internationally recognised human rights.

Whatever the form of specialisation and institutional placement, *specialised anti-corruption institutions need to be integrated in the system of checks and balances essential for democratic governance*. The explanatory report to the Criminal Law Convention on Corruption rightfully states that "the independence of specialised authorities for the fight against corruption should not be an absolute one. Indeed, their activities should be, as far as possible, integrated and co-ordinated with the work carried out by the police, the administration or the public prosecutor's office. The level of independence required for these specialised services is the one that is necessary to perform properly their functions."[12]

All anti-corruption bodies do eventually depend on and are accountable to those in power, and few, if any, have a constitutional status equivalent to that of the judiciary or an ombudsman – such a level of independence is neither required, nor advocated by the international standards.

Forms of accountability of specialised institutions and persons must be tailored to the level of their specialisation; institutional placement; mandate; functions and most of all,

their powers against other institutions and individuals. In all instances, such institutions are required to submit regular performance reports to a high-level executive and legislative body; they also have to enable and proactively facilitate public access to information on their work.[13] Law enforcement institutions must be subject to prosecutorial and court supervision. An example of a good practice in a single multi-purpose agency is to employ special external oversight committees, which can include representatives of different state bodies and civil society.[14]

Increasingly, the international debate acknowledges that accountability is an important cornerstone for anti-corruption agencies to gain public trust and support. Practice in many countries attests that support from the population is crucial in times when the body comes under politically-motivated attacks. Therefore, accountability should also include a dimension of *accountability to the public*. Agencies often have specific mechanisms to liaise with the media and pay particular attention to regularly informing the public through the media about their work. In most cases, agencies also issue annual and other regular reports about their work, although the quality of these reports varies, depending on the degree of overall organisational capacity of the agency and its ability to report against meaningful performance indicators.

Adequate resources, means and training

Setting up and sustaining specialised anti-corruption institutions is costly. However, in the long run it is even more costly to set up a specialised body and then fail to provide it with adequate resources, hence hindering its performance. This, consequently, results in the failure to obtain and maintain public confidence. The requirement to provide anti-corruption institutions with adequate resources and training is an obligation included in all international legal instruments cited in the previous section.

It is crucial that the *selection and the appointment of personnel in anti-corruption agencies* are based on objective, transparent, and merit-based criteria. In-depth background and security checks can be used in the recruitment procedures. Personnel should enjoy an appropriate level of job security in their positions. Salaries need to reflect the nature and specificities of work. Measures for protection from threats and pressure on the law enforcement staff and their family members should be in place.

The composition of personnel of an anti-corruption institution - the number of staff members, their professional profiles - should reflect the institution's mandate and tasks. As knowledge on corruption increases, so are the demands on developing the skills and expertise to detect and combat it. This, in turn, requires agencies to ensure that they have the specialist skills among their staff to apply modern investigative techniques, including for conducting financial investigations or forensic accounting.

While it is increasingly acknowledged that specialised anti-corruption bodies need to acquire *specialised skills and experience* and this seems an obvious requirement, in practice many institutions face serious difficulties with recruiting adequate staff and attracting specialised experts. Reasons for this are not always linked to economic considerations or limited resources in a given country, but more often reflect either a lack of genuine political commitment to address the problem of corruption or decision-makers' ignorance of the complexity of corruption. As stated in a 2009 study, "inadequacy of recruitment and training procedures is one of the major causes for the lack of specialisation".[15]

The type of skills and knowledge anti-corruption bodies seek depend on their mandate and functions; however, a common trend is to try to build a pool of *diverse skills and expertise in different fields beyond conventional law enforcement skills or general experience in the public administration*. For investigation and prosecution, such specialised skills are needed as hands-on knowledge of investigative techniques, previous experience in investigation and prosecution bodies, training in novel methods to investigate corruption, language skills and expertise in various fields, such as economics, audit/forensic accounting, finance, banking, customs, IT (see, for example, in Part 2 sections on Slovenia, Romania, Azerbaijan). Prevention requires previous experience in co-ordinating public policies; governance reform; ethics; conflict of interest prevention; public education and training; conducting research; language skills and others. Preventive bodies with administrative control functions will seek persons with previous experience in state audit, tax or inspection bodies. Reputation and trust are an overarching criterion, but they are particularly important for law enforcement bodies. There are various models of employment in place, ranging from permanent to seconded staff.

Special continuous *training* is one of the most crucial requirements for the successful operation of an anti-corruption body, whether it is newly established or already existing.[16] Corruption is a complex and evolving phenomenon; prevention and prosecution of corruption require highly specialised knowledge in a broad variety of subjects. Furthermore, in-service training should be the norm, and a number of agencies are having agency-specific training plans aimed at increasing staff's qualifications and skills.

The UNCAC and the Council of Europe conventions also highlight that in order to fight corruption law enforcement bodies need *effective means for gathering evidence*. The use of different forms of covert measures and special investigative means, as well as access to bank information are crucial for successful investigation and prosecution of corruption. However, importance of other methods is increasingly acknowledged too, such as use of open source information; data bases; thorough analysis of corporate information; financial investigations; and forensic accounting. It is crucial to further focus on following money flows and identifying, tracing and seizing proceeds from corruption.

International conventions also encourage to *protect persons who help the authorities in investigating and prosecuting corruption* (procedural and non-procedural witness protection measures) and to *facilitate reporting of corruption and co-operation with the authorities* (ranging from whistleblower protection to the possibility of granting limited immunities and reduction of punishment to collaborators of justice).

In order to effectively gather evidence, law enforcement anti-corruption bodies are granted extensive and intrusive *powers*, often even more than regular police. Such broad and intrusive powers given to anti-corruption law enforcement bodies, should, however, be strictly scrutinised in the light of international human rights standards, and should be subject to external oversight.

The question of adequate powers (to request documents, conduct inspections, summon and interrogate persons, etc.) is also relevant for *preventive bodies*, which have certain *control functions in such areas as prevention of conflicts of interest, political party financing or control of declaration of assets of public officials*.

Inter-agency co-operation and involvement of the public

An anti-corruption body cannot function in a vacuum and none can perform all tasks relevant for the suppression and prevention of corruption alone. Therefore, strong and well-functioning *inter-agency co-operation and exchange of information* are among the features of anti-corruption agencies defined in international standards. Particular attention should be paid to co-operation and exchange of information among anti-corruption agencies, control and law enforcement bodies, including tax and customs administrations, regular police forces, security services, financial intelligence units, etc.

Efforts to achieve an adequate level of co-ordination, co-operation and exchange of information among public institutions in the anti-corruption field should take into account the level of existing "fragmentation" of the anti-corruption functions and tasks divided among different institutions. However, even multi-purpose anti-corruption agencies with broad law enforcement and preventive powers cannot function without institutionalised (and mandatory) channels of co-operation with other state institutions in the area of enforcement, control and policy-making. Co-operation is naturally of crucial importance in systems with a multi-agency approach where preventive institutions are not institutionally linked with law enforcement bodies.

In practice, inter-institutional co-operation and co-ordination is often a challenge. Problems in this area range from overlapping jurisdictions and conflicts of competencies to the lack of competencies (where institutions refuse jurisdiction in sensitive cases and shift responsibilities to other institutions). If this area is overlooked (as it often is) in the process of designing the legal basis of the new institution, it will likely seriously hinder the performance of the institution and taint its relations with other state institutions in the future. A 2009 study noted that "[w]hile in theory, the success of anti-corruption institutions greatly depends on effectiveness and co-operation of a wider range of complementary institutions, in practice these are often not well connected and integrated, due to their wide diversity, overlapping mandates, competing agendas, various levels of independence from political interference and a general institutional lack of clarity. Against such background the establishment of an anti-corruption commission has been seen in many cases as adding another layer of (ineffective) bureaucracy to the law enforcement sector."[17]

Often law enforcement officials, especially in countries with a centralised prosecution service, believe that the code of criminal procedure provides a sufficient framework for the co-ordination of the investigation and the prosecution of criminal offences. Experience indicates that such general rules alone are not adequate for securing a proper level of co-operation in dealing with complex corruption cases. General rules cannot address issues that may arise outside the investigation of specific cases, such as analysis of trends and risk areas, co-ordinating policy approaches and proactive detection measures. Furthermore, such rules do not address co-operation between law enforcement and preventive institutions, which is also important. In different countries, these issues are addressed either through creation of *special multidisciplinary co-ordinating commissions*, through *special legal provisions on co-operation and exchange of information* or *by signing special agreements and memorandums* among relevant institutions on co-operation and exchange of information.

Even comprehensive institutional efforts against corruption are prone to fail without active *support from the society and the private sector*. One of the important elements of anti-corruption efforts increasingly promoted by different international instruments is co-

operation with civil society and the private sector. Also, a feature of the Hong Kong anti-corruption commission was, from the beginning, its close involvement of the community in its work.[18] This should be taken into account not only by preventive and education bodies, but also by law enforcement bodies.

International co-operation and networking

The need for international co-operation is evident whenever anti-corruption agencies have law enforcement functions. In cases involving complex corruption schemes with activities or money transfers taking place abroad, it is key for agencies in different countries to co-operate. The need for international co-operation goes beyond law enforcement. Anti-corruption as an internationally recognised discipline is comparatively young and still in the process of developing. Hence, its success depends, to a large extent, on the exchange of good practices, of empirical evidence about the impact of certain tools, and on the development and refinement of international standards. International networking and exchange of best practices is often a valuable source of know-how for newly established bodies.

Anti-corruption agencies are the logical focal points of expertise for international co-operation. International co-operation is, in many cases, part of their mandate. They can only profit from international developments and contribute to them if they immerse themselves in the international network of anti-corruption stakeholders. This is also attested by the fact that all international conventions on corruption encourage international co-operation of State parties (for example, Chapters IV and VI of the UNCAC).

Important platforms for international co-operation and networking in the anti-corruption field are the inter-governmental mechanisms monitoring countries' implementation and enforcement of international anti-corruption standards: the OECD Working Group on Bribery and its Law Enforcement Officials' meetings; the Council of Europe GRECO and the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.

A number of regional anti-corruption initiatives have been established over the years, which encourage networking and sharing of lessons learned and best practices among countries, such as anti-corruption initiatives supported by the OECD, including the Anti-corruption Network for Eastern Europe and Central Asia[19] and the OECD/ADB Asia-Pacific Initiative or the Regional Anti-Corruption Initiative for South Eastern Europe.[20]

Useful forums for networking of anti-corruption agencies are also the International Association of Anti-Corruption Authorities and, for EU member states, the European Partners against Corruption and the EU contact-point network against corruption.[21]

Assessing the performance of anti-corruption institutions

The rise in numbers of anti-corruption institutions over the past decades is in remarkable contrast to the relative lack of conclusive evidence that the existence of anti-corruption bodies helps to reduce corruption. In part, this is due to the fact that anti-corruption bodies have often been created as a demonstrative, political-level statement about countries' resolve to fight corruption (often because of international legal

obligations, or because of pressure from the international community and donors), with the agencies subsequently operating in politically challenging environments, over which they have little control. In part, it is due to the fact that few agencies are looking at themselves from an organisational perspective, although this is something over which they do have control.[22]

With regard to measuring corruption, there is a number of surveys on the perceptions of corruption, and on the governance or business climate, such as Transparency International Corruption Perception Index, the World Bank Governance Indicators (for example, Control of Corruption or Rule of Law indicators), or such surveys as the Doing Business or Freedom House reports Nations in Transit. Altogether and over time, they produce a comparable overview over how the perception of corruption is changing; however, they do not provide much information about the performance of a single institution.

A 2011 study argues that only few anti-corruption institutions have proper mechanisms in place to monitor their performance and to account for their activities to the public.[23] While assessing the performance is a challenging task, and many agencies lack the skills, expertise and resources to develop adequate methodologies and mechanisms, showing results might often be the crucial factor to facilitate transparency and accountability of the agencies, as well as to build institutional memories and improve agencies' policies and performance. It is also important for an anti-corruption institution to gain or retain public support and fend off politically-motivated attacks.

In recent years, progress has been made in developing methodologies and tools to help anti-corruption agencies to assess their institutional capacities and to measure their performance. The UNDP, in 2011, developed guidelines for anti-corruption agencies to assess their capacity. These guidelines provide modules to assess capacities of the agency in selected areas, for example, research on corruption; promotion of integrity; detection; etc. Based on the results, the agency can then develop an action plan for capacity development.[24] A study conducted by U4 and published in 2011 discusses how best to evaluate the effectiveness of anti-corruption agencies. It encourages anti-corruption agencies to ensure internal monitoring and evaluation systems, but points out that these systems will only be meaningful as long as the agency has a strategy of what it wants to achieve to be able to measure progress.[25]

Certainly, assessment of the performance of specialised anti-corruption institutions needs to take into account the broader context in which they operate.

Notes

1. On this subject see introductory chapters of Council of Europe (2004), and UNDP (2005).
2. See, for example, Armenia Corruption Surveys 2008 – 2010, *www.crrc.am/index.php/en/159/;* Perception of Corruption Surveys in Georgia, *www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/GEPAC/779-Georgia%20General%20Public%20Survey-2009.pdf*
3. Hussmann, K., H. Hechler and M. Penailillo (2009), "Institutional arrangements for corruption prevention: Considerations for the implementation of the UNCAC Article 6", *U4 Issue 2009:4*, Anti-Corruption Resource Centre, *www.u4.no*.
4. Council of Europe, *Explanatory report to the Criminal Law Convention on Corruption (ETC no. 173)*, paragraph 96.
5. Kreutner, M. (ed.) (2010), pp. 51 – 66.
6. Kreutner, M. (ed.) (2010), pp. 51 – 66.
7. Meagher, P. (2004).
8. Esser, A. and M.Kubiciel (2004), p. 37.
9. Council of Europe (2004), p. 17; UNDP (2005), p.5.
10. De Speville (2010), p.53
11. Kreutner, M. (ed.) (2010), pp. 51 – 66.
12. Council of Europe, *Explanatory report to the Criminal Law Convention on Corruption (ETC no. 173)*, paragraph 99.
13. UNDP (2005b).
14. See, for example, the system of checks and balances of the Independent Commission Against Corruption in Hong Kong, *www.icac.org.hk/en/checks_and_balances/bf/index.html*.
15. De Sousa, L. (2009), p.8
16. Esser, A. and M.Kubiciel (2004), p. 48.
17. U4 Expert Answer: "Coordination Mechanisms of Anti-corruption Institutions", 2009, *www.u4.no.*
18. De Speville, B. (2010)
19. For more information see *www.oecd.org/corruption/acn.*
20. For more information see *www.oecd.org/site/adboecdanti-corruptioninitiative*.
21. For more information see *www.iaaca.org*, *www.epac.at*.
22. Doig, A. and D.Norris (2012), pp. 255-273.
23. Johnson, J., *et al.* (2011)
24. UNDP (2011).
25. Johnson, J., *et al.* (2011)

Bibliography

Camerer, Lala (2001), "Prerequisites for effective anti-corruption ombudsman's offices and anti-corruption agencies", 10th International Anti-Corruption Conference, Prague, Transparency International, *www.10iacc.org/download/workshops/cs06.pdf*.

Council of Europe (2004), *Anti-corruption Services – Good Practices in Europe*, Council of Europe Publishing, Strasbourg.

Council of Europe (2005), *Strengthening Anti-Corruption Services in South-Eastern Europe, Current Status and Needs for Reforms*, Report from regional meeting of the Directorate General I Legal Affairs on 31 March - 1 April 2005 in Skopje, *www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/paco%20impact/COE%20Report.pdf*, accessed 22 January 2013.

Doig, Alan (1995), "Good government and sustainable anti-corruption strategies: a role for independent anti-corruption agencies?", Public Administration and Development, Vol. 15, pp. 151 – 165.

Doig, Alan (2004), "A Good Idea Gone Wrong? Anti-Corruption Commissions in the Twenty First Century", EGPA 2004 Annual Conference, Ljubljana.

Doig Alan and Norris, David (2012), "Improving Anti-corruption Agencies as Organisations", Journal of Financial Crime, Vol. 19 No. 3, 2012, pp. 255-273.

Global Integrity (2011), *2011 Global Integrity Report*, chapter "Anti-Corruption Agencies, not the Panacea" at *www.globalintegrity.org/report/findings#aca*.

Johnson, J., *et al.* (2011), "How to monitor and evaluate anti-corruption agencies: Guidelines for agencies, donors, and evaluators",U4 Issue September 2011 No. 8, Anti-Corruption Resource Centre, *www.U4.no*.

Kreutner, M. (ed.) (2009), "10 Guiding Principles and Parameters on the Notion of Independence of Anti-Corruption Bodies", in *Practice Meets Science. Contemporary Anti-Corruption Dialogue. IACSS 2009*, Vienna, 2010, pp.51 – 66.

Meagher, Patrick (2004), *Anti-corruption Services - A Review of Experience*, Center for Institutional Reform and the Informal Sector at the University of Maryland, *www.iris.umd.edu/Reader.aspx?TYPE=FORMAL_PUBLICATION&ID=3dca81ee-16c2-46f6-a45c-51490fcb3b99*.

Sousa, Luis de (2009), "Anti-Corruption Agencies: Between Empowerment and Irrelevance", working paper, European University Institute, Florence.

Speville, Bertrand de (2000), "Why do anti-corruption agencies fail?", paper from United Nations Global Program Against Corruption, Implementation Tools, the Development of an Anti-corruption Tool Kit: Inputs for a United Nations Expert Group Meeting, United Nations, Vienna.

Speville, Bertrand de (2003), "Specialised Anti-corruption Services – good practices in Europe", paper presented at the Octopus Interface meeting, Council of Europe, 2003.

Transparency International (2002), *TI Source Book 2000 – Confronting Corruption: The Elements of a National Integrity System*, *http://ww1.transparency.org/sourcebook/index.html*.

UNDP (2005a), Report of the Regional Forum on Anti-corruption Institutions, Vienna International Center, *europeandcis.undp.org/files/uploads/Lotta/AC%20Forum%20Report.pdf*.

UNDP (2011), *Practitioner's Guide to Assessing the Capacity of Anti-corruption Agencies*, UNDP.
www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html

Valts Kalniņš (2005), "Assessing Trends in Corruption and Impact of Anti-Corruption Measures", discussion paper, *www.oecd.org/corruption/acn*.